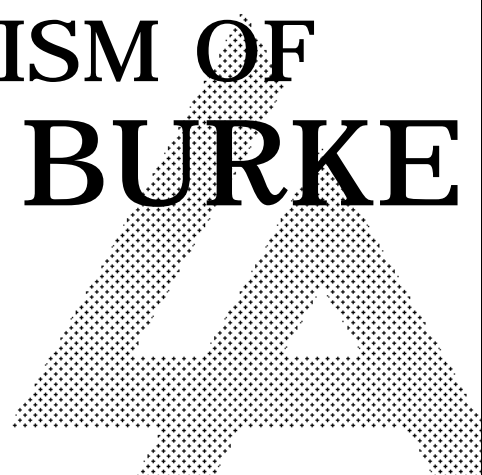




THE PRINCIPLED LIBERTARIANISM OF EDMUND BURKE (1729-1797)

PAUL MARKS



First, I will tell you who Edmund Burke was. Then I will tell you why it is useful to know something of his political opinions.

DUBLIN AND LONDON

Burke was born in 1729, either in Dublin or in the Black Water valley of County Cork — depending on whom you believe. Roman Catholics were, by statute, forbidden to practice law. Edmund Burke's father was a lawyer who conformed to the established church for professional-political reasons. He got involved in a political case, and the threat of the Penal laws hung over him. Burke's mother was a Catholic of the Nagle family. Both the Burkes and the Nagles were Norman-Irish or "Old English". If you want to know more about Burke's background you should read Connor Cruise O'Brien's *The Great Melody: A Thematic Biography of Edmund Burke*.¹ However, I believe O'Brien to be in error in thinking that Burke saw no real distinction between Roman Catholics and Anglicans, and I hold that Burke was an Anglican in belief as well as form.

Burke studied at Trinity College, Dublin. He did well. He founded the debating society. He started a journal — *The Reformer*. He showed particular interest in theology, history and philosophy — studies he was to continue for the rest of his life. He also continued to denounce those who used history to stir up current hatred and those who, he believed, abused theology or philosophy to promote either bigotry or nihilism.

Burke then went to London to study law — which was required for those who aimed to practice law. Law, then, was a dry affair of studying old cases, judgements and commentaries rather than the principles of law, which caused Burke to turn away from his studies. It is perhaps just as well that Burke didn't follow his father into the law, not only because he would then have failed to do other things, but also because the great wave of Blackstone was about to hit legal studies. Burke had great respect for Blackstone,

but as he had studied law before Blackstone became the orthodoxy, and was out of the profession before Blackstone became holy writ, Burke was spared indoctrination in easy, automatic notions of "Parliamentary Sovereignty" or of the general welfare. When Burke thought of legal thinkers he thought not just of Blackstone, but of men like Coke, Seldon and Hales, and of continental thinkers such as Grotius, Pufendorf and Vattel.

PROPERTY REQUIRES GOVERNMENT

While in London Burke got involved in the artistic-philosophical scene — the world of Goldsmith, Garrick, Johnson, Boswell, Reynolds and — later — Fanny Burney. Burke's first two books, the *Vindication of Natural Society* (1756) and *A Philosophical Inquiry into into the Origins of Our Ideas of the Sublime and the Beautiful* (1758) are primarily "non political" philosophy. Murray Rothbard says that the *Vindication* is a defence of "rational anarchism" — of anarchism combined with support for private property — which Burke got scared of and dismissed as a satire nine years later.² But Rothbard is mistaken. Burke pointed out in the preface that the book was a satire, just one year after he wrote the book. The work is a satire not on anarchism, but on "natural religion", with the Tory deist Bolingbroke as the open target of Burke's pen, and the newly popular Rousseau as the hidden target. Burke thought that scripture and church tradition were important, and the political analogy of "natural society" is just that, an analogy, showing that a style of thinking on one question (religion and morals) would, if applied to another question (government), lead to an absurd result. For all were agreed — whether they thought it a good thing or bad one — that large scale property holdings must fall if there were no government.

This is not to say that Burke believed — as many "conservatives", following in the footsteps of Bentham, do — that the rights of property in person and possessions are the mere gift of government. Burke believed that — morally speaking — if government falls our property in person and possessions remains rightfully ours. Nor was this just a youthful opinion. He expressed it in his *Appeal from the New Whigs to the Old* (1791), where he argued that if the area of land once known as France is at year Zero, with the historical customs and government institutions overthrown, then the "National Assembly" has no right to tax or regulate anyone. *Each individual* has an absolute right to his property.

Burke was a statist in that he believed in upholding government. He was the enemy of anarchists, although it should be borne in mind that the only anarchists in Burke's day were men like Godwin, ardent foes of property. But Burke did not believe that government *creates* basic rights or legal principles, as Hobbes or Bentham did believe.

Libertarian Heritage No. 13

ISSN 0959-566X ISBN 1 85637 257 X

An occasional publication of the Libertarian Alliance,
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FOR LIFE, LIBERTY AND PROPERTY



A property right is based on *prescription*, which simply means long occupation — irrespective of “mixing your labour” with anything, or whether a remote ancestor of yours stole the land or goods. Arguments that Indian landowners, for example, were not developing their estates, or that they had inherited their gold from ancestors who were robbers and murderers, cut no ice with Burke.

The East India Company, said Burke, had no right to kill or rob such Indians, even if they were lazy and even if they had vile ancestors. This argument can be found in Burke’s attacks on the East India Company in general, and on Warren Hastings in particular. The fact that the Duke of Bedford was a fool who had insulted Burke and supported the French Revolution and was a descendant of the Russell family who got their land by fawning on the tyrannical Henry VIII, gave no right to the French revolutionaries to rob and murder their friend Bedford — which was what Burke said they would do. This is an argument to be found in Burke’s *Letter to a Noble Lord* of 1796. As was his custom, Burke did not explicitly relate these two arguments to each other, but his consistency is clear nevertheless. Whether he was discussing India or writing what seems like a savage attack on an English aristocrat but is in reality a defence, the same *propertarian* principles shine through.

FOR FREE TRADE AND AGAINST STATE WELFARE

Burke believed in traditional government because he thought it less hostile to property than having no state at all, or than having a new “Enlightened” or “Rational” state. Burke knew well what having an “Enlightened” ruler like Joseph II of Austria or Minister Pombal of Portugal meant — arbitrary power.

Burke supported free trade for Ireland, but unlike Pitt he did not support English taxes on Ireland, and he fought for decades for the removal of the Penal laws upon Roman Catholics. For the same reason — property — he opposed taxing absentee Protestant landlords.

There is a contradiction here only if one is looking at the matter from a utilitarian point of view, and a rather utilitarian view at that. But Burke’s concern was not primarily the “welfare of the poor”; it was the right of peaceful ownership. Burke believed that policies paraded as being for the benefit of the poor, but which were really just various kind of plunder, would eventually *harm* the poor. He thought that the way to improve material standards of life was to reduce taxes and government spending and to repeal government regulations.³ In 1772, for example, Burke managed to have all the statutes against “forestalling”, “engrossing” and other “unfair” trading practices repealed — although the courts continued sometimes to obstruct the wholesale trade, until an act of 1844 — long after Burke’s time — specifically forbade this. Burke had no great problem with using statutes to uphold property against the courts. For all his great veneration for historical institutions, Burke did not believe that either Parliament *or* the courts created the principles of law.

Burke opposed state welfare schemes. He agreed with Locke that compulsory charity is like dry rain, expounding his ideas on such matters most fully in his *Thoughts and Details on Scarcity* (1795). In this he also stated, perhaps more fully than anywhere else, his position that there is no contradiction between the moral law of upholding property — of trying to prevent robbery and murder — and the long run material betterment of the populace. For Burke, the moral law is also God’s law, and the “Laws of commerce are the laws of nature which are the laws of God.”

Burke’s relationship with David Hume is not something I am going to tackle here, but in his belief in free trade, both at home and with people in foreign lands, Burke not only resembled other Scottish Enlightenment figures such as his friend Adam Smith and Dugald Stewart, but also so called “Tories” (the term is inexact) like Sir Dudley North (*Discourse on Commerce*, 1690) in the past, or Joshua Tucker (*Elements of Commerce*, 1755) in his own day. Such beliefs — and opposition to such beliefs — were a cross-party thing. Tucker opposed such things as trade restrictions and the war with the Americans, just as Burke did, but he greatly disliked Burke and the rest of the Rockingham Whigs. Charles James Fox,

on the other hand, was a close party associate of Burke’s for many years but he did not share Burke’s economic views.

BURKE’S HONOUR

Some have accused Burke of venal motives, thereby to explain his “contradictions” — such as standing for the Catholics in Ireland and also for the absentee landlords, supporting the Americans and opposing the French Revolutionaries, and so on. Historical research has exploded these charges. Burke was in fact offered lucrative office if he would drop his opposition to the war with the Americans, but he refused it. And far from being paid to attack the French Revolution, Burke was at first out of step with all the major political figures of his day, including his own parliamentary backers. It was only slowly and in part that some others came to agree with him. But those “contradictions” remain in people’s minds. As I hope I have shown, this idea comes from misunderstanding Burke. He was not primarily concerned with particular “interests” — of “the poor”, “the Catholics”, “the inhabitants of Bristol” or whoever. What he was interested in was persons — *any* persons — not being attacked in their person or possessions, and being allowed peacefully to relate to other persons. The Americans did not wish to pay new taxes. A victory over them would lead to a permanent despotic government over them, to say nothing of encouraging arbitrary government in Britain also. So Burke opposed that war. He never supported any abstract collective right to “self determination”. The French Revolutionaries were enemies of property. They were robbers and murderers and were setting up a government based on *principles* of robbery and murder, on the support of collective and political rights over individual property rights. So Burke opposed them.

When considering how honourable Burke was, one should also consider how honourable his backer, the Marquess of Rockingham, was. Burke was a relatively poor man. Had Burke not been supported by Rockingham, he would have had to choose between compromising his principles or getting out of politics. Besides, Rockingham, like Burke, also turned down offers of office.⁴

I will return to Rockingham later. For now consider how Burke risked everything for the sake of honour when he rushed to defend by force the house of his friend Sir George Savile during the Gordon Riots of 1780. The rioters, in their protests against an act for the partial repeal of the anti-Catholic penal laws, were burning every Catholic chapel in London, as well as some prisons, and were attacking any supporter of the act who would not “repent”. Burke was challenged by the rioters, but he drew his sword rather than announce any change of his mind. This was a fine scene, but Burke’s courage would have had little effect had it not also been for the honour of Rockingham, which would not permit him to change *his* mind either.

ARGUMENTS FROM DESERT

So Burke was, more or less, a minimal statist. I say “more or less”, because on occasion his belief that the state should give moral support to religion — through establishment — slides into a belief that the state should give financial support to religion.

Consider, for instance, Burke’s support for state finance for the Catholic seminary at Maynooth, to enable priests to teach the peasantry to be good anti-Jacobins. Burke’s position on the tithe is unclear. He usually avoided discussing the principle, contenting himself with pointing out that the amount of money was quite small, a tithe having long since stopped meaning a tenth of all production and being more likely to mean a small percentage value of certain crops. Burke was certainly against introducing the tithe to places where it did not already exist, as he showed in his opposition to this aspect of the Quebec Act. But he also feared that if arguments from desert were accepted — that, for example, the church should not get its tithe because it did not deserve it - this would undermine the principle of property. Just as Burke feared that notions to the effect that a king did not deserve to rule would lead to shouts that landlords did not deserve their land or rent, or that people did not deserve to inherit gold or fine houses or anything else.

In Burke's day, enemies of the tithes tended to argue either from notions of desert by pointing at fat priests and impoverished curates, or from notions of "rights" based on "mixing one's labour". At this level, utilitarian arguments about usefulness, and Lockean, labour based notions of rights, tend to merge together, into envy of anyone who has got anything that others have not got. In France, attacks on the tithes soon became attacks on church lands. Attacks on Royal government became attacks on the estates of aristocrats — and then on those of *non-aristocrats* — as the revolutionaries went from denouncing church wealth and landed wealth to denouncing any form of wealth.

If the argument centred around utility or the rights of labour, then property, as far as Burke was concerned, was already lost. If robbery and murder were going to be defended in principle, then greed and envy would ensure that such things would happen in reality.

BURKE WAS NOT FLEXIBLE ABOUT PRINCIPLES

Why does any of this matter? Why should we care what Edmund Burke thought?

Well, to start with, the name of Burke is linked in modern minds to ideas about "Conservative tradition". Burke's name has become part of the language of modern politics. A politician will say: "I am a Burkeian". Or he will say: "I am a conservative". By this he means: "I have no fixed doctrine and believe in compromise and flexibility."

And this is exactly what Edmund Burke did *not* believe in.

True, Burke did not go in for long metaphysical arguments, and did not derive his idea of rights from such arguments. But that was because he regarded the moral principle of safety in one's person and possessions as obvious. One might view tradition in the manner of Bishop Butler in theology, or of Seldon or Hales in law. One might follow the Scottish "common sense" school of Thomas Reid and Dugald Stewart, or follow people like H. E. Pritchard W. D. Ross in the 1920's and 1930's, or David Gordon today. One might respond to tradition instinctively, or one might reason about morality from experience and judgement. But however you argued it, Burke was clear in his mind that you would arrive at the same conclusions. Don't rob people. Don't murder people.

Burke was not flexible about *principles*. Fiat money is *wrong*, not because it is paper, but because people are *forced* to accept it. A large portion of Burke's *Reflections on the Revolution in France* (1790) is an explanation of this, but few now seem to know this.

Compromise may be necessary while putting the principle of property into practice. One might have to repeal one statute now, and others later. But the *principles* do not change and are not matters for compromise.

FREEDOM DOES NOT MEAN GOVERNING OTHERS

The second reason for insisting on the importance of Edmund Burke in a libertarian publication is that libertarians often seem to prefer men like Thomas Paine.⁵ When revolutionaries like Thomas Paine and Richard Price branded a government as slavery, they were very explicit about what they meant. They meant people not having a vote. Taxes could be at one hundred per cent, but you were still free if you had a vote. This is because their interpretation of Locke meant asserting that freedom equals political power. But to men like Burke or Tucker — Tucker being the great Locke hater of the 18th century — freedom is civil or social freedom. Freedom means being left alone, freedom means freedom *from* the state, not freedom to control or restrain the state. As Charles I put it on the scaffold — would that Charles had ruled this way! — liberty is the condition by which people's "lives and goods may be most their own". Freedom does not mean having a say in the government of others.

Burke believed in restricting the powers of monarchs. He was a Whig, not a Tory. But this was only because he did not trust a monarch with sole power, not because he believed in the right of subjects to rule.⁶

All modern constitutions, including those of Monaco and of Andorra — the latter rejecting seven hundred years of historical rule of law in favour of modern fancies — have lists of rights to health, to education, to welfare, and of course to the right to vote. Rights of this sort, political rights, rights to participate in and to get things from the government at the expense of others, have been intellectually related ever Paine's *Rights of Man* was published in 1791. In the first part of *Rights of Man*, Tom Paine denounced any other governmental arrangements except the absolute monopoly of a mass electorate as a natural right, which he called "freedom". And in part two of *Rights of Man*, he demanded old age pensions, state education, welfare, and so on.

In the original Constitution of the United States — as opposed to the Declaration of Independence, which has no legal force — there is no mention of rights to vote. Voting arrangements are up to each state. And the first ten amendments, the "Bill of Rights", are, like the British "Bill of Rights", restrictions on government power, not rights to things. It is true that in subsequent amendments the notion of a right to vote was introduced, but no *welfare rights* were added. Thus, the vast majority of things that the American government does, from fiat money to medicare, remain unconstitutional. And American courts have been *corrupted*.⁷ There is no other word for it.

But so have British courts and British legal thought. If we had a written constitution it would contain welfare rights, just as other modern constitutions do, and just like, tragically, the constitutions of Eastern Europe. So in the unlikely event of a government attempting to roll back welfarism, most would be constitutionally forbidden from doing so.

DO NOT MAKE CORRUPT DEALS!

The third reason for taking Edmund Burke seriously is as a political tactician.

You should always argue from principle. If you do, but do not subsequently get all, or some, or even *any* of what you want, you will still spread your case, either in private conversation or by letter, or by speech or by publication. Burke always followed this rule, from his dealings with Ireland in the 1760's to his response to Revolutionary France in the 1790's. *Eventually* he had a big impact.

Do not make corrupt deals. In particular, do not make corrupt deals with politicians, such as the King's agent Jenkinson, first Earl of Liverpool, who offered Burke office in exchange for Burke renouncing what he wanted. And do not make deals with special interest groups, such as the City stock jobbers whom Burke so distrusted. This is not just a matter of ethics. It is a practical fact that those who attempt to manipulate politicians or special interest groups tend to end up being manipulated *by* them. "He who touches pitch shall be defiled." The clever men in Europe who made deals with the French Revolution were mostly destroyed by it.

Cleverness is not a substitute for principle. The "rational", planned, mathematical administration desired by Jeremy Bentham, or by the rest of Shelburne's Bowood circle, or by the French revolutionaries,⁸ or by the so called "market reformers" of today, always lead to a massive *increase* in expenditure compared to that of the old administration. The results of local council "reforms" over the last century, particularly 1974, or the N.H.S. "reforms" would have come as no surprise to Burke. (Not that Burke would have supported such a concept as the "National Health Service" in the first place.) If you want to reduce government expenditure, then you must abolish *functions* and *offices*, as Burke tried to do in 1780 and achieved to a limited extent in 1782. Do *not* go in for "managerial reform". That makes things worse.

In economic matters *ownership* is what counts. Hence Burke's denunciation of the idea of government grain dealers in 1795. That such dealers would be part of "the market" is irrelevant. The question is *not* their "rational", "scientific" or mathematical administration. Nor is the question whether they are out to "make a profit". Is the thing privately owned in the full sense, or is it state funded?

Are people allowed to compete against it? There must be no monopoly enforced by state violence, like that of the East India Company — “This state masquerading as a counting house”.

Charities are good things, if they really are charities and are not state funded. But if “charitable” endeavour is state funded, then we have entered the world of compulsory “charity” — the land where dry rain falls. Profit and loss, “the love of lucre”, is a helpful element in economic activity — but it cannot turn a state organisation into a non-state organisation.

IF THE U.S. CONSTITUTION WERE FOLLOWED ...

It is easier to restore something than to create something new. *Why* should people accept a new Libertarian constitution? *Why* should they accept anarchy?

The existing United States Constitution already has the authority of history. When crises come in America during the next few years, people may be ready to say: “this is caused by desertion from our traditional principles and we should go back to the text of the Constitution, with no more ‘interpretation’.” Far more men and women are likely to follow that argument than if we say: “follow this scheme — which we all have different versions of and are quarrelling over — which we have just thought up and which has never been tried before.”

The U.S. Constitution is not perfect. It allows the federal government to run a post office, and to build roads. But if it were followed, the modern fiat money welfare state would be *crushed*. And if libertarianism wins in America the country would become a beacon, an example of survival to a world which will be collapsing into chaos. People *would* follow it.

No one has to say that the U.S. constitution is perfect, any more than Burke said the old British constitution was perfect. But it would be a fine place to start from.

A PERMANENT PARTY IS NO SUBSTITUTE FOR POPULAR EDUCATION

And this brings me to my last point, how to guard against mental corruption. As I have said, Burke did not fully trust the courts. And he was right, as was proved by the attempts of the courts to sabotage his deregulation. Nor did Burke fully trust political institutions. But Burke *was* the first thinker to place his trust in the notion of a *permanent party*, his party being to defend the Lords and Commons, to defend the constitution, and to safeguard property in person and possessions against corruption by the Crown — also part of the constitution — or from any other threat.

This is Burke’s greatest weakness. His party *failed*. The Rockingham Whigs depend on one man, and that one man was *Rockingham*, not Burke himself. When Rockingham died, his party fell into the hands of unreliable men like Fox.

There is no substitute for education, for informing the generality of people. It is not good enough to inform only a narrow group of people. Principles must be simple enough to be *understood*. Clever schemes are of no help. They simply discredit both themselves and those who proclaim them, and breed corruption. But saying to people “this is what the federal government can do and everything else is reserved to the states and to the people — see Article Ten of the Bill of Rights” is the way to get somewhere. A Supreme Court is not needed for this; a jury will do. And is not a jury of randomly selected “ordinary people” more “democratic”?

“The price of liberty is eternal vigilance.” As far as we know, Burke did not say this, but it sums him up well enough, and liberty is far harder to regain once it has been lost. But if this is not done, either by juries correcting the Supreme Court, or just by recapturing old principles — true institutional reform being impossible unless that is done first — then we face the new dark age that Burke always feared.

Some of the thinkers of the Scottish Enlightenment sometimes seemed to think that civilisation was built up by trade alone, but Burke never believed this. He thought that the respect for property rights on which trade is based was only built up *very* painfully.

Such respect was based on *honour*. If men turned their backs on honour, the work of centuries could be overturned in a day. So if civilisation completely broke down, then far from it being easy to start from a clean sheet, no one of the generation of the breakdown might live to see civilisation reemerge.

NOTES

1. Connor Cruise O’Brien, *The Great Melody: A Thematic Biography of Edmund Burke*, Sinclair Stevenson, London 1992.
2. Murray Rothbard, “A Note on Burke’s *Vindication of Natural Society*”, *Journal of the History of Ideas*, XIX, 1958, pp. 114-118.
3. Burke held such views since at least 1748 (see *The Reformer*, No. 7, 10th March 1748) and continued to press them until his death in 1797. For men such as Sir Ian Gilmour to hold that Burke was pragmatic concerning economic policy and that Burke’s *Thoughts and Details on Scarcity* (1795) were some sort of aberration is just plain wrong.
4. See J. S. Hoffman, *The Marquis: A Study of Lord Rockingham, 1730-1782*, Fordham University Press, New York, 1969. Rockingham was very unusual in eighteenth century politics — in politics generally, come to that — in that *no one* held him to be either corrupt or mad. He was held by all to be a rational man of the highest honour — and was, of course, hated by many people because of this.
5. See, for example, *Tom Paine Maru* by L. Neil Smith. I rather like the work, but my concern is the fact that a libertarian story should have that title, with Tom Paine being treated as if he was on our side.
6. A question like “With what person or group of persons did Burke believe final absolute power should lie?” is misconceived. Not being a Hobbesian, Burke did not believe that *absolute* power should lie with any individual or group, and accordingly not with “the people” either. Blackstone may, like others, have used the term “parliamentary sovereignty”, but Blackstone also talked of the “mixed constitution”. Burke always avoided making metaphysical claims about Parliament.
7. The breakdown of American law really dates from the Supreme Court’s compromise with the unconstitutional “New Deal” regime of the 1930’s. In return for the regime dropping such concepts as the “National Recovery Act”, which was an attempt to set up monopolies and cartels to control prices in all parts of American commerce and industry, the Supreme Court failed to continue the struggle against such things as the Social Security act of 1935. This one measure, which at the time cost so little, now costs *hundreds of billions* of dollars a year. Indeed, it is possible that even if the “Great Society” obscenities of the 1960’s had not come to pass, “Social Security” on its own would eventually have destroyed the United States.
However, the evil seeds of American legal decay can be spotted long before the 1930’s. The government’s fiat dollars of the civil war were rightly ruled unconstitutional by the Supreme Court, then headed by the very man who had issued the fiat dollars as treasury secretary, Salmon P. Chase. Chase convicted himself! However, on the addition of new judges, the case was run again, and a corrupt decision arrived at. This was the infamous “second greenback case”. It seemed to matter little at the time, because the gold standard was in any case being restored, but a precedent was set. Similarly, the upholding of the Sherman Antitrust Act of 1890 set a precedent, to the effect that the federal government could punish people who had committed no clearly defined crime. This decision was simply an *interpretation* of the *possible effects* of a company being of a certain size or acting in a certain way. From this the whole barbaric jungle of American “law” has grown, from modern “Civil Rights” statutes which give special privileges to groups favoured by the federal government, to the decay of tort law which has forced people to pay for other people’s misfortunes *not* caused by the negligence of those forced to pay.
8. The title of a work on Condorcet sums up this aspect of the revolutionaries: *Condorcet: From Natural Philosophy to Social Mathematics*, by K. M. Barker, University of Chicago Press, 1975. The administration of the calendar, weights and measures, local government, all had to fit the procrustean bed of “rational” mathematical equalising thought. As Oakeshott was fond of pointing out, these notions (in modern times) go back to Francis Bacon, who desired a technocratic state which makes nature “yield what it has never yet yielded”, who believed in the inductive method of examining affairs, and who believed that by gathering large amounts of numerical “data” one has somehow gained guidance as to how to proceed in policy. But for all his “scientific” pretensions, Bacon hated Copernicus. More generally, “scientific” state planning is often supported by men with no real understanding of natural science. Sir William Petty, the father of econometrics and all its false statistical “predictions”, was one of the first to try this method out in political economy, hence his amassing of statistics and his schemes to “plan” Ireland. Lord Shelburne, first Marquis of Lansdowne, arch flatterer of the king — and maybe secret revolutionary — patron of Bentham, Mill and company and sworn enemy of Edmund Burke, was descended from Sir William Petty.