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**PRIVATE PROPERTY, FREEDOM AND POWER**

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The University of Edinburgh

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*Everybody knows the fight was fixed*

*The poor stay poor, the rich get rich*

*That's how it goes*

*Everybody knows*

Leonard Cohen, *Everybody Knows*

## ABSTRACT / LAY SUMMARY

This thesis aims to shed light on a central aspect of private property: the limits that it imposes on the freedom of non-owners and its potential implications. To the extent that private property does not depend on the physical connection between the owner and the object, accumulation becomes normatively possible because one can be an owner of more things than one can physically hold or protect from others. The situation that private property enables is not only that people may have no opportunity to acquire and be an owner, but more importantly, that it may leave people without the possibility of satisfying their needs by using objects that otherwise would be available for everyone's use.

In the first part of the thesis, I examine three different justifications for private property produced within the liberal/libertarian canon. I will use these accounts to investigate what follows for a justification of private property from considering its passive side of the property relation. The general idea is that a justification of private property demands consideration of the interests of non-owners: of their unfreedom and its potential implications regarding the justification of a private property system.

In the second part of the thesis, I intend to demonstrate that private property not only gives freedom to owners but also may give them power. There is certainly a sense in which private property always gives power to owners. Private property gives to owners the *power to* pursue aims that otherwise would be either impossible or very difficult to achieve. However, great unequal distributions of private property may give to owners not only *power to*, but also *power over* people. Given the fact that accumulation may leave individual needs unmet, private property becomes an important power resource. The second part of the thesis is dedicated to show that in its capitalist articulation, private property gives a dominating power to owners in two main spheres: the economic and the political spheres. This task turns to be more difficult than it

might superficially appear to be, as political philosophy does not provide an adequate general framework for thinking about private domination.

## DECLARATION

As per the Assessment Regulation (n 34) for Research Degrees at the University of Edinburgh, I confirm:

- (a) That this thesis has been composed by me;
- (b) That the work contained in this thesis is my own;
- (c) And that it has not been submitted for any other degree or professional qualification.

Constanza Salgado Muñoz

Edinburgh, 9 September 2019



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## CHAPTER 1. AN OVERVIEW OF THE MAIN ARGUMENTS

### 1. Introduction

This thesis takes the unusual step of bringing owners' power to the fore as a way of showing the deficits of liberal theories in their assessment of the role of private property in contemporary society.

In this introductory chapter, I explain the main arguments that will be presented throughout the thesis. The thesis is divided in two parts. The first part contains three chapters, each of which examine a different justification of private property produced within the liberal/libertarian canon. In section 3 of this chapter, I present a brief overview of the main arguments of these three chapters. As I explain in this section, I use these accounts to investigate what follows for a justification of private property from considering its *passive side* of the property relation. By relying on this perspective, that is, the perspective of non-owners, the First Part seeks to show, first, the unfreedom that private property entails for them. And second, how liberal justifications of private property are led to consider the interests that this lack of freedom can affect as a result of the accumulation that private property enables. That is, the interests that are affected when in a private property system some do not have either the opportunity to become owners or to otherwise meet their needs with existing resources.

The second part of the thesis also contains three chapters. This Second Part, which focuses on those forms of property which are 'productive' in the Marxist sense (i.e. they involve ownership of the means of production) reinforces the idea set out in the first part: that a justification of private property cannot be indifferent to the interests that the accumulation of private property may affect. It reinforces by way of showing that private property, in its capitalist articulation, gives a dominating power to owners. The first contention of the

Second Part of the thesis, then, is that capitalist property leads to domination over those who sell their labour for wages. This means that the unequal distribution of private property can be criticised not just for its own sake, but also on *relational* grounds, because it leads to domination of one category of persons by another. The second contention is that the political power that a capitalist system of private property gives to owners permits the reproduction of that system and militates against the practical development of redistributive arrangements.

## **2. Defining private property**

The idea that private property is mainly a relation between a person and a thing has been, since the onset of modernity, the typical image of private property. This image came along with an absolutist understanding of the relation between the owner and her thing, epitomized in Blackstone's famous description of it as "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe"<sup>1</sup>. This *absolutist* understanding of private property was adopted by the codification movement in section 544 of Napoleon's civil code which establishes that "[P]roperty is the right to use and dispose of things in the most absolute manner provided this use and disposal are not prohibited by the law". With codification, the Roman system re-emerged, eliminating all elements of feudalism and much of customary law.

In this understanding of private property, the emphasis is on both the relation between the owner and her thing, and the unlimited right of the owner to do what she wants with her owned thing.

However, from the second half of the 19<sup>th</sup> century, a different understanding of private property emerges, an understanding that sees private property merely as a "bundle of rights"<sup>2</sup>, this is, as a set of legal relations that may change over

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<sup>1</sup> William Blackstone, *Commentaries on the Laws of England* (Reprint of 3rd Revised Edition. Clark, N.J.: The Lawbook Exchange, Ltd 2003) 52.

<sup>2</sup> For a good explanation of the "bundle of rights" approach, see James Penner, "The Bundle of Rights Picture of Property" (1996) 43 *UCLA Law Review* 711.

time in accordance with the interests we want it to protect. In this new approach, private property is, more than the dominion over a thing, *a set of legal relations among persons*. This understanding received its legal articulation with W.N. Hohfeld, for whom property did not consist of things, but rather a bunch of rights, liberties, powers and immunities<sup>3</sup>. Hohfeld contested the classical difference between *right in rem* -a right over things- and *right in personam* -a right over persons- based on the idea that it was not a substantive but a quantitative difference. Both rights were over persons; the only difference was the scope: a *right in personam* was a right over particular and determined persons while a *right in rem* was a right over all persons except the right holder. This new understanding of private property brought important legal changes in private property: not only the disaggregation of property but also its de-physicalization<sup>4</sup>.

If the first understanding of private property as the relation between an owner and a thing, in which the owner has an absolutist power over her thing was necessary to abolish feudal property, the second understanding, instead, was suitable for the development of an industrial economy that progressively began to be more based on intangible forms of wealth. This stage of capitalism -our stage of capitalism- required “an understanding of property that could encompass complex legal and financial relationships, disaggregate ownership into a variety of interests held by a variety of stakeholders, and accommodate rights in intangibles”<sup>5</sup>.

The industrial and financial economy had to liberate from the imprisoning conceptualization of property as an absolute relation between a material thing and an individual person<sup>6</sup>. The second understanding, for which private

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<sup>3</sup> Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* (ed. Walter Wheeler Cook, Yale University Press 1923)

<sup>4</sup> Kenneth Vandeveld, “The New Property of the Nineteenth Century: The Development of the Modern Concept of Property” (1980) 29 *Buffalo Law Review* 325.

<sup>5</sup> Tony Arnold, “The Reconstitution of Property: Property as a Web of Interests” (2002) 26 *Harvard Environmental Law Review* 281.

<sup>6</sup> Thomas Grey, “The Desintegration of Property” (1980) 22 *Nomos* 69.

property was a relation between persons constituted by a bundle of rights, was functional for the de-physicalization and disaggregation of private property.

Corporations are today the main capitalist institutions, which means that persons (either individually or in a group) are no longer the direct owners of the means of production. Shareholders now own not some physical assets, but a kind of credit against the corporation. De-physicalization also makes it possible to create new forms of wealth, as for example, patents, copyrights and trade secrets. With this development, private property becomes more a right to a value rather than a right to a (tangible) thing. Desegregation of private property, on the other hand, is also relevant to industrial and financial capitalism. Owners have to be able to both easily divide and transfer their wealth. Importantly, this desegregation was functional to the development of the modern corporation, which suffered an increasing divorce between ownership and control. Unlike the former business unit, which was both owned and managed by the same small group of individuals, modern corporations gather the wealth of many individuals that now are merely the “investors” and have no control over the direction of the company<sup>7</sup>.

My thesis, however, is not about the concept of private property as such. Nevertheless, I need to provide a definition so I can discuss the justifications of private property on a clear base. With this aim, I offer here a *stipulative* definition of private property. That is, I do not make essentialist assumptions about the concept of private property, but rather assign it a specific meaning. Unlike the “bundle of rights” approach, I do think there is an internal coherence in the idea of private property. The legal practice has never relinquished the idea that property is a unitary concept: a concept that nonetheless has various conceptions. In my concept, *private property is constituted by a right of exclusion and by a freedom to use*. In other words, private property involves both the exclusion of others from the owned object and the freedom of the owner to use

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<sup>7</sup> Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property* (The MacMillan Company 1933).

it. Most approaches to private property regard these two features as the conceptual core of private property. On the other hand, these features that I believe constitute private property usually form part of the bundle of rights<sup>8</sup>.

There is some debate about which of these features has either conceptual or explanatory primacy. For most approaches, with which I agree, the central element is the right to exclude. James Penner, one of the main exponents of this approach, claims that “in order to understand property, we must look to the way that the law contours the duties it imposes on people to exclude themselves from the property of others, rather than regarding the law as instituting a series of positive liberties or powers to use particular things”<sup>9</sup>. According to Penner, however, exclusion is connected with use: the right to exclude arises from our interest in the use of things<sup>10</sup>. To the extent that the many uses property allows are extremely difficult to quantify, the duty of exclusion comes to facilitate the owners’ different uses<sup>11</sup>. Along the same lines, claiming for both the primacy of exclusion and its crucial link with the right to use, Thomas Merrill states that the “primary reason for creating and maintaining a system of property is to promote the effective use of things. But the way we do this is by giving owners the right to exclude others from the thing”<sup>12</sup>. For Merrill, and for Henry Smith, as well, the right of exclusion provides an easy way to organize the management and control of resources. “Legal entitlements can be delineated in a low cost fashion if they rest on a foundation of exclusion”, Smith says<sup>13</sup>. In *partial* agreement with this approach, Arthur Ripstein characterizes the right to exclude as the essential feature of private property<sup>14</sup>. But unlike the other

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<sup>8</sup> However, for the “bundle of rights” approach, these features are contingent, not necessarily part of the bundle.

<sup>9</sup> Penner James *The Idea of Property in Law* (Oxford University Press 2000) 71.

<sup>10</sup> *ibid* 71ss.

<sup>11</sup> *ibid*. See also Penner (n 2) 742ss.

<sup>12</sup> Merrill, Thomas "Property and the Right to Exclude II" (2014) 3 *Brigham-Kanner Property Rights Conference Journal* 1, 4.

<sup>13</sup> Henry E. Smith, “Exclusion and Property Rules in the Law of Nuisance” (2004) 90 *Virginia Law Review* 965, 976.

<sup>14</sup> Arthur Ripstein, “Possession and Use”, in James Penner and Henry Smith (eds) *Philosophical foundations of property law* (Oxford University Press 2013).

approaches, which ground exclusion in instrumental reasons related to use, for Ripstein, the purpose of exclusion is not external to private property but rather internal: exclusion protects the owner's interest in being the one who determines the use of the object, *as against others*<sup>15</sup>. The owner's interest in using her thing is protected not primarily because of the importance of that interest, but because she has an exclusive right to her things<sup>16</sup>.

In characterizing private property as a relation constituted by a right to exclude and a freedom to use, I am not contending an absolute conceptualization of private property, as the "sole and *despotic dominion* which one man claims and exercises over the *external things* of the world". Thus, I do not contend that private property is not subject to limitation. However, understanding the concept of private property with the abovementioned features will be useful for the discussions about property that this thesis addresses because it shows that private property involves a *relation between persons regarding a thing*, a relation in which the owner has the right to exclude all others (the "non-owners") from her thing.

### 3. Justificatory arguments for private property

#### 3.1. Why does private property need justification?

Private property requires justification on account of its *special nature*. At the core of private property, there is a claim from someone that demands everyone else *abstain* from using what she asserts as her property. Private property, as we have seen in the previous section, imposes duties for all non-owners to exclude themselves from using the owned objects. Hence, private property, in the first place, *affects the freedom of everyone else except the owner to use the owned objects*. The special nature of private property, then, lies in the limits that it imposes on

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<sup>15</sup> *ibid* 156.

<sup>16</sup> Larissa Katz has offered a different approach, in which the central feature is the owner's exclusive position; a position that "does not depend for its exclusivity on the right to exclude others from the object of the right" (277). For Katz, the main feature of private property is not exclusion but *exclusivity in setting the agenda for the object*. Larissa Katz "Exclusion and exclusivity in property law" (2008) 58 *University of Toronto Law Journal* 275.

the freedom of non-owners and, once instituted, in the potential implication of that unfreedom in a private property system.

Take note here that the owner's claim does not concern physical possession. It is not a claim that calls on others to refrain from disturbing the owner when she is using an object. Rather, the owner's claim is directed to everyone else to abstain from using the object even though it may not be in her physical possession; and even though someone else might need the object or give it a better use. To the extent that private property *does not depend on the physical connection between the owner and the object*, it becomes possible to *accumulate*. Accumulation becomes possible because one can own more things than is physically possible to hold or physically possible to protect from others. Thus, once instituted, private property may result in abundance for a few, and little or nothing for many.

The situation that private property makes normatively and conceptually possible is not only that some people may have no opportunity to acquire and be an owner but, more importantly, that it may leave some people without the possibility of satisfying their needs by using objects that otherwise would be available for everyone's use. Here I am not claiming that private property necessarily creates poverty<sup>17</sup>. However, private property makes possible that on account of the accumulation of some people -and not solely natural scarcity- others are not able to satisfy their needs with the existent resources.

In a world in which objects either could be freely used by everyone when nobody is using them or could be used in accordance with rules that take account everybody's needs and interests, the existence of private property demands justification. A justification of private property, then, has to say something about the unfreedom that private property involves and the

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<sup>17</sup> Indeed, we will see below (in section 3.4.2) that there is a well-known common good-based argument for private property according to which private property creates wealth, and, therefore, makes everybody better off.

abovementioned potential implications of such unfreedom within a private property system.

### **3.2. Private property and the passive side of non-owners**

A great deal of arguments for private property assert that private property serves some important interest of individuals. Many accounts deploy arguments of this nature, and there are many ways in which we can understand the interest which property serves: autonomy, privacy, identity, etc.

What sustain these arguments, most of the time, explicitly or not, is a more basic claim: private property gives a *special freedom* to individuals regarding the objects they own. Private property confers a special freedom because it goes further than the freedom to use objects that nobody is using (for example, the freedom to have a picnic in a public park). Private property gives to individuals a right to exclude others from the owned objects, and by giving owners that right, they become the only ones who can both use and determine the uses of their objects. The owner, then, has the freedom to control the object, because by having the right to exclude all non-owners from it, she becomes the only person who determines the use of the object. Many accounts aim to justify private property by showing this special freedom that private property bestows on owners. Other accounts give more content to this freedom by arguing for its crucial relevance in protecting some other important interest of individuals. This is, for example, what Waldron does in his seminal book *The Right to Private Property*.

According to Waldron's justification of private property, which in turn relies on Hegel's justification, the freedom that private property accords owners is crucial for the development of individual's autonomy because "it is only through owning and controlling property that he can embody his will in external objects and begin to transcend the subjectivity of his immediate existence. In working on an object, using it, and having control over it, an individual confers on his will a stability and a maturity that would not

otherwise be possible”<sup>18</sup>. For Waldron, private property inculcates the self-discipline individuals require to be properly functioning persons “by registering the effects of willing at one point of time and *forcing an individual willing to become consistent and stable over a period*”<sup>19</sup>.

The novelty of Waldron’s justification is the claim that his argument for private property has, as he says, “broadly egalitarian consequences”<sup>20</sup>. The reason, declares Waldron, is that

we cannot argue, on the one hand, that property-owning is necessary for ethical development, and then, on the other hand, affect unconcern about the moral and material plight of those who have nothing. Just as a right-based argument for free speech establishes a duty to see to it that everyone can speak freely, so *a general-right-based argument for private property establishes a duty to see to it that everyone becomes a property-owner*<sup>21</sup>.

As we can see, Waldron goes further. In Waldron’s view, not only his Hegelian based justification but also *any* justification centred on what he call general right-based arguments -on arguments that appeal to the crucial importance of the individual interests private property protects- should argue that *everyone must have private property*. Waldron’s argument is attractive in this point: a justification of private property should entail a *minimum* of private property for all. Nonetheless, how much property and what kind of property everyone should have (private property over capital goods or consumption goods, etc.) are issues that remain ambiguous in Waldron’s work. It is not completely clear if Waldron’s right to private property requires people to own *some* property or to own *enough*. Neither it is clear if Waldron is arguing that everybody has a right to have property over basic things, over consumption goods or if he is arguing for something like a property ownership democracy. Although Waldron refers to the idea of a property-owning democracy in a few passages of the book, these do not appear to be something akin to Rawls’ idea of such

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<sup>18</sup> Jeremy Waldron *The Right to Private Property* (Clarendon Press 1988) 377-378.

<sup>19</sup> *ibid* 373-374, emphasis added.

<sup>20</sup> *ibid* 131.

<sup>21</sup> *ibid* 4, emphasis added.

democracy<sup>22</sup>. In any case, Waldron's basic claim is that everybody must have private property *as a matter of right*<sup>23</sup>.

What is important to note here is that Waldron's normative claim that everybody ought to be an owner introduces *distributive considerations* to the core of accounts that aim to justify private property by appealing to the importance of the individual interests to which private property serves. Through this claim, Waldron seems to provide an answer to the problems we saw private property may potentially create in a private property system.

Whereas Waldron looks for the active side of private property to reach the conclusion that everybody has a right to private property, I will examine three different justifications of private property produced within the liberal/libertarian canon, to investigate what follows for a justification of private property from considering its *passive side* of the property relation. By relying on this perspective, that is, *the perspective of non-owners*<sup>24</sup>, this Part of the thesis seeks to show, first, the unfreedom that private property entails for them. And, second, how the liberal justifications of private property put forward by Kant and Locke include elements that reflect their perception that a sufficiently robust justification would need to take into account the interests of the non-owner that are affected by the private property accumulation. This refers, in other words, to the interests that are affected when in a private property system some do not have either the opportunity to become owners or to otherwise meet their needs with existing resources.

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<sup>22</sup> The idea of a property-owning democracy relates to a *widespread distribution of private property over means of production*. The concept was coined by J.E Mead, and it was later used by John Rawls.

<sup>23</sup> Note, however, that in Brudner's interpretation of Hegel, what is demanded is not property for all, but rather welfare rights. Alan Brudner, *The Unity of the Common Law* (2<sup>nd</sup> edition Oxford University Press 2014).

<sup>24</sup> It is important to note here that non-owners' position is one of the two sides of private property. When I am the owner of an object, everybody else is a non-owner of that same object. This is why, in a private property system everyone is a non-owner of countless of objects. Non-owners, then, are not necessarily individuals who own nothing. However, taking account the side of non-owners allows us to see the problems of those who may only experience the *passive side* of private property.

In the following sections, I will sketch the main arguments of this part of the thesis.

### **3.3. Private property, freedom and distribution**

#### **3.3.1. Freedom as property**

The relation between private property and freedom is close but that does not mean that property is tantamount to freedom. However, libertarians understand property rights as already contained in their understanding of freedom. Freedom, for libertarians, means the absence of interferences not only in regards to one's body and actions but also, the absence of interference in one's property rights. In this understanding, that I will call a *moralized* understanding of freedom, limitations to private property always reduce overall freedom, and for that reason, only *absolute* property rights protect it.

In Chapter 2 of the thesis, we will see that the upshot of this moralized understanding of freedom is that it only considers the freedom that private property rights give to the owners, but it is blind to the limitations to freedom that private property necessarily entails for all the non-owners. Libertarians' defence of absolute private property rights, then, can only be sustained by completely ignoring non-owners' unfreedom. Departing from a non-normative conception of freedom, I will shed light over the unfreedom that private property involves for non-owners and the unequal freedom that results from an unequal distribution of private property. This non-normative approach will allow us to see that the absence of limits to private property does not entail greater overall freedom; that societies with unlimited property rights are not societies with maximal freedom, as libertarians believe, and, even less, societies with equal freedom.

Justifications of private property sometimes also claim that private property is a natural consequence of individuals' basic *right to freedom*. Eric Mack characterizes well the core of this kind of justification of private property when he argues that persons have an original, non-acquired natural right that entitles them to acquire objects as private property. This right, according to Mack, arises

from a basic moral claim individuals have to be allowed to pursue their own good in their own way, which in turn allows them to acquire and exercise discretionary control over extra personal objects<sup>25</sup>. This is the case, according to Mack, because an essential part of individuals' freedom to pursue their own goods in their own way is the acquisition and discretionary disposal of objects<sup>26</sup>. Private property, then, would be a necessary consequence of that general right to freedom that all individuals possess.

This is not, however, an easy claim to make. If we understand this general right to freedom as a claim for the *absence of duties*, private property cannot exist. The reason is that private property is a *normative position* that involves *rights* and therefore, correlative *duties*. Perhaps this idea becomes clearer by using the analytic framework provided by Wesley Hohfeld<sup>27</sup>. According to Hohfeld, normative positions are *relational*. This means that each normative position has always a *correlative position*. Each position is always held by someone against someone else. In this framework, that today is a platitude in legal thought, a right is always constituted by a correlative duty. Importantly, then, a right "is the legal position created through the imposition of a duty on someone else"<sup>28</sup>. But not only rights are relational; liberties are relational positions as well. Someone has a liberty regarding some action, according to Hohfeld, when she is free to engage or abstain from certain action; that is, when she has *no duty* to either engage or eschew that action. The absence of duty, then, makes evident that liberties correlate to *no-right positions*: the person (or group of persons) against whom a liberty is held has no right regarding the activity to which liberty refers. However, liberties do not entail a correlative duty to abstain from interfering in the action to which liberties refer. Freedom of contract, for example, is typically expressed in the normative position of a Hohfeldian *liberty* because each individual has the liberty to engage in or to refrain from a

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<sup>25</sup> Eric Mack "The Natural Right of Property" (2010) 27 *Social Philosophy and Policy* 53, 54.

<sup>26</sup> *ibid* 54ss.

<sup>27</sup> Hohfeld (n 1).

<sup>28</sup> Matthew Kramer "Rights without Trimmings", in Matthew Kramer, N.E. Simmons, Hillel Steiner (eds) *A Debate over Rights* (Oxford University Press 1998) 9.

contractual relation: individuals have *no duty* either to contract or to abstain from contracting, which correlatively means that others have *no right* either to prevent me from engaging in a contract or forcing me if I do not want to contract. However, others can interfere with my liberty by either deciding not to contract with me or by contracting with whom I expect to contract. Others have no correlative duty to abstain from interfering with me in that way, because I have a liberty to contract, not a right to contract.

In Hobbes' state of nature, for instance, the general freedom individuals have is better described as the *absence of any kind of duty*<sup>29</sup>. That means that individuals have liberties (which do not correlate with duties) but not rights (which do correlate with duties). This is why, in Hobbes' state of nature, private property is not possible. The reason is that private property gives more than a Hohfeldian liberty to the owner. The owner has the liberty to use (or not) the owned object, but all non-owners have also the duty to abstain from interfering with the owner's use (or non-use). Private property, then, is a paradigmatic case of a normative position articulated as a *liberty protected by a right*<sup>30</sup>; a right that consequently entails for non-owners a correlative duty of abstention from using/interfering others' property. Importantly, this general freedom that individuals have in Hobbes's state of nature, not only means that they do not have rights over objects but also that they do not have a duty to abstain from using any object, *even in the case that somebody is currently using one*. The reason is that individuals do not even have rights to their bodily integrity. Because my liberty does not correlate to another's duty, my act of picking up an apple does not correlate with a duty to abstain from snatching the apple I have picked up. As we can see, the general freedom individuals have in Hobbes's state of nature involves the absence of any kind of duty, and therefore, any kind of rights: individuals have the freedom to do *everything* within their powers.

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<sup>29</sup> Thomas Hobbes, *Leviathan* (Oxford University Press 1996) 82ss (see Chapter XIII).

<sup>30</sup> As we can see, these are the two features (a right to exclude and a right to use) that I claim in section 2 of this chapter are the core of the concept of private property.

We will see in Chapter 3 that Kant claims that in the state of nature every individual has an *innate right to freedom*, understood as *independence* from being constrained by *another's choice*. In Kant's view, this innate right, shared by all, provides the ground for the whole juridical system, *including the private property system*. Unlike Hobbes's state of nature, in Kant's individuals have bodily rights, which entail correlative duties to abstain from affecting and interfering with others' body. According to Kant, this also means, consequently, that individuals have a duty to abstain from using the objects that others' are holding. In Kant's state of nature, I cannot snatch from you the apple that you have picked up because in that case I would be interfering with your body. Kant's innate right to freedom, then, goes further than Hobbes not only in relation to individuals' body, but also in relation to objects, to the extent that it allows individuals to use objects (that nobody is using) without the interference of others. Importantly, however, for Kant the innate right to freedom does not entail a *right over objects* or, in other words, does not entail property rights<sup>31</sup>.

### **3.3.2. Distributive considerations in Kant's justification of private property**

In Chapter 3 we will see that in Kant's account property rights cannot be derived from the right to freedom that all individuals innately have, and therefore, its justification needs additional arguments. Hence, in order to justify private property Kant introduces in his reasoning firstly what he calls the *Postulate of Private Right* with its *Permissive Law*, and subsequently the *civil state*.

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<sup>31</sup> Like Kant, Hart claims that there is only *one* natural right and it is the *equal right of all human beings to be free*. Again, like Kant, for Hart this right to freedom is a *natural right* because it is not created or conferred by persons' voluntary action. On the contrary, individuals have a right to freedom merely due to their status as persons. According to Hart, this equal claim to freedom entails that each individual 1) has the right to forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint, and 2) is at liberty to do (i.e. is under no obligation to abstain from) any action as long as it does not coerce, restrain or is designed to injure other persons (175). H. L. A. Hart "Are There any Natural Rights?" (1955) 64 *The Philosophical Review* 175. In the light of this equal right to freedom, private property is not possible. The reason is that the private acquisition restrains others' freedom: when I claim that this land that I enclosed is mine, I claim that you have to abstain yourself from using it (for example, by roaming there) even when I am not. Another argument, then, is needed to justify private property.

According to the libertarian interpretation of Kant, which has been the most popular understanding of Kant's political philosophy, the *Postulate* works by declaring that private property is justified on the basis that it enhances the freedom of owners and does not affect anyone else's freedom. Although particular acquisitions are only definitive with the advent of the civil condition, in this understanding, the mere *legal* opportunity to be an owner honours individuals' innate right to freedom: having a system of acquisition that applies to all would suffice for the justification of a private property system. Even though this understanding rules out legal distinctions that disqualify some people from acquisition, the fact that there are people owning nothing is irrelevant for a justification of a system of property rights. Here, as occurs with libertarians, Kant does not see the freedom that property restricts because his justification is anchored to a moralized understanding of freedom.

However, we can find in Kant yet another justification of private property; a justification in which distribution is a constitutive part of a private property system. For a private property system that must be compatible with the right to freedom as *independence from others' choices*, the fact that some people own nothing (relevant) is problematic: they have become *dependent on owners' charity* to sustain their existence. In this interpretation, Kant's claim for taxing the wealthy to provide for the poor makes sense as a condition for justifying private property: Kant's demand for *redistribution* appears as the other side of the coin of a private property system.

As we will see in Chapter 3, his justification opposes the idea that the rationale of a justification of private property does not include a concern for distribution. By focusing on Kant's account, my idea is to show that once we take the unfreedom of non-owners into consideration and its potential implication of having nothing to satisfy their basic needs, distribution becomes a condition that is internal to a justification of private property.

Although Kant rejects going further, his innate right to freedom as independence of others' choices opens the door to claim that a private property

system must not make anyone dependent on the *exploitative will of owners*, that is, on a will that takes unfair advantages of others' dependence on their property. In this light, Kant's understanding of justice protects us from forms of domination that are a function of private property.

### **3.4. Labour, distribution and common good-based arguments**

#### **3.4.1. Labour and distribution**

As is commonly known, Locke justifies private property by appealing to a particular unilateral act from which property rights arise. This argument, then, not only justifies private property but, more importantly, the particular entitlements that arise from those particular acts. In this way, Locke *also justifies a particular distribution* -whatever distribution that might result from the performance of the special acts from which property rights emerge.

The problem is how purely unilateral acts, which carry the private appropriation of unowned things, can change the normative situation of everyone else, by imposing duties upon them without their consent<sup>32</sup>. Locke thinks this is possible, although it demands a morally powerful act: the act of *labouring*. However, by dealing with Locke's justification of private property in Chapter 4, I will argue that not even labour -an act that unlike mere occupation has some moral content- can ground *by itself* property entitlements of its outcomes. There we will see why none of Locke's labour arguments is sufficient by itself to justify private appropriation.

Although it might seem odd, to the extent that Locke's account is mostly known as a *labour theory of property*, labour is not the crucial argument for Locke's justification. Even if labour were able to be a title for the private appropriation of its outcome, for Locke this still would not suffice. The reason is that in the first justification that Locke provides, he adds an important condition to appropriation: labour leads to acquisition only under the proviso that "enough and as good" is left for others to appropriate. In other words, under this proviso,

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<sup>32</sup> In chapter 3 we will see that for Kant this is an unresolvable problem from the point of view of freedom. This is why, in Kant's account, private acquisitions in the state of nature are *provisional* until the advent of the civil condition.

appropriation through labour is only possible when it leaves a sufficient amount of resources of an equal quality for the appropriation of everyone else. In its best light, we can see that Locke provides a sort of egalitarian justification of private property. Here, the justification of private property cannot ignore its distribution. In this sense, James Penner is right when he argues that "Locke has contributed to the view that a theory of property is also a theory of distribution"<sup>33</sup>.

In general, however, Locke's account has not been seen as providing an egalitarian justification of private property, but rather the opposite: as an account that justifies an unequal distribution of private property and more radically, as an account that justifies private property through the justification of the *positive effects* of its *unequal distribution*. In the second justification that Locke provides, which ultimately takes precedence over the first, Locke aims to justify not only private property but also its greatly unequal distribution. We will see in Chapter 4 that, given this aim, the "enough and as good" proviso only makes sense if it becomes a right to a certain level of material welfare because, how would inequality be possible if the proviso forbids appropriations that do not leave a sufficient amount of resources for others? In the new form of the proviso, appropriations are legitimate even when they do not leave enough and as good resources for everyone, *if they do not make others worse off than before*.

### **3.4.2. A common good-based argument**

In this second justification, I claim that Locke relies not on labour but rather on a *common good-based argument* and more precisely, on a common good-based argument that contends that private property makes *everybody better off*<sup>34</sup>.

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<sup>33</sup> Penner (n 9) 187.

<sup>34</sup> Note here that the idea that private property makes everybody better off is a *consequentialist* kind of argument, which claims that private property not only favours the interest of the owner, but also the interests of *each one* of the members of the group. A utilitarian kind of argument, instead, would claim that private property fosters the *aggregate good* of a group, despite that some or many in this group may see their welfare and freedom diminished.

At the core of this kind of argument is the idea that private property enhances wealth. As Carol Rose epitomize, social wealth or metaphorically the *pie* "will be at its largest if there is a system of private property"<sup>35</sup>. In other words, the claim is that private property enables the existence of wealthy societies because it is a positive sum game: by taking private control of resources, the stock of what can be owned is substantially increased<sup>36</sup>. This idea has traditionally been deployed through the classic argument that resources are much better used and exploited when they are allocated to individuals as private property<sup>37</sup>. Garret Hardin's well-known fable "the tragedy of the commons" has helped to widely spread such argument<sup>38</sup>. According to Hardin, once we picture a pasture open to all, then it becomes evident that "the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another.... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit--in a world that is limited. Ruin is the destination toward which all men rush"<sup>39</sup>. The tragedy of the commons, says Hardin, "is averted by private property, or something formally like it"<sup>40</sup>.

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<sup>35</sup> Carol Rose, "Enough, and As Good" of What?" (1987) 81 *Northwestern University Law Review* 417, 419.

<sup>36</sup> David Schmitz "The Institution of Property" (1994) 11 *Social Philosophy and Policy* 42.

<sup>37</sup> Probably, the first well-known argument of this kind was made by Aristotle, who asserts that "Property that is common to the greatest number of owners receives the least attention; men care most for their private possessions, and for what they own in common less, or only so far as it falls to their own individual share; for in addition to the other reasons, they think less of it on the ground that someone else is thinking about it, just as in household service a large number of domestics sometimes give worse attendance than a smaller number". Aristotle *Politics* (tr H. Rackham, Harvard University Press 1959) II, i, 10.

<sup>38</sup> Garrett Hardin, "The Tragedy of the Commons" (1968) 162 *Science* 1243.

<sup>39</sup> *ibid* 1244.

<sup>40</sup> *ibid* 1245. Today even the mainstream doctrine has come to accept that what Harding described as "the commons" was not a system of *common property*, but of *open access*. A system of open access is a system where there is no property rights at all. Common property, on the contrary, supposes both rules of use and restrictions on access. Hence, what Hardin describes as a tragedy is in fact not a tragedy of common property but rather a tragedy of *open access* regimes.

Today it is commonplace to contend that an *unequal distribution* of private property, as it is deployed in a *capitalist articulation*, creates *massive* amounts of wealth. According to Locke, this unequal distribution of private property makes everybody better off because it creates a wealth that reaches everybody through wages: even those who gain less than subsistence wages are not worse in terms of material welfare than in a system *without (any kind of) property*. In Chapter 4, I will argue that this kind of common good-based argument provides a very low baseline to measure the interests of the worst off. Thus, those who are worst off in a capitalist system of private property would still have legitimate grounds to complain about others' appropriation.

It is also important to note here that in both the egalitarian and non-egalitarian justification that Locke offers, labour cannot justify private property by itself. In both justifications, Locke requires another kind of argument for grounding property rights: one that looks to the interests of non-owners.

#### **4. The power of capitalist property**

##### **4.1. The dominating power of capitalist property**

###### **4.1.1. Dominium as power over people**

In the Roman law tradition, *imperium* described the power over people by the rulers and *dominium*, the power over things by the individual. When private property is described as a relation between a person and a thing, private property seems to be not so problematic. Treating private property as a relationship between a person and an object tends to conceal the universal passive duty of all non-owners. Described as a *relation between persons regarding a thing*, instead, allows us to see more easily the limits that private property imposes on the freedom of non-owners.

In the second part of the thesis we will see that in its *capitalist articulation*, private property can be depicted not only as a right that entails the imposition of duties on all the non-owners, but also as a right that gives owners a power over others, whom in virtue of such power find themselves subjected to the owners' will. As the US legal realist Morris Cohen argued, private property, in this

articulation, is *also sovereignty*<sup>41</sup>. Cohen describes how in feudal law there was an inseparable connection between ownership of the land and local political sovereignty: the lord, who was the owner (but did not have the tenure) of the lands, also had political power over those who lived in them. Today, we are not so far from that situation, Cohen claims. Today it is not possible to assert that the sphere of civil society, to which private law applies, is a sphere of equal freedom and voluntary exchanges or, in other words, a sphere where nobody exerts power over others. The current situation is that the owner has also *power over people*: “*dominion over things is also imperium over our fellow human beings*”<sup>42</sup>. With this quote, Cohen subverts the Roman distinction between *dominium* and *imperium*. According to Cohen, *dominium* today is *imperium* because private property entails *power over people*<sup>43</sup>.

There is a sense in which private property always gives power to owners. Private property gives to owners the *power to do things*: here private property is a mean that gives owners the *power to* (i.e. the ability or capacity) pursue aims that otherwise would be either impossible or very difficult to achieve. However, there is another sense in which private property gives power to owners. *Great*

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<sup>41</sup> Morris Cohen, “Property and Sovereignty” (1927) 13 *Cornell Law Review* 8, 13.

<sup>42</sup> *ibid.* Cohen sees the power of capitalist property not only in regard to wage labor relations. Cohen claims that by protecting capitalist ownership law gives to owners “certain powers to tax the future social product”: by giving them the right to obtain profits, rent and interests, capitalist owners determines what share of the social product individuals shall acquire. But even more, according to Cohen, bankers and financiers exercise their sovereign power “when they determine the flow of investment, e. g., when they influence building operations by the amount that they will lend on mortgages. This power becomes explicit and obvious when a needy country has to borrow foreign capital to develop its resources”. *Ibid* 13-14.

<sup>43</sup> It is important to note that Cohen’s idea about *property as sovereignty* is stronger than the idea that private property acts as a delegation of sovereign power in certain limited areas in which the sovereign does not decide about the use of objects but supports whatever decision owners make. Cohen’s idea, then, is not that property gives to owners a power to make final decisions about the use of their things (which is correct) but the stronger notion that private property gives owners a *power over* others, this is, a power to govern their choices and actions. Larissa Katz uses Morris idea of “property as sovereignty” in the weaker sense rather than in Cohen’s stronger sense to make her point about the special position of the owner. See Katz (n 11) 293ss.

*unequal distributions* of private property give to owners not only *power to*, but also may give *power over* people.

Given that the accumulation of private property leaves some people either with no property or without the possibility of satisfying their needs, private property becomes an important *power resource*: when my needs are unmet, the rich can make me do things I otherwise would not do. This, indeed, is Rousseau's idea when he claims that "no citizen should be rich enough to be able to buy another, and none poor enough to be forced to sell himself"<sup>44</sup>. In other words, property should be distributed in a way that nobody is dependent on others.

In the second part of the thesis, I attempt to show that capitalist property, currently our clearest example of unequal private property distribution, gives owners a *dominating power* not only in the *economic sphere*, allowing them to extract benefits from workers (I will call this instantiation of domination *exploitation*), but also in the *political sphere*, enabling their will to prevail in important economic matters, thus weakening the capacity of democracy to "domesticate" capitalism.

An overview of the main arguments of the second part of the thesis will be provided at the beginning of that part. In the following sections, I will explain some of the central ideas about domination and its connection to a justification of private property.

#### **4.1.2. Defining capitalist property**

There are different ways to define capitalist property. In his important book, *Capital in the Twenty First Century*, Thomas Piketty, for example, defines capital "as the sum total of nonhuman assets that can be owned and exchanged on some market. Capital includes all forms of real property (including residential

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<sup>44</sup> Jacques Rousseau, *The Social Contract and The First and Second Discourses* (Yale University Press 2002) 189. This famous phrase is in book II, chapter XI.

real estate) as well as financial and professional capital (plants, infrastructure, machinery, patents and so on) used by firms and government agencies”<sup>45</sup>.

There are, however, narrower definitions of capitalist property. The narrow definition I want to offer, understands capitalist property as *private property over means of production* in a context characterized by the existence of (a) a great unequal distribution of private property over means of production; (b) markets and (c) wage labour relations. These three features are part of the meaning I attribute to capitalist property. They are also intertwined.

A crucial feature of capitalism is that only a few own means of production; the vast majority of people lack those means. Capitalist property, then, cannot be described simply as private property over means of production as such. Property rights gives to capitalist owners a right to exclude all non-owners. This right to exclude, enforced by the law, prevents property-less people from any access to means of production in order to produce the resources they need to survive. Having no other access to resources, property-less people sell their labour to owners. It is important to be precise here: that what individuals sell is not the outcomes of their labour but their “labour's power”, that is, their capacity to labour. This capacity is exchanged for a wage. Markets are the last crucial feature of capitalist property. Capitalist markets are unique because they are pervasive and dis-embedded<sup>46</sup>. Markets are pervasive because goods and services are produced to be exchanged in the market and not directly for satisfying our needs and wants. By selling their production in the market, capitalist owners obtain profits<sup>47</sup>. Hence, markets subject them to competitive

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<sup>45</sup> Thomas Piketty *The Capital in the Twenty-first Century* (The Belknap Press of Harvard University Press 2014) 46.

<sup>46</sup> As Glenn Morgan asserts, “historical research emphasizes that in pre-modern societies markets generally had a specifically confined spatial and temporal existence. In Europe and elsewhere, kings and princes gave permission for markets to take place in particular places and at particular times of the year markets *were carefully bounded off in time and space from the rest of social life*”. Glenn Morgan, “Money and Markets” in Glenn Morgan, John L. Campbell, Colin Crouch, Ove Kaj Pedersen, and Richard Whitley (eds) *The Oxford Handbook of Comparative Institutional Analysis* (Oxford University Press 2010) 215.

<sup>47</sup> Note that I am not necessarily claiming here that profits come from the sphere of exchange by buying cheap and selling dear.

pressure: capitalist owners compete in the market with other owners for consumers' choices. Individuals, on the other hand, acquire their resources not by directly producing them, but rather by purchasing them in the market: they sell their labour in order to obtain an income that then enables them to buy in the market what they need to survive.

As we saw, Piketty defines capital broadly, as private property over non-human assets that can be exchanged at a market. Unlike Piketty, I narrowly define capitalist property as private property over *means of production* in a context characterized by the three aforementioned features. It is important here to explain that for means of production I understand *productive property* as an object that enables the production of another object (different from the former). Of course, many objects may be used as means of production. I can use my computer, for example, to write a book, or I can use my carpentry tools to make a shelf, or my loom to weave me a dress. In none of these cases can my private property over these things be seen as capitalist property. Capitalist property, even in the narrow sense that I am understanding it here, involves an unequal distribution of means of production, wage labour and production for exchange in the market. My loom is capitalist property only if I hire people to produce clothes with it, not for my own use but to sell them in the market.

Private property over means of production, then, is the property that some (or rather, a few) people have over machinery and productive land. This is the paradigmatic way one might understand private property over means of production. Today, however, people do not necessarily need to be the direct owners of these physical assets -now what you generally own are some shares in a corporation (that, in fact, more than the ownership of a part of the corporation are a kind of credit against it). But even this idea of private property over means of production does not exhaust capitalist property. In today's intangible economy that we live in, capitalist property is much more than private property over means of production. In a broader sense, it is also the property people can have over many intangible and financial assets. In this

sense, one might categorize some forms of personal wealth as capitalist property.

Both senses of capitalist property are important in this thesis. I think the narrow understanding of capitalist property is at the core of capitalist property. It is the necessary condition for the operation of all the wider senses of capitalist property. For this reason, most of my discussion about property in this thesis will assume this narrow definition. In the last chapter, however, the broader understanding of capitalist property will also be at stake: in the political sphere, wealth gives political power to its owners.

## **4.2. The problem of domination**

### **4.2.1. Domination in the mainstream liberal tradition**

To show that *capitalist property* gives owners a power to *dominate* others is not an easy task. The mainstream liberal tradition, for many reasons, tends to be blind to power and domination, and, particularly, to the fact that private property, in some articulations or distributions, confers a dominating power to owners. One of these reasons is that this tradition sometimes understands freedom and equality as *legal statuses*. Although, since the advent of modernity there no longer exists the legal statuses of “slave” or “serf”, domination today arises, among other sources, from material inequalities between individuals that nonetheless have the legal status of free and equal persons<sup>48</sup>.

When freedom is more than a formal status, the mainstream liberal tradition usually conceives it as negative freedom. It treats freedom merely as a *normative freedom to act* (unhindered by others), equating such freedom with *voluntariness*. Part of this tradition, then, understands that to be *normatively free to act* is a sufficient condition for *acting freely*, that is, *for acting not forced by another will*. For instance, it is typically said that if individuals are not legally obliged to labour, then, they are not forced to labour. However, being normatively free to labour and being forced to labour are not incompatible statements: there is no

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<sup>48</sup> Frederick Neuhouser, “Rousseau’s Critique of Economic Inequality” (2013) 41 *Philosophy & Public Affairs* 193, 203.

contradiction in sustaining that X is normatively free to Y and that X is forced to Y<sup>49</sup>. The reason is that we can conceptualize freedom in (at least) two different ways: as *freedom to act* and as *freedom of choice*.

Power over and domination do not prevent others' freedom to act but do affect others' freedom of choice. Hence, when we are subject to someone's dominating power in the private sphere, the problem is not that she is unilaterally imposing duties on us or that she is preventing us from acting, but rather that our freedom to choose is affected, and therefore we do not act freely. In other words, we do not act in a completely voluntary way: the *voluntariness* of our choices and actions is undermined.

The mainstream liberal tradition has certainly something to say about freedom of choice. This tradition tends to understand that only *coercion* (of the will) affects our freedom to choose (as we will see in Chapter 5, this is the case of Pettit's account of domination), and coercion here involves an act that intentionally changes the range of choices available to another, making her considerably *worse off* than she would have been without the coercive act. Coercion (of the will), then, is tantamount to *threats*. This means, however, that to the extent that market transactions are the outcome of *offers* and not *threats*, they are always fully voluntary. In this understanding of freedom of choice, private property is never a source of domination: it never gives owners a power that forces people to choose (and do things) what they otherwise would not choose (to do)<sup>50</sup>.

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<sup>49</sup> What needs to be stressed here is that individuals, as wage earners, are *legally free*. It is not the law that make them dependent on capitalist owners -individuals are legally free to enter into an employment relation and also free to exit it. Unlike slaves and servants, wage laborers are not legally dependent on employers.

<sup>50</sup> Another reason why some liberals tend to be blind to domination is that they equate interests with preferences, and most of the time they assume, as a premise, that individuals are always aware of and never wrong as to what their interests are. Individuals' choices would always be an instance of their real interests. If this is the case, the mainstream liberal tradition cannot understand the situations in which domination is deployed not by subordinating the will of another, but rather by shaping her interests and beliefs so there is no need to subject their will. I will explain that domination also acts in this way in chapter 5, section 3.3.

Domination, as we can see, is a concept that liberalism does not easily grasp. The idea that capitalist property gives a dominating power, indeed, does not find in the (mainstream) political philosophy a general framework to rely on.

#### **4.2.2. Domination as a wrong**

In the first place, domination is problematic because it affects freedom of choice: individuals do not act freely when they are subject to domination. Their choices, in an important sense, are not fully voluntary. In other words, when we are involved in relations of domination, we act and choose subject to the will of the powerful. From the point of view of freedom, this is a problem in itself: freedom to choose has value even if our choices are not “good” or “valuable” choices. The reason is that freedom to choose is constitutive of our autonomy. When our freedom of choice is affected, we cannot claim that our choices stem from our will. When I am forced to do X, I am not acting freely, which means that my actions are not completely voluntary, and importantly, they are not completely mine. This idea becomes apparent when we make a coerced decision. When I am coerced, I am choosing and acting in accordance to another’s will: your threat makes me choose (and act) as you want me to. An important part of the second half of the thesis is to show that in addition to coercion, other factors also affect our choices.

However, domination is not only a problem from the point of view of freedom to choose and the development of autonomy that such freedom makes possible. Domination also affects the interests of those who are subject to it. Interactions and exchanges that involve domination are not reciprocally productive. It is not like the power that a teacher or a parent can have over their students or children, but rather the *opposite* (see below chapter 5). When you dominate me, the choices I am forced to make do not correspond to my interests. Moreover, by affecting my choices, you extract valuable social goods from my actions. Those benefits have to be understood as extracted since they lack reciprocity. The slave and the master, the serf and the lord, husband and wife, are all paradigmatic cases of domination, in which masters, lords and husbands used to extract labour, care work, and household services from slaves, serfs and

wives. In relations of domination, benefits and losses are related: the powerful gain at the expense of the powerless.

In the second part of the thesis my intention is to show that like masters, lords and husbands, capitalist owners also extract benefits from workers (I will call this instantiation of domination, *exploitation*).

### **4.3. The limits of capitalist property**

#### **4.3.1. Capitalist property in a justification of private property**

The core of the thesis's second part is to show that an unequal distribution of private property, *as articulated in a capitalist system*, gives owners a power over others. The problem, then, is not inequality *per se* but the dominating power that capitalist property gives to owners. The fact that capitalist property indeed possesses that dominating power, as we will see in the second part of the thesis, provides us a reason to limit the kind of articulation of private property that may be justified: one might say that the regimen of private property should be applied to consumer goods, but not to means of production. In this framework, not only the existence of private property must be justified, but also its *extension to means of production*<sup>51</sup>.

As I said previously, Waldron's justification of private property is attractive because it calls for a *minimum* of private property for everybody. We saw that Waldron contends that there is a right to private property: not a right to an

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<sup>51</sup> It is interesting to note that in Rawls' theory of justice not every instantiation of private property is protected by the first principle of justice, a principle that only protects basic liberties. Rawls clearly asserts that what is protected by this principle is the "right to hold and to have the exclusive use of *personal property*" (p. 114). Thus, for Rawls only personal property is a special and basic freedom that deserves the protection of the first principle of justice. Rawls justify personal property as the other basic liberties: to the extent that it relates to the two moral powers. Personal property, Rawls says, provides "a sufficient material basis for personal independence and a sense of self-respect, both of which are essential for the adequate development and exercise of the moral powers" (p. 114). However, according to Rawls, private property over means of production is not a basic liberty and therefore, it is not protected by the first principle of justice. Interestingly, Rawls not only disregards the protection of private property over means of production as a basic liberty, but more radically, he rejects private property in its capitalist articulation. In Chapter 7 (section 3.3) we will see that the reason for that rejection is related to the power Rawls considers capitalist owners have in the political sphere. John Rawls *Justice as Fairness. A restatement* (Harvard University Press 2001).

opportunity to be an owner, but rather a right to actually possess some private property. Waldron, however, does not advocate a *maximum*. Waldron never tells us if his Hegelian argument for a right to property may institute limits to the extension of private property. Thus, an interesting question to ask is whether the kind of argument that Waldron offers, would allow (or compel) him to argue for limiting private property to a determined maximum. In this regard, one might say that an argument for private property based on the importance of property for the development of autonomy should in turn mark the limits between things to which the regime of private property should be applied (that is, personal property) and other things that should not (means of production).

I am not interested here in pursuing that argument. Worthy of note, however, is that Waldron says that redistribution is not inconsistent with private property, or in other words, that property rights are not necessarily resistant to redistribution<sup>52</sup>. This idea may provide a sort of limit to private property, although only a *relative* limit: only what is necessary for everyone to become an owner. Contrarily, the idea that private property in its capitalist articulation gives a dominating power to owners constitutes a reason for imposing *determined* limits to private property extension. Moreover, one might claim that

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<sup>52</sup> Waldron devotes the last chapter of his book (Chapter 10) to explain why, he says, the idea of everybody being an owner is “more than a petit-bourgeois utopian pipe-dream” (p. 423). In other words, Waldron’s aim is to show that a right to private property is not an impracticable claim. In that chapter, Waldron explains that private property might affect the possibility of a right to private property in two different ways. On the one hand, if redistribution violates property rights, then, there is no property that can be allocated to those who have nothing. On the other hand, if owners have the liberty to transfer their property, then, allocations aimed to make everybody an owner might always be frustrated by the exercise of the owners’ same property rights. Waldron answers both challenges by turning to the distinction between concept and conceptions that he develops in Chapter 2. Although there is one concept of private property, there are many different conceptions of this concept, and in some of these conceptions, property rights are not absolute, and therefore, neither include a liberty to transfer nor are resistant to redistribution. Hence, Waldron says, property rights would not be inconsistent with the claim “property for all”. However, at the end Waldron only explains why his normative claim is not *conceptually inconsistent* with the concept of private property. Practically, Waldron does not provide us with a clear sense of how we might bring about the kind of distributive arrangements, which would tackle the problem of people who owns nothing.

this reason is *internal* to a justification of private property: the problem is not the unequal distribution of private property *per se*, but rather the dominating power that such unequal distribution gives to owners. To the extent that Waldron only looks at what one might say is the *emancipatory* side of private property (i.e. to how it fosters the development of autonomy), it becomes difficult to see the power that property bestows on owners, which corresponds to what one might call the *oppressive* side of private property.

Once we consider the oppressive side, it becomes evident that capitalist property cannot be justified for the same reasons as private property over other goods. The justification of capitalist property is not reducible to the justification of private property: these two kinds of property should be justified by different kind of arguments. As Hannah Arendt suggests in *The Human Condition*, “wealth and property, far from being the same, are of an *entirely different nature*”<sup>53</sup>. These two kinds of property cannot be justified for the same reasons and, in fact, Arendt says, in modernity *wealth has come to oppose private property*: “individual appropriation of wealth will in the long run respect private property no more than socialization of the accumulation process”<sup>54</sup>.

Capitalist property cannot be justified in with reference to the freedom that it gives to owners because such freedom is a freedom to dominate others. And by giving owners power over others, capitalist property threatens the very same possibility that everybody could be an owner.

Whether the domination that capitalist property makes possible constitutes a *sufficient reason* for limiting the extension of the regime of private property to *personal or consumer objects* or if such reason has to be counterbalanced with common good-based arguments is not my inquiry here. My aim in the second part of the thesis is only to argue that capitalist property gives owners a

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<sup>53</sup> Hannah Arendt, *The Human Condition* (University of Chicago Press 1958) 61, emphasis added.

<sup>54</sup> *ibid* 67.

dominating power and that this is a *pro tanto* reason to limit the extension of private property in a such way.

However, one might pursue an argument that is weaker but still important. According to this argument, the dominating power that capitalist property gives to owners plays a role in *legitimizing* rules and policies that constraint such power. The fact that capitalist property is the source of a dominating power, then, provides a reason to pursue limits to this power.

#### **4.3.2. Capitalist property and the ambivalence of law**

It is interesting to note that many legal institutions can be understood as aiming to prevent, limit or repair capitalist domination. Labour law, consumer law and social rights are obvious examples. In the case of labour law, it is not difficult to contend that labour regulations, like minimum wages, overtime work, holiday entitlements and many others, exist to protect workers from the dominating power of capitalist owners (here, employers). That those regulations exist to protect workers is reinforced when we note that they are not standards that workers can give up (because law envisions that if such standards could be waived, then employers would demand that workers waive them, as a contractual condition). Collective rights, on the other hand, aim to equalize the bargaining power of employers *vis a vis* workers. As Kahn-Freund compellingly argued, “[t]he main object of labour law has always been, and we venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship”<sup>55</sup>. Indeed, labour law arises when we acknowledge that we cannot apply private law rules (namely, contract rules) to labour relations. Contracts have always been an institution founded on the basis of contractors’ freedom. In this sense, labour law appear when we realize that the worker cannot claim the same degree of freedom as the employer. Contract rules reinforce the employer's power at the expense of worker autonomy. Therefore, a contract

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<sup>55</sup> Quoted in Virginia Mantouvalou “Legal constructions of structures of exploitation”, in Hugh Collins, Gillian Lester and Virginia Mantouvalou (eds) *Philosophical Foundations of Labour Law* (Oxford University Press 2019) 197.

agreed under these conditions will express the employer's dominating power. Therein lies the main reason that justifies the necessity of labour law as an independent branch of private law.

Consumer law is another type of regulation that aims to protect consumers from the powerful position of companies that may lead to abuse of consumers. Social rights, on the other hand, also can be seen as preventing domination because they lessen the worker's dependence on both the market and employers<sup>56</sup>. Other institutional arrangements also can be understood as preventing domination, as for example competition law or some public service regulations. In some sense, one might contend that *preventing private domination is at the heart of many public law institutions*.

By looking to these institutions, we can see the ambivalence of law, its Janus face. On the one hand, (private) law both constitutes and supports private property in its capitalist configuration, and therefore, its domination. On the other hand, many institutions of (public) law impose limits to the dominating power of capitalist property. By acknowledging that capitalist property confers a dominating power to owners we realize that the law governing property cannot exclusively be a matter of private law. Because it involves power over people, property must also be addressed by public law.

## **5. Methodology**

As it is already possible to see from a reading of this first chapter, in the first part of the thesis an immanent approach is taken. That is, I engage with liberal theories by using their own terms, in order to see how far they can go regarding a critique of the extant liberal order. Thus, for example, I explore the idea of negative freedom in order to see if negative freedom is a concept that, indeed, can be useful both to criticize absolute conceptions of private property and to argue for its redistribution. Using this same approach, I explore Kant's idea of freedom as independence to see if the fact of people owning nothing is or is not problematic for that same concept of freedom. Finally, I deal with Locke's

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<sup>56</sup> Gosta Esping Andersen *Three Worlds of Welfare Capitalism* (Polity Press 1993) 11-12.

justification of private property in order to understand the limitations of the concept of labour in supporting Locke's aim to justify an unequal distribution of private property.

The aim of this first part, then, is fundamentally that of *immanent critique*. In other words, it is a critique that does not oppose to liberalism a normative criterion external to it, but rather the very same concepts that liberalism employs. By examining the concepts that liberal/libertarian theories use, we will see that they cannot disregard distribution as a constitutive part of a justification of private property. Thus, this mode of criticism will show not only the potentiality of the concepts liberal theories employ for a critique of inequality but also how these same liberal premises can expose the contradictions of the actually existing 'liberal' system.

However, this does not suffice to demonstrate the problems of private property in its capitalist articulation. That is why, unlike in the first part, in the second part of the thesis I pursue a *transcendental critique* of liberal theories. Here I work from an approach that imposes external normative standards on liberalism, and particularly, on liberal political philosophy: power, domination and exploitation. I contend that liberal political theories not only tend to ignore the concepts of domination, exploitation, oppression, but also cannot easily see the phenomena these concepts relate to. They cannot perceive such phenomena in all their extension for many reasons, but especially two: they assume both that coercion is the only way in which freedom of choice can be affected and that domination only exists when there is an individual that can be held responsible for her acts. It is for these reasons that liberal political philosophy disregards social structures as a source of domination and exploitation. In my view, however, social structures are the main source of domination: only by looking at them can we understand domination and exploitation as an enduring condition of certain kind of interactions.

Hence, the critique in the second part of the thesis will be *transcendental*: I do not expect to develop this part by engaging with the premises and the approach

to reality that liberal political philosophy uses. On the contrary, I aim to make clear their limits in grasping the phenomenon of domination.

The second important methodological point of my thesis is that it maintains a certain distance from both social theory and economics. To the extent that I work with concepts somewhat beyond the mainstream of political philosophy, such as power, domination and exploitation, it could indeed be tempting to rely on those approaches. However, my aim in this part of the thesis, and an important part of its novelty, is to bring these concepts to the field of political philosophy in order to show both the strengths and limitations of this disciplinary perspective; to see, on the one hand, what political philosophy can reveal about domination and exploitation; and on the other, to show the narrow and thin content that it tends to give to these concepts. With this purpose in mind, I will keep the inquiry within the field of political philosophy as much as possible.



## CHAPTER 2. PRIVATE PROPERTY, NEGATIVE FREEDOM AND LIBERTARIANISM

### 1. Introduction

The aim of this chapter is to show that from a non-normative perspective, the negative freedom that private property gives to owners is the very same negative freedom that it denies to all non-owners. In this sense, as Jeffrey Reiman points out, “what is important is to see that while ownership of private property promotes the liberty of the owner, it also threatens the liberty of the non-owner. I call this two-sided nature of property's relationship to liberty *the ambivalence of property*”<sup>1</sup>. Exhibiting this ambivalence will enable us to see that the freedom that private property serves cannot justify private property by itself, without considering the side of non-owners.

In this Chapter, we will see that the negative freedom tradition understands property rights as already being contained in their understanding of freedom. Libertarians embrace that tradition but go further by claiming unlimited property rights. According to libertarians, societies that seek to protect absolute property rights are societies with the greatest freedom.

Libertarians will be refuted by using what I call the *pure negative freedom approach*. This approach will show not only that private property constrains non-owners' freedom to act, but also how these constraints on freedom appear in our current capitalist articulation of private property. We will see, among other things, that in a full market society with an unequal distribution of money, lack of money (poverty) is lack of freedom to act. Moreover, it implies

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<sup>1</sup> Jeffrey Reiman, *As Free and as Just as Possible* (Wiley-Blackwell 2012) 94.

a lack of freedom to engage in many important activities for personal development.

The idea, then, is to refute libertarian proposals by contending that libertarians neither argue for freedom as such nor overall freedom, but rather the freedom of owners, or even more radically, the freedom of those who own more. This chapter reclaims the idea of negative freedom from libertarians in order to show that negative freedom can support arguments for both limitations to private property and redistribution.

## **2. Property right-based conceptions of negative freedom**

### **2.1. Negative freedom and private property**

The claim that the proper understanding of freedom is as *negative* freedom was famously defended by Isaiah Berlin in his seminal essay of 1958, *Two Concepts of Liberty*. In that essay, he developed the distinction between positive freedom and negative freedom, dismissing the first one as a dangerous and harmful conception of freedom<sup>2</sup>. In that well-known essay, Berlin defines negative freedom as absence of coercion, understanding by coercion "the deliberate interference of other human beings within the area in which I could otherwise act"<sup>3</sup>. Thus, there is freedom, in Berlin's account, when individuals are not intentionally constrained by other persons *within the area in which they could otherwise act*.

Berlin's and similar negative conceptions of freedom have given rise to a *tradition* in which freedom means basically freedom *from government intervention*, and more precisely, freedom from the intervention of government in *individual rights*<sup>4</sup>. The reason is that *the area in which persons can act is not*

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<sup>2</sup> Positive freedom is never precisely defined by Berlin, but rather characterized as "self-direction", "self-mastery", "self-control" or "self-realization". In some sense, Berlin is here characterizing a concept closer to autonomy rather than freedom. For this reason it is better to say that positive conceptions of freedom emphasize freedom *to*, that is, the actions that individuals are able or unable to perform, making of secondary relevance both, the kind or the source of the interference that may hinder their actions.

<sup>3</sup> Isaiah Berlin, *Liberty* (Oxford University Press 1969) 31.

<sup>4</sup> As Crocker says, "the negative tradition is concerned, almost exclusively, with limiting government. Laws, bureaucracies, and centralized power are taken to be the chief sources of

*understood physically, but normatively*, this is, as an area constituted by basic rights (i.e. individual rights). That being the case, the negative freedom tradition is committed through the defence of private property in the name of freedom, against interventions made by public institutions. Interferences in private property are constraints in freedom but private property does not at the same time constrain the freedom of others. In this view, then, any interference in private property reduces overall freedom, or in other words, everybody's freedom.

## **2.2. The libertarian approach to the relation between freedom and property**

Libertarians have embraced this tradition, going further. Unlike liberals, they reject any constraint on freedom. According to libertarians, freedom means self-ownership and *absolute* property rights<sup>5</sup>. Thus, any limit to private property is an interference in individual freedom, and therefore a "crime[s] against persons"<sup>6</sup>. Undoubtedly, the most well-known libertarian defence of a minimal state -that exists primarily to protect absolute private property rights- has been provided by Nozick in *Anarchy, State and Utopia*. This is not only a central text for all contemporary academic discussions of libertarianism but also, together with John Rawls's *A Theory of Justice*, arguably "framed the landscape of academic political philosophy in the last decades of the twentieth century"<sup>7</sup>.

Nozick's libertarian position is based on a mix of Lockean and Kantian ideas. On the one hand, Nozick's conception of natural rights resembles Locke's, as

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the interference that destroys freedom". Lawrence Crocker, *Positive Liberty* (Martinus Nijhoff Publishers 1980) 1ss.

<sup>5</sup> Paradigmatically, Robert Nozick *Anarchy, State, and Utopia* (Blackwell 1974). Other well-known libertarians are Eric Mack, Jan Narveson, Samuel Wheeler III. There is a group of libertarians like Michael Otsuka, Peter Vallentyne, Hillel Steiner, among others, that call their libertarian approach "left libertarianism" because of the relevance they give to equality at some point of their proposals. To understand the left-libertarian approach, see Peter Vallentyne and Hillel Steiner (eds) *The Origins of Left-Libertarianism: An Anthology of Historical Writings and Left-Libertarianism and its Critics: The Contemporary Debate* (Palgrave 2000).

<sup>6</sup> As Wheeler says, "[C]rimes against property are just crimes against persons which tend not to produce immediate sensations of pain", Samuel Wheeler III "Natural Property Rights as Body Rights" (1980) 14 *Noûs* 171, 189.

<sup>7</sup> Barbara Fried, "Begging the Question with Style: Anarchy, State and Utopia at Thirty Years" (2005) 22 *Social Philosophy and Policy* 221, 221.

well as part of his ideas about property acquisition (because he uses, with some modifications, Locke's "sufficiency proviso")<sup>8</sup>. On the other hand, according to Nozick, "individuals are ends and not merely means: they may not be sacrificed or used for the achieving of other ends without their consent"<sup>9</sup>. Nozick appeals both to the idea that individuals are ends (in order to oppose to any redistribution), and to consent, understood in a negative sense as a limit to what we can do to each other, and in a positive sense as synonymous with acting not subject to any other will<sup>10</sup>.

With these ideas, Nozick makes his proposal of *absolute* private property rights and *absolute* self-ownership. For Nozick both things protect individuals' freedom: basically, they protect them against violence, against paternalist policies and against redistributive measures. Thus, when Nozick discusses redistribution and property rights, he asserts that "[t]axation of earnings from labour is on a par with *forced labour*"<sup>11</sup>.

According to Nozick's libertarian proposal, a capitalist society with absolute private property rights is a society of *maximal freedom* because, in his view, it imposes *minimal restrictions on the freedom of individuals*. In a society with these characteristics, individuals enjoy a large amount of freedom, even if more than the half of them lacks the ability (here, the resources) to perform many of the actions that they are (normatively) free to perform. Poverty and property-less people mean lack of wellbeing, but not lack of freedom.

Nozick and libertarians declare that freedom is the only important value for the society that they defend and private property is the embodiment of freedom. But, as we will see in the next sections, they can only make that assertion by ignoring the unfreedom that private property entails for all the non-owners and more radically, the vast dimensions of unfreedom that an unbridled capitalism

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<sup>8</sup> I will address the meaning of Locke's "sufficiency proviso" later in Chapter 4.

<sup>9</sup> Nozick (n 5) 30-31.

<sup>10</sup> In Chapter 6 I will argue that consent does not guarantee that individuals *act freely*. There we will see that not only coercive but also *consensual* exchanges can be exploitative.

<sup>11</sup> Nozick (n 5) 169. Also, as Wheeler contends, "taxes are theft", in Wheeler (n 6) 189.

entails for many people. The way Nozick can ignore all this is by relying on the aforementioned negative freedom tradition, which provides a *moralized* understanding of freedom. The idea of a moralized conception of freedom will be explained in the next section.

### **2.3. The moralized understanding of freedom**

Gerald Cohen was the first to use the term *moralized*, which today has been adopted by many, as we will see throughout this chapter. Cohen introduced this term in the context of a discussion with Nozick, by saying that “there is a definition of freedom which is implicit in much libertarian writing, and which entails that interference is not a sufficient condition of unfreedom. On that definition, which I shall call the *moralized* definition, I am unfree *only* when someone does or would *unjustifiably* interfere with me, when what he does or would do prevents me from doing what I have a *right* to do”<sup>12</sup>.

As we can see, moralized understandings of freedom are *right-based*: whether or not someone’s freedom is affected by another person is determined by reference to those persons’ rights. Consequently, for moralized conceptions of freedom, even the toughest physical interferences on another's action, as for instance incarceration, are not constraints on that person's freedom if these interferences arise from the exercise of *rights*. As I said, Nozick's libertarianism is paradigmatically grounded on a moralized understanding of freedom: Nozick's understanding of freedom presupposes the *previous existence of absolute property rights*. However, Nozick neither has a theory of rights nor gives substantive argument for their justification<sup>13</sup>. Nozick’s understanding of freedom plays a crucial role in his defence of a minimal state and an unbridled capitalism. The reason is that, as Cohen notes, "if one combines this rights definition of freedom with a moral endorsement of private property... then one

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<sup>12</sup> Gerald Cohen “Illusions about Private Property and Freedom” in John Mepham and David-Hillel Ruben (eds), *Issues in Marxist Philosophy IV* (Harvester Press 1981) 10, emphasis added.

<sup>13</sup> As Nozick acknowledges in the preface of *Anarchy, State, and Utopia*, his book "does not present a precise theory of the moral basis of individual rights". Nozick (n 5) xiv.

reaches the result that the protection of legitimate private property cannot restrict anyone's freedom"<sup>14</sup>.

Nozick's moralized comprehension of (negative) freedom presuppose, in what concerns us, that *private property does not affect the freedom of others*. It does not affect their freedom because: (1) A's right of exclusion of all the others from her property is a rightful action, since that right is a constitutive part of private property, and (2) the intervention of others in A's private property is, correlatively, a wrongful action. Accordingly, in Nozick's view, a society with *minimal state intervention* and *absolute property rights* is a society with *minimal constraints on individuals' freedom*. Freedom is the bedrock of Nozick's proposal, but we will see that in the long run, freedom is nothing more than the absence of constraints on the exercise of property rights<sup>15</sup>.

Certainly, unlimited freedom has little value. When everybody has the freedom to do everything within their powers (even to affect the body and life of others), having no duty to others, individuals live in "continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short"<sup>16</sup>. Freedom, then, must have limits to be valuable; limits that are grounded in others' rights. It is the rights that we have, which involve correlative duties to others, that makes freedom meaningful. Moralized understandings of freedom, however, ignore that such rights impose important limits to others' actions. To overlook that those are limits to freedom is problematic because it means that even harsh physical restraints on a person's actions are not considered constraints on freedom, and, consequently, there is no need to give any justification for them. In the case of Nozick (and libertarians), this allows him to ignore the fact that private property, as we will see in the next sections

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<sup>14</sup> Gerald Cohen "Capitalism, Freedom and the Proletariat", in Michael Otsuka (ed) *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy* (Princeton University Press 2011) 153.

<sup>15</sup> Ian Carter, *A Measure of Freedom* (Oxford University Press 1999) 70.

<sup>16</sup> Thomas Hobbes, *Leviathan* (Oxford University Press 1996) 84. This unlimited understanding of freedom corresponds to the understanding of freedom as the absence of any duty. As we saw in Chapter 1, in this understanding of freedom private property cannot exist.

of this chapter, affects the freedom of all non-owners. If the question is how much freedom a given individual enjoys or what the overall level of freedom of a society is, then, ignoring the constraints that private property imposes on individuals would be misleading.

### **3. The pure negative freedom approach**

#### **3.1. Important features**

The consequence of a moralized understanding of freedom is that it only sees the freedom that private property rights give to the owners, but disregards the unfreedom that private property necessarily generates to all the non-owners. That unfreedom, however, is at the core of the nature of private property.

A justification of private property that is grounded on negative freedom cannot afford to ignore the constraints that it imposes on the action of all the non-owners. In order to show the limits that private property imposes, I will make use of the "pure negative conception of freedom", an approach that has been developed by Steiner<sup>17</sup>, Carter<sup>18</sup> and Kramer<sup>19</sup>. A rough version of this approach had been previously applied, although not detailed to such an extent, by Cohen, to make the point that capitalism, with its property rights, is not the realm of freedom, as is usually affirmed.

This pure negative conception of freedom has three important features, which will be explained in turn in the next three sections.

##### **3.1.1. Freedom as physical possibility**

First, the pure negative freedom approach is a *modal* conception of negative freedom, or, in other words, a *non-normative* conception. This means that it conceives freedom as concerning the *possibility* of particular actions, not its *permissibility*<sup>20</sup>. The pure negative approach is concerned with physical freedom

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<sup>17</sup> Hillel Steiner, "Individual Freedom" (1975) 75 *Proceedings of the Aristotelian Society* 33; Hillel Steiner, *Essay on Rights* (Blackwell 1994).

<sup>18</sup> Carter (n 15).

<sup>19</sup> Matthew Kramer, *The Quality of Freedom* (Oxford University Press 2003).

<sup>20</sup> *ibid* 60ss. See also Jonathan Wolff, "Freedom, Liberty and Property" (1997) 11 *Critical Review* 345.

and unfreedom, and, therefore, with what makes actions *physically* possible or impossible.

It is worth noting at this juncture that physical and deontic freedom are not co-extensive. On many occasions, each one can lead to opposite directions, as clearly happens in the sphere of the market that is the reign of permissions, but not necessarily of physical freedom: the law permits me to buy a car, but it is also possible that I lack the resources to buy it. The fact that physical and normative freedom are not co-extensive also implies that, commonly, types of actions that are forbidden, are at the same time physically possible to perform. That is, the physical freedom to perform particular types of actions might not be eliminated by their legal prohibition. This arises because the common form of enforcement is punishment, which obviously happens *after* the wrongful action is performed. *Before* the performance of the action, there is only a threat of punishment. Nonetheless, threats do not make actions impossible, but "simply reverse the preference ordering of the recipient with respect to bringing about and not bringing about the result desired by the threatener"<sup>21</sup>. Thus, disobeying legal rules is not impossible (in this sense, one might say that we are free to break the law).

Certainly, the fact that physical freedom to perform a *particular* action is not eliminated by its legal prohibition does not mean that the *overall* physical freedom of the individual remains the same. Usually, in well-enforced legal systems, disobedience entails punishment and therefore, a decreased possibility of performing many important actions in the future. Consequently, although legal rules that forbid certain actions do not make individuals *modally* unfree to perform them, generally they reduce their overall freedom<sup>22</sup>.

### **3.1.2. Freedom as an opportunity concept**

The second important feature of the pure negative freedom conception has to do with its focus on freedom *to act* and more precisely, with individuals' *physical*

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<sup>21</sup> Carter (n 15) 227.

<sup>22</sup> Kramer (n 19) 20-21.

freedom *to act*<sup>23</sup>. Thus, this approach is neither affected by enquires about freedom of the will, nor concerned with the way that individuals' will is involved at the moment that they perform particular actions. Ian Carter describes this difference using Charles Taylor's distinction between freedom as an "opportunity concept" and as an "exercise concept"<sup>24</sup>. When freedom is treated as an opportunity concept, it refers to the physical possibility to perform some action or actions at some moment subsequent (or identical) to that at which the agent possesses the freedom in question; when freedom is treated as an exercise concept it refers to the mode in which some agents act<sup>25</sup>.

Perhaps the best way to express this distinction is by signalling that the pure negative approach is concerned with individuals' *freedom to act* and not with them *acting freely*. Thus, for the pure negative freedom view, if the action is physically possible the individual is free to act, no matter how terrible the other alternatives might be. Indeed, if the only alternative to carrying out X is to abstain from doing X, we can say that the individual remains free to act, *as there exists an alternative: abstention*. The answer is positive even if abstaining from doing X leads to death. As Matthew Kramer explains, because "nobody can ever be made unfree to abstain from acting in a particular way", abstention is always

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<sup>23</sup> Notice here that for freedom to act the important thing is to be unconstrained to perform actions, even if the agent does not want to perform such actions. Carter and Kramer further develop this idea in Ian Carter and Matthew Kramer "How Changes in One's Preferences can Affect One's Freedom (and how they cannot): a Reply to Dawding and Van Hees" (2008) 24 *Economics and Philosophy* 81. In addition, it is relevant to note that in 1969, in the introduction of a new version of his essay "Two concepts of liberty", Berlin overtly acknowledges that he made a mistake in the first version of 1958. In that version, he understood freedom "as the absence of obstacles to the fulfilment of a man's *desires*". According to Berlin, although the aforementioned is the most common sense in which the term is used, it is wrong. The reason is that "if to be free - negatively - is simply not to be prevented by other persons from doing whatever one *wishes*, then one of the ways of attaining such freedom is by extinguishing one's wishes. If degrees of freedom were a function of the satisfaction of desires, I could increase freedom as effectively by eliminating desires as by satisfying them: I could render men (including myself) free by conditioning them into losing the original desires which I have decided not to satisfy". Berlin (n 3) 31.

<sup>24</sup> Ian Carter, "Choice, Freedom and Freedom of Choice" (2004) 22 *Social Choice and Welfare* 61. This distinction is in Charles Taylor, "What's Wrong with Negative Liberty" in Charles Taylor (auth) *Philosophy and the Human Sciences. Philosophical Papers 2* (Cambridge University Press 1985).

<sup>25</sup> Carter (n 15) 64.

an alternative to action<sup>26</sup>. Because the slave is free to abstain from working, we can say that she is also free to work. Importantly, the fact that under this approach she is free to work does not mean that she acts freely (certainly, she does not).

Acting freely, on the other hand, involves questions about voluntariness, this is, about the degree of voluntariness of our actions and choices. What typically becomes relevant here is if the person who acts, is or is not coerced to perform that action. Although the voluntariness of an action is a matter of degree, some actions other than those that are coerced also demand our concern, as we will see in the second part of the thesis<sup>27</sup>.

The salient point here is that according to this pure negative freedom conception, being free to act does not necessarily entail acting freely. Of course, the former is a necessary condition for the latter (one can only act freely if she is physically free to perform that action), but the freedom to perform a particular action does not mean that the action will be performed freely<sup>28</sup>.

### **3.1.3. Is the pure negative conception of freedom a neutral approach?**

The "pure negative conception of freedom" claims the neutrality of its approach. There are three reasons one might say that this approach provides a sort of neutral criterion. The first reason is that this approach only looks for physical interferences and if such interferences impede certain actions. As Kramer says, "to determine whether some particular freedom or unfreedom exists, we need not have recourse to any evaluative or normative assumptions"<sup>29</sup>. That is why Cohen, an analytical Marxist far from Kramer's and Carter's political allegiances, could support this view. For Cohen, it was clear that "I am *pro tanto* unfree whenever someone interferes with my actions, *whether or not I have a right to perform them, and whether or not my obstructor has a right to interfere with me*"<sup>30</sup>.

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<sup>26</sup> Kramer (n 19) 21.

<sup>27</sup> See below Chapter 6.

<sup>28</sup> Serena Olsaretti, *Liberty, Desert and the Market* (Cambridge University Press 2004) 109ss.

<sup>29</sup> Kramer (n 19) 151.

<sup>30</sup> Cohen (n 14) 153.

The normative assessment of the interferences involves another level of analysis.

Here it is also very important to notice that the pure negative view approach is not looking to share blame when it determines that some freedom has been constrained. This approach rules out intentionality, culpability or moral responsibility as a requirement to determine when someone's freedom has been constrained for somebody else. To say that someone's action has constrained the freedom of another does not signify that she has acted wrongly or that she is morally responsibly. Even though according to Kramer, for someone to be unfree, someone else is necessarily responsible for her unfreedom, this does not mean in any case a *moral* responsibility.

The second reason that supports the idea of neutrality is that the pure negative freedom approach rejects views that make freedom dependent on the desires and preferences of individuals. The question about how authentic or conditioned some preferences are, or the problem of "adaptive preferences" is out of place in the enquiry of the approach we are dealing with. Someone's freedom to act must be determined without considering her desires and preferences<sup>31</sup>.

Finally, this approach does not confuse the question about freedom to act with the question about acting freely. How freely somebody acts, as I mentioned

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<sup>31</sup> Notice here that for freedom to act the important thing is to be unconstrained to perform actions, even if the agent does not want to perform such actions. Carter and Kramer further develop this idea in Ian Carter and Matthew Kramer "How Changes in One's Preferences can Affect One's Freedom (and how they cannot): a Reply to Dawding and Van Hees" (2008) 24 *Economics and Philosophy* 81. In addition, it is relevant to note that in 1969, in the introduction of a new version of his essay "Two concepts of liberty", Berlin overtly acknowledges that he made a mistake in the first version of 1958. In that version, he understands freedom "as the absence of obstacles to the fulfilment of a man's *desires*". According to Berlin, although the aforementioned is the most common sense in which the term is used, it is wrong. The reason is that "if to be free - negatively - is simply not to be prevented by other persons from doing whatever one *wishes*, then one of the ways of attaining such freedom is by extinguishing one's wishes. If degrees of freedom were a function of the satisfaction of desires, I could increase freedom as effectively by eliminating desires as by satisfying them: I could render men (including myself) free by conditioning them into losing the original desires which I have decided not to satisfy". Berlin (n 3) 31.

previously, demands an enquiry about the conditions that make actions voluntary. As I will claim in the second part of the thesis, this kind of approach to freedom, which is concerned about the freedom of our choices, tends to make reference to evaluative terms in order to identify freedom/unfreedom. Although we will see that some accounts conceptualize domination without reference to evaluative terms<sup>32</sup>, this does not mean that such conceptualization is neutral in the sense that it does not involve an ethical or political position.

It is in this latter sense that the pure negative approach cannot claim neutrality. The reason is that this approach only sees an aspect of freedom: as I said, this approach is concerned with the interferences in our freedom to act and not in our freedom of choice. To claim that freedom to act is either the only important freedom or that it exhausts the concept of freedom, certainly involves a political position: a position that dismisses as instances of freedom all the cases related to freedom of choice and therefore, to freedom as non-domination.

This is why I will claim in the second part of the thesis that in its *capitalist articulation*, private property can be depicted not only as a right that entails the imposition of duties on all the non-owners, or as a right that imposes obstacles on non-owners' actions but also as a right that gives owners power to dominate others, whom in virtue of such power find their freedom to choose constrained.

### **3.2. Freedom, inabilities and incapacities**

In this section, before we ponder how private property constrains freedom, we will take note of an interesting consequence of the pure negative freedom approach: the fact that this approach focuses on non-normative freedom transforms certain typical dichotomies -such as inability/unfreedom and freedom/conditions for freedom- into mere distinctions.

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<sup>32</sup> See Chapter 5.

### 3.2.1. (In)ability and (un)freedom

*Positive* freedom accounts regard obstacles that originate in the inabilities or incapacities of agents as cases of unfreedom<sup>33</sup>. Negative conceptions of freedom, instead, commonly require that obstacles to freedom originate from the *intentional actions of other persons*.

For someone like Berlin, so paradigmatically engaged with a negative conception of freedom, "you lack political liberty or freedom *only* if you are prevented from attaining a goal by *human beings*. *Mere incapacity* to attain a goal is not lack of political freedom"<sup>34</sup>. What is relevant, then, is freedom from the interferences of *others*, rather than freedom from all interferences.

In the liberal tradition, to which negative freedom conceptions frequently belong, the aforementioned distinction has served to assert, with theoretical support, that lack of resources or poverty does not mean lack of freedom but rather mere incapacity. For Berlin, for example, the poverty and lack of money that prevents someone *from* something that she needs or desires (because she cannot afford it) cannot be attributed to human beings, as would be the case if this same thing were forbidden by the law. According to Berlin, when we attribute poverty to human beings, and therefore, we say that lack of money is lack of freedom, we are relying on a particular social and economic theory about the causes of poverty<sup>35</sup>. Hence, for Berlin, incapacities or inabilities like poverty, that prevent individuals from many particular actions (like buying nutritious food, or going to school), cannot be considered constraints on freedom.

We will see later, in section 4.2.1., that individuals who lack money are not merely unable to do certain things or to perform certain actions, but also *unfree*. They are unfree because they are prevented, by other human beings, from access to the things they need. Berlin, however, does not consider the

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<sup>33</sup> For a positive conception of freedom, the focus is on what individuals have the capacity or power to do or not to do. Of course, for political philosophy, a conceptualization of freedom always needs to be related to other persons. Hence, for positive conceptualizations of freedom, the important point is how others treat our inabilities or incapacities.

<sup>34</sup> Berlin (n 3) 169, emphasis added.

<sup>35</sup> *ibid* 170.

shopkeeper who denies a loaf of bread to the poor who cannot pay for it as interfering in that person's freedom. This can be explained by the fact that private property is a constitutive part of Berlin's conceptualization of freedom, and therefore, the shopkeeper's interference is the inevitable framework where individuals have to act. This is why Berlin can say that an individual who "is too poor to afford something on which there is no legal ban - a loaf of bread, a journey round the world, recourse to the law courts" is not unfree, but rather *unable*<sup>36</sup>.

Kramer rejects this dichotomy: if an agent lacks the capacity to do A, then, he *ipso facto* lacks the freedom to do A. However, Kramer adds a nuance, by proposing a "trivalent" conception of freedom. According to this conception, we need to add to the bivalence "free" and "unfree" a third alternative, which is "not free"<sup>37</sup>. Unlike "mere" inabilities, *unfreedom* regards inabilities *caused by other persons*. "Mere" inabilities are inabilities not caused by other human beings, and therefore, for Kramer, these naked inabilities do not make individuals "unfree", but rather "not free"<sup>38</sup>.

The difficulty of Kramer's proposal is that he not only needs a criterion for differentiating when individuals are "unfree" and when they are "not free", but also he needs a *neutral* criterion. Kramer provides a criterion, which is causality. According to Kramer, to be "unfree" instead of "not free", we need to attribute *causal responsibility* to the interference of some person or group of persons. Importantly, Kramer understands the idea of being causally responsible in a very broad sense. Indeed, there is no threshold to surpass for human actions to be considered a causal contribution to another's unfreedom. For Kramer, "the sheer remoteness or smallness of some person's causal contribution to a reduction in some other person's liberty is never per se a reason for ignoring

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<sup>36</sup> *ibid* 169.

<sup>37</sup> *ibid*.

<sup>38</sup> Of course, being "not free" has a different status in Kramer's account. In some sense, is less relevant. As Morriss says, "it is far more significant if you are unfree to do something than if you are merely unable to do it". Peter Morriss, "What is Freedom if it is not Power" (2012) 59 [132], *Theoria: A Journal of Social and Political Theory* 1, 3.

that contribution"<sup>39</sup>. The reason for Kramer's broad conception of causal contribution, then, has to do with the neutrality commitment that the pure negative freedom approach claims: to discriminate between salient and not salient contributions would demand evaluative judgments. It is in virtue of this broad conception of causality that Kramer can assert that "if the 'impersonal' workings of social or political or economic institutions trammel people's liberty in various respects, the actions that diffusely constitute those workings are sources of unfreedom *pro tanto*"<sup>40</sup>.

### 3.2.2. Freedom and its conditions of exercise

Closely associated with the distinction between mere incapacity and unfreedom is the distinction between freedom and the conditions in which it is exercised. Those who invoke this distinction, like Berlin<sup>41</sup>, assert that everyone is free, for example, to go to the university; the fact that some persons cannot afford the fees does not mean that they are less free to go; they just lack the conditions to exercise that freedom.

The main concern with this distinction is that it is potentially problematic if not used in the right context. Certainly, this distinction makes sense when we are dealing with *normative* freedom. As we saw in section 3.1.1, there is no contradiction in asserting that someone is free to do X (say, go to the university), but that she is not able to do X (say, because she does not have the money for the fees). That everyone is permitted to do an action X does not imply that that action is, at the same time, possible for everyone. For that reason, it is perfectly coherent to affirm that capacities, abilities and resources are conditions for the

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<sup>39</sup> Kramer (n 20) 273.

<sup>40</sup> *ibid* 319.

<sup>41</sup> Berlin clearly asserts that "It is important to discriminate between liberty and the *conditions of its exercise*. If a man is too poor or too ignorant or too feeble to make use of his legal rights, the liberty that these rights confer upon him is nothing to him, but it is not thereby annihilated". Berlin (n 3) 45. Similarly, Rawls distinguishes between liberty and its *worth* when he states that "the inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally, is sometimes counted among the constraints definitive of liberty. I shall not, however, say this, but rather I shall think of these things as affecting the *worth* of liberty, the value to individuals of the rights that the first principle defines". John Rawls, *Theory of Justice. Revised Edition* (The Belnap Press of Harvard University Press 1999) 179.

exercise of normative freedom. Having money and good quality education, for instance, are necessary conditions for exercising the freedom to go to the university; a normative freedom that the law nonetheless grants to everyone.

However, outside the context of normative freedom, the distinction between freedom and its conditions is less clear. As we will see later (section 4.2.1), for a pure negative freedom approach, we do not need to say that individuals who lack economic resources are free to do X (for example, go to the university) but are deprived of the conditions for the exercise of that freedom. According to this approach, we can straightforwardly say that they are unfree to do X, because they will be prevented by human beings from accessing the university.

#### **4. The freedoms that private property constraints**

The commonly held idea we have in mind is that a negative approach to freedom only is useful for depicting the freedom of owners: property rights grant the owner a sphere of action regarding a given object with neither physical nor normative constraints. However, we do not need to abandon the negative freedom approach to conclude that private property also constrains the freedom of all non-owners. In the next section 4.1., employing the pure negative approach, we will see that private property rights simultaneously give both freedom to the owner and unfreedom to all non-owners. The pure negative approach will allow us to discuss property and freedom in the same basic language, knowing that we are denoting the same kind of freedom. This approach, therefore, provides us a common ground for our discussion with libertarians, who only see unfreedom when governments impose limits on private property, ignoring the unfreedom that private property and especially absolute property rights, impose to non-owners.

##### **4.1. The unfreedom of non-owners**

According to a pure negative freedom approach, private property rights make individuals free to perform many actions regarding the objects each one owns. But at the same time, property imposes obstacles that make physically impossible for all the non-owners of a particular object to perform almost any

actions in regards to the very same object. By “physically impossible”, I mean that private property imposes physical restrictions to what non-owners can do with the owned objects. These obstacles are constraints on non-owners' freedom to act. Thus, even if private property over some object enhances the owner's freedom since it grants her freedom to perform any actions regarding that object, it also restrains *everyone else's* freedom to perform any actions with that object<sup>42</sup>. In this approach, is the *same kind of freedom* that property endows owners and denies non-owners.

In this *non-moralized* approach, we can see that private property most of the time renders objects physically unavailable to all non-owners. Non-owners cannot perform actions regarding those objects, because private property imposes obstacles that make those actions impossible. This impossibility arises not simply from the mere existence of a legal duty to abstain from interfering with others' ownership, since we already know that for the pure negative freedom's approach, prohibition does not mean impossibility. The impossibility, instead, results from the fact that the owner can prevent others' intrusion in her property by putting up fences, walls, alarms and any other kind of security in the exercise of her exclusion right<sup>43</sup>. Additionally, owners have the support of the state in the form of human beings empowered to use physical force in order to prevent illegal behaviours (like the invasion of another's property).

Cohen's famous example makes plainly apparent how private property imposes obstacles that constrain the freedom of non-owners:

Suppose, then, that I want to perform an action which involves a legally prohibited use of your property. I want, let us say, to pitch a tent in your large back garden, perhaps just in order to annoy you, or

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<sup>42</sup> Robert Hale "Coercion and Distribution in a Supposedly Non-Coercive State" (1923) 38 *Political Science Quarterly* 470; Ernest Loevinstohn "Liberty and the Redistribution of Property" (1977) 6 *Philosophy & Public Affairs* 226; Peter Jones "Freedom and Redistribution of Resources" (1982) 11 *Journal of social Policy* 217; John Baker *Arguing for Equality* (Verso 1987); Rodger Beehler "For One Concept of Liberty" (1991) 8 *Journal of Applied Philosophy* 27; Jeremy Waldron "Mr. Morgan's Yeat", in Christine Sypnowich (ed) *The Egalitarian Conscience: Essays in Honour of G. A. Cohen* (Oxford University Press 2006); Reiman (n 1); Cohen (n 14).

<sup>43</sup> The owner can also use physical force in self-defense against others' intrusion in her property.

perhaps for the more substantial reason that I have nowhere to live and no land of my own, but I have got hold of a tent, legitimately or otherwise. If I now try to do this thing I want to do, the chances are that the state will intervene on your behalf. If it does, I shall suffer a constraint on my freedom<sup>44</sup>.

Certainly, we are so used to property rights that it is difficult for us to grasp how they hinder our actions. Like Nozick, we tend to have a moralized perception of freedom when private property is involved. The reason is that, for us, private property is like a baseline that we consider as given, so we tend not to see how it hinders non-owners' actions. For us, "the general framework of property relations is taken to define the normal conditions of action, and therefore the initial opportunities or alternatives available, just as the laws of mechanics determine the conditions under which we can fly"<sup>45</sup>.

The pure negative approach demands that we view the right to exclusion without normative lens, so as to be able to discern how it physically operates. Following this path, Waldron has explained how property rights affect the negative freedom of non-owners with the extreme case of homeless people<sup>46</sup>. Homelessness makes more self-evident the unfreedom of non-owners. The reason is that the homeless person will be expelled from every owned place if she tries to get inside. Almost every action she attempts will encounter an obstacle that is likely to become a constraint on her freedom. Basic actions like sleeping, washing, and urinating will be hindered most of the time because she will probably be thrown out from every place that is privately owned. For homeless people, public spaces are the only places where they can be.

However, the case of the homeless people is only an extreme example of something that happens to *everyone all the time*. Private property implies the owner's right to exclude everyone else from every action that involves the use and possession of her owned object. As non-owners of almost everything that

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<sup>44</sup> Cohen (n 14) 150.

<sup>45</sup> S. I. Benn and W. L. Weistein "Being Free to Act and Being a Free Man" (1971) 80 *Mind* 194, 202.

<sup>46</sup> Jeremy Waldron "Homelessness and the Issue of Freedom" (1991) 39 *UCLA Law Review* 295.

surround us, our actions are permanently blocked by fences, walls, physical force and other obstructions. Hence, we can see that private property *per se* involves a decision about distribution of freedom - *the greatest freedom for the owner regarding her property and absolute unfreedom regarding that same object for everyone else*<sup>47</sup>.

In this light, both the limits to private property and its distribution become extremely relevant. Limits to private property do not involve a pure loss of freedom, but rather a redistribution of freedom. Consider, for example, the right to roam that demands owners to allow individuals to roam across their lands<sup>48</sup>. This regulation, again, cannot be assessed only by considering the

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<sup>47</sup> Compare the distribution of freedom associated with private property with the distribution of freedom that common property articulates. Certainly, the private property of an object gives the owner more freedom regarding that object than the common property of that same thing. But, if we consider the overall freedom of the group in relation to that object, common ownership may outweigh private property. Consider, by way of illustration, Cohen's following example: "Neighbors A and B own sets of household tools. Each has some tools which the other lacks. If A needs a tool of a kind which only B has, then, private property being what it is, he is not free to take B's one for a while, even if B does not need it during that while. Now imagine that the following rule is imposed, bringing the tools into partly common ownership: each may take and use a tool belonging to the other without permission provided that the other is not using it and that he returns it when he no longer needs it, or when the other needs it, whichever comes first. Things being what they are... *the communizing rule would, I contend, increase tool-using freedom, on any reasonable view*". Cohen (n 14) 155. Perhaps, Cohen's idea can be grasped better if we think of a library. Instead of each one being the owner of few books, a library with common books enhances everybody's freedom to use those books. The reason seems clear. In a private property regime, everyone is only free to use her few books and unfree to use any other book, but in the common property regime of a library, everyone is free to use every book contained in the library. Of course, unlike what happens with the private property regime, in which the owner can use her books when and how she wants, in the case of the library, certain rules regarding its use are needed. Those rules certainly will restrict everyone's freedom to use the books at each one's will, but at the same time will make possible a maximal overall freedom to use the library's books.

<sup>48</sup> The United Kingdom enacted a "right to roam" in the "Countryside and Rights of Way Act 2000" (CRoW), which requires landowners to allow the public to roam freely across their lands. CRoW classifies private land that contains mountains, moors, heath, or downland as "open country" and therefore, open to public access. This limitation to the right to exclude does not involve a compensation for the landowner. See Jerry Anderson, "Britain's Right to Roam: Redefining the Landowner's Bundle of Sticks" (2006) 19 *Georgetown International Environmental Law Review* 375.

impact on landowners' negative freedom because we would lose sight of the immense freedom that all non-owners gain with their right to roam<sup>49</sup>.

The distribution of private property, on the other hand, becomes relevant for the principle of *equal freedom*. If every person had roughly the same amount of property (and, I add, property of the same characteristics), each one would have roughly similar amount of freedom and unfreedom<sup>50</sup>. We will see in the following section that in our capitalist societies this is far from being the case.

If in this section 4.1 the idea was to make explicit the sheer fact that property constrains the freedom of all non-owners, the idea in the next two sections (4.2.1 and 4.2.2.) is to show, applying our pure negative approach, how the constraints on freedom inherent to private property are expressed under capitalism. The last section of the Chapter (4.2.3) will be dedicated to show that redistributive taxation does not involve a net loss of freedom.

## **4.2. Capitalism, private property and freedom**

### **4.2.1. Money, markets and freedom: property as a particular distribution of freedom**

The first thing we need to note, as we saw in Chapter 1 (section 4.1.2), is that one of the main features of capitalist economies is its markets, which are largely extended and dis-embedded. It is pertinent to underscore here that markets require well-enforced property rights, and more precisely, a state that enforces the *right of exclusion*. Indeed, markets "can function only in a situation where the 'exclusion principle' applies, i.e., where A's consumption is made contingent on A's paying the price, while B, who does not pay, is excluded. Exchange cannot occur without property rights, and property rights require exclusion"<sup>51</sup>.

The second thing to note is that in capitalist economies private property (understood here as income) is not equally distributed. Given market and

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<sup>49</sup> Indeed, if we look at the freedom that private property constrains, we can see that land ownership hinders, at least, freedom of movement of all non-owners.

<sup>50</sup> Baker (n 40) 76-77.

<sup>51</sup> Richard Musgrave and Peggy Musgrave, *Public Finance in Theory and Practice* (5th Edition. McGraw-Hill 1989) 42.

income inequality, it is not difficult to conclude that money is freedom and lack of money (or poverty) is lack of freedom. Indeed, it is easy to agree with Cohen on the simple assertion that "there are lots of things that, because they are poor, poor people are not free to do, things that non poor people are, by contrast, indeed free to do"<sup>52</sup>. Contrary to what Berlin states, we do not need a (morally loaded) theory about the causes of poverty to prove that poverty is directly related to unfreedom. We only need to describe what happens in a market society when individuals have no money (or a very little amount of money).

It is usually said that if we do not adopt a positive conception of freedom, we are deemed to consider that poverty entails incapacity, not unfreedom: the actions impeded by poverty cannot be understood as the result of other persons' intentional actions. However, the pure negative approach is capable of showing that such is not the case: individuals who lack money are not just unable to do certain things or to perform certain actions, but are also unfree. Unlike what many promoters of either negative or positive conceptions of freedom would say, we do not need to advocate for a positive conception of freedom to assert that lack of money is lack of freedom.

An illustration here might be useful. From the point of view of the pure negative freedom account, is the situation of a shopkeeper who denies a loaf of bread to X because she cannot pay for it, different from that of a kidnapper who withholds Y in the entrance to the shop, making it impossible for her to buy a loaf of bread? Of course, from a *normative point of view* (say, from the perspective of a legal system) both cases are completely different. In the case of X the answer is that the shopkeeper does not constrain X's freedom. The shopkeeper owns the bread and she can give it away whenever she wants, usually, according to market rules, when another pays the price. Because X *has no right to the bread* if she does not pay the price, her freedom to obtain the bread is not affected when the shopkeeper denies it. Conversely, the kidnapper clearly restrains Y's freedom, basically, because she hinders Y's *right to enter the shop* and buy what

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<sup>52</sup> Cohen (n 14) 167.

she wants. However, from the non-moralized standpoint of the pure negative freedom approach, the two cases are not so different. Like the kidnapper, the shopkeeper restrains X's freedom when she denies her the loaf of bread: she hinders X's physical possibility to grab the bread.

The aim of using such an ordinary example is to show that in the market, if X has no money to buy some good or service, the owner, security guards, the police, and others will interfere with X's access to it:

within a money economy, the legally recognised ownership claims of persons are effectively enforced by police and courts, and if the paying over of an amount of money M is the legally necessary condition of taking possession of some object O, or engaging in some action A, or entering upon some condition C, then whoever lacks M is not at liberty respecting O, A, and C. This is because persons lacking the requisite money are coerced from taking and using O, or engaging in A, or entering upon C, by the existing institutional arrangements of police and courts<sup>53</sup>.

Thus, one important way to describe what money does, from the point of view of our non-moralized approach, is to say that it *removes the interference of other persons*. Therefore, money is crucial, because in a market economy "goods and services are *inaccessible* save through money: giving money is both necessary for getting them, and, indeed, sufficient for getting them, if they are on sale"<sup>54</sup>. Or, as Carter, eloquently posits, "[T]he money in one's possession partly determines whether or not others will physically prevent one from performing certain sets of actions. Thus, the tramp is physically prevented, not by his lack of money, but *because* of his lack of money, and *by other people*, from eating at the Ritz and then walking away unimpeded"<sup>55</sup>.

Therefore, we can assert that (1) money, in market societies, confers physical freedom and (2) lack of money denies such freedom. Money, then, is not an object, or is not just an object, as Cohen says, but a social relation<sup>56</sup>. Money

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<sup>53</sup> Beehler (n 41) 41.

<sup>54</sup> Cohen (n 14) 176.

<sup>55</sup> Carter (n 15) 235.

<sup>56</sup> Cohen (n 14) 177.

confers freedom because it eliminates the only human obstacle which stands in the way of most of our actions<sup>57</sup>.

As we saw in the previous section, private property *per se* implies not only freedom but a *particular kind of distribution of freedom and unfreedom*. Because of its pervasive unequal distribution of private property (money), capitalism entails a *secondary form of distribution of freedom and unfreedom*. What makes this unequal distribution of money even more problematic is that in the neoliberal articulation of capitalism, having money is also the entrance door to the access of goods and services that are crucial for our development (such as, for example, education or medical services). If in neoliberal capitalism all essential goods and services are subject to the market, having no money to pay the fees to go the school or university makes it impossible for individuals to study. According to the pure negative freedom approach, then, those individuals that cannot afford the school or university fees are not free to go there to study. When markets are not just the main but also the only means for the distribution of goods and services, regardless of their relevance, poverty means lack of freedom to perform crucial and valuable activities we need for our personal development.

This is why social rights come to confer freedom to their holders. When they are displayed in *universal public provisions*, they *replace money*, and therefore, they break, in this matter, the unequal distribution of money of capitalist societies. Rights, and not money, is what everyone has in these spheres and therefore, *equal freedom*<sup>58</sup>. Instead, when social rights are displayed in public

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<sup>57</sup> Beehler (n 41) 45.

<sup>58</sup> *Universal provisions break with the characteristic unequal distribution of money because the provisions that social rights involve are not in the market, and therefore money does not have consequences for both the access and the quality of the provision. The idea that social rights should not be in the market was famously exposed by Thomas H. Marshall in *Citizenship and Social Class*. According to Marshall, social rights will be able to break with the unequal distribution of money "by a progressive *divorce between real and money incomes* which is seen in the main social services such as health and education". Thomas H. Marshall in *Citizenship and Social Class* (Cambridge University Press 1950) 81. What Marshall meant by this distinction is that the inequality of monetary income should not have any effects when it comes to essential spheres of human wellbeing. The different ability to pay (the inequality*

provisions that aim only to provide poverty relief, they do not replace money but they act as a *functional equivalent* to it. Although they confer freedom to its holders, they tend to perpetuate the consequences of the unequal distribution of money<sup>59</sup>.

#### **4.2.2. The (un)freedom both to work and to decide what to produce**

In addition to markets and inequality of private property (incomes/money), the other crucial feature of capitalist economies is the unequal distribution of private property over means of production. As I we saw on Chapter 1, the crucial feature of capitalist economies is not the private ownership over means of production, but its holding as private property by only a *few* people<sup>60</sup>. Unlike what happens with ownership of cell phones, means of production are privately owned by a very few people. This is why, I will refer to people who do not own any means of production as *property-less* people. Note that property-less people are not only non-owners of particular means of production owned by others, but also people who lack any private property over means of production.

What does capitalist property mean for individuals' freedom, from the perspective of the pure negative freedom account? Unlike what happens with private property over consumer goods, the problem we face here is more severe because *most individuals do not own any means of production*. Consequently, they are unable to perform not only concrete actions but also *types* of actions. Property-less people are physically prevented from two important *type* of

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of monetary incomes) will not have distributive consequences because the sphere of social rights will not be organized according to the market principle. In these spheres it would be as if all had the same income (real income), because the ability to pay would cease to be a criterion of distribution of social provisions. For Marshall, universality of social provisions was the way in which inequality (of monetary incomes) could be abolish in some specific spheres.

<sup>59</sup> Fernando Atria and Constanza Salgado, "Social Rights" in Emilios Christodoulidis, Ruth Dukes and Marco Goldoni (eds) *Reasearch Handbook on Critical Legal Theory* (Edward Elgar 2019).

<sup>60</sup> Rawls, for example, rejects capitalism but supports what he calls a "property-owning democracy", which is an economic regime where *private property* over means of production is widely dispersed. See John Rawls *Justice as Fairness. A restatement* (Harvard University Press 2001).

*actions*: (1) they are physically prevented to make any decision about the production of the goods and services that subsequently will be offered in the market and (2) they are physically prevented from labouring (in order to survive). These two types of actions, that most people are unfree to perform, are not ordinary actions. Rather, they are both special and sensitive actions.

The important thing here is to see how these actions are physically hampered. The reason, again, is that the right of exclusion of the owner, enforced by the state, makes it impossible for non-owners to perform any action regarding the owned object (in this case, the means of production). The physical obstacles that the right of exclusion allows physically impede property-less people from participating on the board of directors of a company, or more generally, to be in the significant place where decisions of production of goods and services are made: property-less people do not make any decision about production. Private property over means of production, on the other hand, makes labour impossible for property-less people. Because means of production are owned by a few and private property allows owners to exclude non-owners from them, property-less people are unfree to labour on those means of production.

Capitalist societies are not configured to make those actions possible. Private property shapes our social world and in that world, neither decisions about production nor labour are possible without the owner's consent. For us it is difficult to see that most people are prevented to perform these two types of actions because we are so used to property rights that we believe that they are part of our natural world. We usually do not notice that private ownership over means of production constrains freedom. Perhaps this occurs because the actions that such ownership hinders are not part of our preferences or desires. However, because our pure negative approach is not preference dependent, it brings this unfreedom into focus.

Take for example the action to decide what to produce. Because the means of production are privately owned just by a few people, most people are never free to decide that kind of issues or even to participate in the process where

these decisions are made. Someone might object to this assertion by saying that people do decide about production, albeit indirectly, in their role as consumers. As consumers, the objection alleges, we choose what to consume and what not to consume, thus making a sort of decision about what has to be produced. Consumers' decisions, the objector might say, are even more democratic than decisions we make in democratic procedures. This objection, however, is deeply mistaken for two reasons. First, because in the market not everybody is able to decide to the same extent: money, which makes consumption possible, is not as equally distributed as franchise, for example. The holdings with which each one arrives at the market are very disparate. Second, there are many decisions about production that, as consumers, we cannot make. That is why Charles Taylor asserts that "[t]he notion that we could go about setting our basic social priorities via the market as consumers is nothing short of absurd. How would the consumer go about "choosing" to have more education and less advertising? The former is not a commodity on the market and the latter is the result of decisions taken in industry to affect his spending, not the other way around. How could we choose to have less Monico office buildings and more municipal housing? Can we do this as "free consumers" – via the market?"<sup>61</sup>. Or can we, as consumers, decide to have less cars and better public transport, for example? Certainly, the answer is negative. This decision is not possible within the market.

Finally, let me clarify something to avoid confusion. I have asserted that most individuals (i.e. property-less people) are *unfree to labour*: they are physically prevented from using the means of production owned by a few. This means that individuals are unfree to perform the basic actions they need to survive. Their survival, then, depends on the owners' will. What the pure negative freedom approach cannot assert, however, is that individuals are *unfree from abstaining from labour*. As stated in section 3.1.2, it is always possible to abstain from an action, even if that abstention brings terrible consequences, as it

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<sup>61</sup> Charles Taylor, "What's Wrong with Capitalism?" (1960) 1/2 *New Left Review*, 9.

certainly would in the case we are considering. As we saw, the slave is free to abstain from obeying her masters' orders, and this situation is identical to the one that property-less people face today.

Within capitalism, then, individuals are both *unfree to labour* and *free to abstain from labour*. Are they *forced* to labour? The enquiry about whether individuals are forced to labour delves in the way individuals act (if they *act freely* when they labour for others and especially when they have to labour in appalling and precarious conditions). In other words, the question concerns the voluntariness of their actions: the freedom of their choices. However, we saw in section 3.1.3 that according to the pure negative freedom approach, what matters for unfreedom is physical impossibility, not lack of voluntariness. The pure negative freedom account is about freedom to act, not about acting freely. As we stated earlier, the enquiry about acting freely, or the voluntariness of actions, is a different investigation. Because these are different enquires, to assert that individuals are *free to abstain from labour* does not necessarily lead us to assert that they are not forced to labour. Individuals might be *free to abstain from labour* and, at the same time, they might be *forced* to labour. As I said, both are different concepts, with different meanings and referents: one (being *free to abstain from labour*) is about freedom to act, while the other (being *forced* to labour) concerns the degree of voluntariness of individuals' actions. Being *forced* to labour, then, conveys the idea that workers do not act freely when they consent to work for capitalist owners.

Nozick, again, offers a moralized approach to this issue, which means that he provides a *right-based* conception of voluntariness, as we can see when he states as follows:

Some readers will object to my speaking frequently of voluntary exchanges on the grounds that some actions (for example, workers accepting a wage position) are not really voluntary because one party faces severely limited options, with all the others being much worse than the one he chooses. Whether a person's actions are voluntary depends on what it is that limits his alternatives.... Other people's actions place limits on one's available opportunities. Whether this

makes one's resulting action non-voluntary depends upon whether these others *had the right to act as they did*<sup>62</sup>.

Serena Olsaretti has convincingly shown that Nozick's mistake is not only to define voluntariness through rights but also failing to distinguish between questions of freedom and questions of voluntariness<sup>63</sup>. In Nozick's account, if there is freedom to act (understood in a moralized way as he does) there is also voluntariness. This move is crucial for Nozick's principle of *justice in transfer*, which states that when transfers are voluntary, *the resulting distribution is necessarily just*<sup>64</sup>. Because he equates a just transfer with a voluntary transfer and consequently a voluntary transfer with freedom to act, in Nozick's account, exploitative exchanges, as is the case of sweatshop labour, would always be just.

We will see in the second part of the thesis that freedom of choice is crucial for an account that aims to understand the dominating power that capitalist property gives to owners. There I will claim that domination affects individuals' freedom to choose: individuals do not act freely when they are subject to domination. Their choices, in an important sense, are not completely voluntary: they act and choose subject to the will of the powerful. The most interesting aspect of this situation, however, will be my contention that not only coercion but also other circumstances may affect individuals' *freedom from domination*.

#### **4.2.3. Property and (re)distribution**

Libertarians declare loudly that redistribution affects overall freedom. Opposition to redistribution, indeed, is one of Nozick's and libertarians' greatest targets. For Nozick, "no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives"<sup>65</sup>. In other words, a pattern that aims to create equality contradicts freedom and, for that reason, redistribution undermines

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<sup>62</sup> Nozick (n 5) 262.

<sup>63</sup> Olsaretti (n 28) 137ss. Olsaretti's two main contentions are that (1) freedom to act does not suffice for voluntariness and that (2) there are non-voluntary choices other than coerced.

<sup>64</sup> *ibid.*

<sup>65</sup> Nozick (n 5) 160.

the legitimacy of the state. Unlike what happens with a minimal state that mainly protects unlimited property rights, welfare states continuously interfere in individuals' freedom.

However, if we are considering freedom to act in its physical dimension as the pure negative freedom approach does, we may reach the conclusion that libertarians are mistaken. As we saw earlier, libertarians assume a moralized understanding of freedom, which only perceives that the owner's freedom is affected by redistribution but neither does it consider the unfreedom that non-redistribution implies for non-owners nor does it recognize the augmentation of others' freedom to whom the redistributive measures are directed. As we saw in section 4.2.1., resources imply freedom, and although this freedom is reduced in the case of the owner, it increases in the case of those who receive the resources. Redistribution, then, means redistribution of *freedom* "rather than a case of freedom having been traded off against other values in the course of redistribution"<sup>66</sup>. Redistributive taxation, which makes possible social provisions for those who have no money, should not be depicted as sacrificing freedom for the sake of other important values, but rather as a reallocation of freedom: no net loss of freedom results from redistributive taxation<sup>67</sup>.

Indeed, if the aim is equal freedom in this pure negative sense, then, there are compelling reasons in favour of redistribution. From the pure negative perspective, although redistribution interferes with the freedom of some individuals, it also creates new freedoms for others<sup>68</sup>. Someone might contend that what beneficiaries gain with redistribution is welfare, not freedom. This, for example, is what Berlin would say. As we saw, for Berlin resources are not freedom, but conditions that enable one to exercise freedom. This distinction assumes, as we saw in section 3.2.2, a normative understanding of freedom.

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<sup>66</sup> Waldron (n 41) 155.

<sup>67</sup> In this sense, Robert Goodin, *Reasons for Welfare. The Political Theory of the Welfare State* (Princeton University Press 1988) 306ss; Will Kymlicka, *Contemporary Political Philosophy* (Oxford University Press 2002) 148ss; Cohen (n 14) 153ss; Waldron (n 41); Jones (n 41).

<sup>68</sup> Carter (n 15) 78ss.

From a pure negative freedom approach, instead, resources mean freedom because they enable new actions for those who receive them.

Nozick's claim that his account prevents interferences in peoples' freedom is undermined once we understand that the system of unlimited private property he endorses requires continuous interference in people's freedom: as we have seen, private property involves continuous intervention in non-owners' freedom<sup>69</sup>. When libertarians say that a system of absolute private property rights enhances freedom, they seem to be referring to the overall freedom that such system confers to the people that comprise capitalist societies. But libertarians ignore the unfreedom of non-owners; they seem to ignore also that not having money prevents individuals from doing not only ordinary actions but also prevents many essential actions needed for their development. This is why Cohen's objection to libertarian assertions about unlimited private property rights reveals that "capitalism *does not protect liberty in general*, but rather those liberties which are built into private property"<sup>70</sup>. Faced with this indictment, libertarians would have to say, that the system of full ownership that they defend, does not enhance individuals' overall freedom, but rather the freedom of those who own more.

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<sup>69</sup> Kymlicka (n 66) 150.

<sup>70</sup> Cohen (n 14) 155.

## CHAPTER 3. PRIVATE PROPERTY IN KANT'S FREEDOM AS INDEPENDENCE

### 1. Introduction

The justification of private property that Kant provides in *The Doctrine of Right* can be understood, at least, in two different ways<sup>1</sup>.

According to one interpretation of Kant's account, private property is justified as a rightful relation on the base that it enhances the freedom of owners and does not affect others' freedom. This interpretation goes hand in hand with the idea that distribution has no role in a justification of a private property system. Here, the mere legal opportunity to become an owner is sufficient to justify individuals' equal freedom and therefore, the fact of people owning nothing is not problematic for a justification of private property based on the freedom that it enhances. I call this interpretation the libertarian understanding of Kant's justification, which is subject to the same objections I raised in the previous Chapter 2: it does not see the freedom that it affects because it is anchored in a moralized understanding of freedom.

However, another understanding of Kant's justification arises once we try to make sense of Kant's "duty to support the poor". We will see that this duty is intertwined with a justification of private property, as far as those who own nothing become dependent on owners' charity to sustain their existence. To the extent that dependency only arises with the existence of private property, a

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<sup>1</sup> There are many interpretations of Kant's political philosophy. Perhaps the most popular interpretation fifty years ago was the libertarian interpretation of Kant. However, in recent decades some egalitarian interpretations of Kant's political philosophy have also appeared. These accounts focus on Kant's idea about the provisional character of private property in the state of nature to contend that private property is only definitively justified when both its allocation and its structure can be accepted by all. As I explain later in this chapter, these accounts are appealing, but they rely on a contractarian justification of property, which I believe Kant would reject.

distribution aimed to make everyone independent of owners' actions turn out to be a necessary condition for a justification of a private property system. By examining Kant's justification of private property, we will see that even a fully liberal justification of private property cannot disregard distribution as a constitutive part of a private property system. By focusing on Kant's account, my idea is to show that redistribution is intrinsically connected to a private property system.

We will see, however, that the right to be independent of the owner's will to survive opens the door to a further claim that Kant nonetheless is reluctant to accept: that no one should become dependent on the exploitative will of owners. In this light, Kant's justification would protect us from forms of domination that are a function of private property.

## **2. Kant's justification of private property**

Kant was not well known for his political philosophy, if compared to his moral philosophy<sup>2</sup>. However, during the last three decades, Kant's political philosophy has gained strength from different fronts. In Kant's theoretical system, the justification of private property rights does not arise from his moral theory but from his political theory. Kant's political philosophy is articulated in *The Doctrine of Right*<sup>3</sup> and its main idea is to explain how the *external freedom* that

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<sup>2</sup> Paradoxically, his moral philosophy has had a significant impact in contemporary *political* philosophy, like happens with the case of Rawls, who follows Kant's moral philosophy in his articulation of a *Theory of Justice*.

<sup>3</sup> The *Doctrine of Right* is the first of the two parts that comprise Kant's book *The Metaphysics of Morals*. *The Doctrine of Virtue* is the second part of the book.

each of us possesses can coexist. It is significant to note that external freedom relates to *actions*<sup>4</sup>, not to internal dispositions or intentions<sup>5</sup>.

According to the *Universal Principle of Right*, which is given firstly as a *statement*: "any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law"<sup>6</sup>. Subsequently, Kant posits the *Universal Principle of Right* as an *imperative* to "act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law"<sup>7</sup>. Hence, for Kant, *Right* is the sum of the conditions under which the freedom of one is compatible with the freedom of another in accordance with the universal law of freedom<sup>8</sup>.

Kant's concept of *Right* is internally connected with external freedom (hereinafter, "freedom" will mean "external freedom"). Indeed, in Kant's view,

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<sup>4</sup> Because external freedom is related exclusively to actions, and therefore dispositions are irrelevant, external freedom is *enforceable*. Appealing to this enforceable perspective, Kant explains in the introduction of *Metaphysics of Morals* the distinction between the sphere of *Ethic* and the sphere of *Right*: "That lawgiving which makes an action a duty and also makes this duty the incentive is ethical. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the Idea of duty itself is juridical. It is clear that in the latter case this incentive that is something other than the Idea of duty must be drawn from sensibly dependent determining grounds of choice, inclinations and aversions". Immanuel Kant, *The Metaphysics of Morals* (Cambridge University Press 1991) section 219.

<sup>5</sup> Morality, on the contrary, focuses on *internal* freedom. This does not mean that for morality actions are irrelevant, because of course, morality is about practical reason, and actions are the conclusion of practical reasoning. However, in Kant's moral philosophy, action by itself is irrelevant if it is not accompanied by the proper internal dispositions. *Internally free*, as Flikschuh explains, is a person who acts independently of the causality of their desires or interests, and from the maxim of duty. Katrin Flikschuh *Kant and Modern Political Philosophy* (Cambridge University Press 2000) 88-89.

<sup>6</sup> Kant (n 4) section 230.

<sup>7</sup> *ibid* 231. In the same section, Kant explains that the *Universal Principle of Right* is a "postulate incapable of further proof".

<sup>8</sup> *ibid* 230. It is important to note that *Right*, with its *Universal Principle*, is not derived from the *Categorical Imperative* (which pertains to Kant's moral philosophy). The *Universal Principle of Right*, neither requires individuals to consider the freedom of others as a moral motivation for their actions, nor demands universalization for the validity of their norms and institutions. Marcus Willaschek has some interesting works in this issue. See Marcus Willaschek "The Non-Derivability of Kantian Right from the Categorical Imperative: A Response to Nance" (2012) 20 *International Journal of Philosophical Studies* 557; Marcus Willaschek "Right and Coercion: Can Kant's Conception of Right be Derived from his Moral Theory?" (2009) 17 *International Journal of Philosophical Studies* 49

freedom is the *only innate right* we have. As he puts it, "Freedom (*independence* from being constrained by *another's choice*), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity"<sup>9</sup>. Thus, the *innate right to freedom* and the *Universal Principle of Right* correspond to each other: what the former depicts in the objective sense, the latter depicts it in the subjective sense. What it is interesting to note is that Kant asserts that the *innate right to freedom* involves a system of *equal freedom*, which in turn means "*independence* from being bound by others to more than one can in turn bind them; hence a man's quality of being *his own master (sui iuris)*"<sup>10</sup>.

The idea that freedom is the *only innate right* has two important implications. Firstly, for Kant, the *whole* juridical system is grounded on the right to freedom, understood as independence of the choices of others. Kant's claim is not only that freedom is the *only innate right* but also that this right can only be restricted for the sake of freedom itself, not any other value<sup>11</sup>. The second important implication is that private property is neither an innate right nor is it contained in the innate right to freedom. The innate right to freedom contains the right to bodily integrity but, importantly, not the right to private property. Thus, in Kant's theory, there is no natural right to private property, as occurs with Locke's justification: private property is an *acquired right*<sup>12</sup>. The latter idea is important because in Kant's account, acquired rights can only be justified to the extent that they are compatible with the *innate right to freedom*. The innate right to freedom as independence from another's choices, then, becomes crucial in

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<sup>9</sup> Kant (n 4) section 238.

<sup>10</sup> *ibid* 237

<sup>11</sup> Hart also argues that freedom is the *only "natural right"*, that is, the only right individuals have merely due to their status as persons. However, unlike Kant, Hart does not seem to think that freedom can be restricted only for the sake of freedom itself. As Hodgson explains Hart's argument "aims to show that violations of freedom call for justification, but it leaves open whether the justification is to proceed entirely in terms of freedom or whether it can proceed in terms of other values as well". Louis Philippe Hodgson "Kant on the Right to Freedom: A Defense" (2010) 120 *Ethics* 791, 795.

<sup>12</sup> Kant (n 4) section 237: "An *innate right* is that which belongs to everyone by nature, independently of any act that would establish a right; and *acquired right* is that for which such an act is required".

the sense that it is the criterion that will determine if private property is consistent with everyone's freedom<sup>13</sup>.

### 2.1. Physical possession

Given that the innate right to freedom does not encompass a right to private property, one might ask if it implies a right to use objects. According to Kant, I only have a right to use an object to the extent that I have physical possession of it. Thus, what can be *analytically* derived from the innate right to freedom is only what Kant calls "empirical possession", that is, the *physical* possession of an object. The reason for the protection of this kind of possession is simple: an interference with my physical possession implies an interference with my bodily integrity and therefore, with my innate right to freedom<sup>14</sup>. That is why, as Flikschuh says, "I can call an external object mine so long as I am physically attached to it, such as when I hold an apple in my hand, for example. Here *my innate right to physical integrity extends to the apple*: were someone to wrest the apple from my hand, they would be acting contrary to Right since their action would constitute an attack on my bodily integrity"<sup>15</sup>.

In Kant's innate right, thus, there is a right to bodily integrity but not a *right to the objects one holds* (there is not a right to the apple). Put differently, I have a right not to be disturbed when I hold an apple, but not a right to the apple.

### 2.2. Intelligible possession

Unlike physical possession, *intelligible possession*, that is, *possession without detention*<sup>16</sup>, does not follow *analytically*<sup>17</sup> from the innate right to freedom<sup>18</sup>. In

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<sup>13</sup> Not only private property, but also any other right that persons have must be compatible with the innate right to freedom.

<sup>14</sup> Kant (n 4) section 250.

<sup>15</sup> Katrin Flikschuh "Kant's Indemonstrable Postulate of Right: a Response to Paul Guyer" (2007) 12 *Kantian Review* 1, 14, emphasis added.

<sup>16</sup> Kant (n 4) section 245

<sup>17</sup> What Kant calls intelligible possession is a *synthetic*, but also an *a priori* proposition. See Kant (n 4) section 250.

<sup>18</sup> According to Baynes, Kant's denial that the right to external possession is analytically contained in the concept of external freedom marks an important shift from his earlier views on private property where he claimed that property rights were derived analytically from the concept of freedom or self-determination. Kenneth Baynes, "Kant on Property rights and the Social Contract" (1989) 72 *The Monist* 433, 435. In the same sense, Flikschuh

this sense, one of the most important tasks - if not the utmost- that Kant undertakes in the *Doctrine of Right* is an attempt to prove how intelligible possession is possible<sup>19</sup>.

Kant appeals several times to physical possession in order to clarify, by contrast, the idea of private property that he is trying to justify. Kant tries to grasp this idea by asserting that something external is *mine* only if I assume that I may be wronged by another's use of the thing even though I am not in physical possession of it<sup>20</sup>. But, in order for one to be wronged on account of another's use of an object, Kant has to show that there is a special relation between me, the object and everybody else. This special relation is what Kant calls *intelligible possession*. According to Kant, the expression "this external object is mine" is "as a giving of law that holds for everyone" because by it "an obligation is laid upon all others, which they would not otherwise have, to refrain from using the object"<sup>21</sup>. The core idea of intelligible possession, unlike physical possession, is not the relationship between a person and an object but the *relation between subjects with regard to objects*: the duties all others have toward me in connection with some object of my own.

### **2.3. The postulate of practical reason**

As we saw, private property does not derive directly from the innate right to freedom. Therefore, the *Universal Principle of Right* needs a complement, which Kant calls the *Postulate of Practical Reason* (hereinafter, the "Postulate")<sup>22</sup>. According to the *Postulate*, "it is possible for me to have any external object of my choice as mine, that is, a maxim by which, if it were to become a law, an object of choice would in itself (objectively) have to belong to no one (res

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states that in *Comments on the observations on the beautiful and the sublime*, Kant himself defended a view according to which the right to external possessions can be derived from a person's power of control over their own body, including the work produced by that body. Flikschuh (n 15) 34.

<sup>19</sup> *ibid* 250.

<sup>20</sup> *ibid* 245.

<sup>21</sup> *ibid* 253.

<sup>22</sup> *ibid* 246.

nullius) is contrary to rights"<sup>23</sup>. Kant subsequently substantiates his postulate as follows:

if the use of [an object] could not coexist with the freedom of everyone in accordance with a universal law (would be wrong), then freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting usable objects beyond any possibility of being used; in other words, it would annihilate them in a practical respect and make them into *res nullius*, even though in the use of things choice was formally consistent with everyone's outer freedom in accordance with universal laws<sup>24</sup>.

Kant's emphasis on the "use of things" shows that for him objects are essentially means we use to carry out the most basic and complex ends that we set. If objects were not available for us as means for our purposes, the deployment of freedom would be harshly reduced, and not for the sake of freedom.

It is important to note here that, with this *Postulate*, Kant aims to prove that private property is possible or rightful, that is, that the *relation* that property entails can coexist with everyone's freedom<sup>25</sup>. Kant is not yet justifying *concrete acquisitions*, but rather the relation that private property involves. However, in Kant's justification of this relation, he offers no other reasons besides the ones that the *Postulate* gives, as quoted above.

#### **2.4. The permissive law and provisional rights**

Immediately after the *Postulate*, Kant introduces what he calls the *Permissive Law*, explicitly saying that this *Permissive Law* is merely a restatement of the *Postulate*, when in fact it refers not to the rightfulness of private property but rather to a *power* for acquiring specific objects. In Kant's words, a power "to put all others under an obligation, which they would not otherwise have, to refrain

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<sup>23</sup> *ibid* 246.

<sup>24</sup> *ibid* 246.

<sup>25</sup> Kant devotes himself to explain how private property is possible in Chapter I ("How to have something external as one's own"). However, Kant tries to keep separate, as far as is possible, his explanation of how private property (intelligible possession) is possible (rightful) from his theory of (original) acquisition, that he develops in Chapter II ("How to acquire something external").

from using certain objects of our choice because we have been the first to take them into our possession"<sup>26</sup>.

As an acquired right, the acquisition of private property requires a particular act. In Kant's account, the act of acquisition in the state of nature (thus, the acquisition of unowned objects) demands *occupation*, and even though occupation does not involve labour, like in Locke, it is more than a mere *declaration*. Occupation of an object, for Kant, means "taking control of it"<sup>27</sup>.

Kant's basic idea is that although private property is rightful, someone's *acquisition* of a concrete object needs authorization. The reason is that acquisition involves an act that unilaterally imposes on others obligations that they otherwise would not have. "A unilateral will (and a bilateral but still *particular* will is also unilateral) cannot put everyone under an obligation that is in itself contingent", Kant says<sup>28</sup>. Thus, for acquisition to be possible, this *Permissive Law* is needed.

However, Kant neither defines this permissive law nor explicitly expands upon its nature after he enunciates it. In their effort to grasp the nature of the permissive law, the vast majority of scholars have argued that its special feature is that it grants permission to do something that otherwise would be wrongful (because it would imply the violation of the innate right to freedom and the Universal Principle of Right)<sup>29</sup>. In virtue of this *Permissive Law*, an unjust act is

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<sup>26</sup> Kant (n 4) section 247.

<sup>27</sup> *ibid* 259. In this sense, the act of acquisition requires more than saying "this is mine!", which is the claim Rousseau uses to depict the first act of appropriation, and therefore, the emergence of private property ("The first person who, having enclosed a plot of land, took it into his head to say this is mine and found people simple enough to believe him was the true founder of civil society). Importantly, to the extent that acquisition demands more than a mere declaration, nobody can originally acquire the whole world.

<sup>28</sup> *ibid* 256.

<sup>29</sup> This is the most traditional interpretation of the permissive law, which was famously sustained in Brandt's work "Das Erlaubnisgesetz, oder: Vernunft und Geschichte in Kant's Rechtslehre", in 1982. Brian Tierney has developed a similar interpretation, which is also famous in the Anglo-Saxon tradition. Hrushka and Byrd have offered another understanding of Kant's permissive law. According to them, the permissive law of the *Doctrine of Right* is a power-conferring norm. For them the permissive law does not *justify* the commission of an otherwise prohibited act because "it is not prohibited to impose an obligation on others not to interfere with things I have acquired and call my own. Thus doing so does not need

allowed on the assumption that the *unjust elements will gradually be removed* because eventually the civil condition will emerge<sup>30</sup>.

The *Permissive Law*, as I said, allows individuals to acquire external objects. Nevertheless, the acquisitions that the *Permissive Law* permits are only *provisionally* rightful, because, as Kant says, "for although each can acquire something external by taking control of it or by contract in accordance with its concepts of Right, this acquisition is still only *provisional* as long as it does not yet have the sanction of public law, since it is not determined by public (distributive) justice and secured by an authority putting this right into effect"<sup>31</sup>. This provisional nature of private acquisitions may be one of the most well-known elements of Kant's property theory, usually contrasted with the property theory of Locke or Hegel. According to Kant, the provisional nature of acquisitions means that "*conclusive* acquisition takes place only in the civil condition"<sup>32</sup>.

However, the permission of provisional acquisition is crucial for entering into the civil condition because "if no acquisition were recognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible"<sup>33</sup>. Provisional acquisition provides the context that triggers the *duty* to leave the state of nature in order to enter to the civil condition.

As we can see, by contrasts with Locke's account, in Kant's political theory entering into the civil condition is not based on instrumental reasons but upon a duty.

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justification". What the permissive law does, instead, is to give a power to individuals to appropriate things See Brian Tierney "Kant on Property: the Problem of Permissive Law" (2001) 62 *Journal of the History of Ideas* 301; Joachim Hruschka and Sharon Byrd *Kant's Doctrine of Right: a Commentary* (Cambridge University Press 2010).

<sup>30</sup> Baynes (n 15) 438.

<sup>31</sup> Kant (n 4) section 312.

<sup>32</sup> *ibid* 264.

<sup>33</sup> *ibid* 313.

## 2.5. The civil condition

For Kant, original appropriation is problematic in the state of nature because she who appropriates something does not treat others as innately equals: by acquiring something, her unilateral will puts all the others under an obligation that they would not otherwise have<sup>34</sup>. As Kant points out, "when I declare (by word or deed) that I will something external to be mine, I thereby declare that everyone else is under an obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right"<sup>35</sup>. It is for this reason that in Kant's account rights are provisional until the advent of the civil condition: the condition where everyone can enjoy their rights.

Kant uses the idea of an original *social contract* to explain the emergence of the civil condition and the idea of a *united will* of people to explain to whom state supreme authority (or the state's sovereignty) belongs. One might think that the idea of an original social contract and a united will is conducive to understanding the civil condition as a stage at which property rights provisionally acquired are redistributed according to an egalitarian principle of distribution. The problem, however, is that Kant does not conceive the original social contract either as a real or a hypothetical contract, but as an "idea of reason"<sup>36</sup>. Perhaps this is why Kant says that the civil condition does not change the structure of property rights because "*in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition, insofar as the civil condition is thought of by pure rational concepts alone. The difference is only that the civil condition provides the conditions under which these laws are put into effect*"<sup>37</sup>. Indeed, for Kant, not only the structure of private property rights but also the concrete

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<sup>34</sup> Ernest Weinrib "Poverty and Property in Kant's System of Rights" (2003) 78 *Notre Dame Law Review* 795, 807.

<sup>35</sup> Kant (n 4) section 256.

<sup>36</sup> Baynes (n 15) 444ss; Flikschuh (n 5) 172ss.

<sup>37</sup> Kant (n 4) section 313. In the same sense, "[the public Right condition] contains no further or other duties of men among themselves than can be conceived in the former state; *the matter of private Right is the same in both*" (section 306).

acquisitions would be already fixed in the state of nature, because the civil condition "is just the rightful condition, by which what belongs to each is *only secured, but not actually settled and determined*"<sup>38</sup>.

## **2.6. The duty to support the poor**

One of the most intriguing paragraphs of the *Doctrine of Right* is the one in which Kant asserts that the state is

authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens<sup>39</sup>.

As we can see, Kant is direct: the state is allowed to coerce wealthy people in order to provide for the needs of the poor. It is important to note that Kant here is asking for *redistribution*, not charity. The reason for this redistribution, Kant says, is that "the general will of the people has united itself into a society that is to maintain itself perpetually"<sup>40</sup>. Drawing from this sentence, some scholars have seen Kant's redistributive measures as an expression of political prudence.

We will see, however, that the duty to support the poor is better understood as a constitutive part of the justification of private property and acquisitions. I will develop this idea in section 3.2. of this chapter.

## **3. Freedom and distribution in Kant's justification of private property**

### **3.1. The libertarian interpretation of Kant's justification**

As stated above, freedom as independence from others' choices is the *only innate right*. According to Kant's innate right to freedom, everyone has the freedom to do *what it is compatible with the freedom of others*. This means that an individual's freedom encounters its limits in the freedom of others (and *only* in their freedom). Unlike what happens in Hobbes' state of nature, in which individuals

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<sup>38</sup> *ibid* 257, emphasis added.

<sup>39</sup> *ibid* 326.

<sup>40</sup> *ibid* 326.

are free to do anything within their powers, in Kant the clearest limitation of individuals' freedom is the body of others. According to Kant's innate right to freedom, the main and most determined right individuals have is the right to bodily integrity. We saw that this right, *indirectly*, allows individuals to use objects. As Ernest Weinrib says, before private property, "*every object is available for use by everyone, except the space that others occupy and whatever is in their physical possession*"<sup>41</sup>. Individuals, then, are free to use any object nobody is holding. In a Hohfeldian sense, individuals have a *liberty* regarding the use of objects, which means that nobody has a right to stop others from using objects that are not being held by someone else.

According to Kant, private property cannot be derived from innate right. Therefore, it is Kant's *Postulate* that allows private property. The crucial point of the *Postulate* is that a prohibition "to have any external object of my choice as mine" would be a contradiction with freedom itself. Despite that the *Postulate* functions as a justificatory proposition, it only *asserts* that the opposite to the postulate constitutes a contradiction of external freedom, but does not *prove* it. Kant does not provide a justification but only an *indirect proof*: to forbid private property would be a self-contradiction of freedom. However, as Brian Tierney argues, there is no internal contradiction in limiting rights to external objects because what must be proved is not only that private property expands the freedom of owners, but also that it is compatible with the innate right to freedom of everyone else<sup>42</sup>. In this sense, as some of Kant's commentators have pointed out, his justification of private property *begs the question*<sup>43</sup> in that it assumes what has to be proved: that private property is consistent with everyone's innate right to freedom.

For one side, freedom demands private property: private property enhances the freedom of owners by giving them a *right over objects*; for the other side, that

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<sup>41</sup> Weinrib (n 34) 806.

<sup>42</sup> Tierney (n 29) 304.

<sup>43</sup> Kenneth R. Westphal "Do Kant's Principles Justify Property or Usufruct?" (1997) 5 *Jahrbuch für Recht und Ethik*; Tierney (n 29).

right means that non-owners are no longer free to use the owned objects, even when owners are not using them. With the *Postulate* Kant seems to provide an incomplete justification of private property because he considers only one side of the problem, namely, the perspective of the owner.

However, there is another possibility; one in which property is always compatible with others' equal right to freedom. This is what I call the *libertarian interpretation* of Kant's justification. On this matter, Arthur Ripstein's book *Force and Freedom*<sup>44</sup> provides probably the most sophisticated libertarian interpretation of Kant's political philosophy.

For Ripstein the starting point is Kant's idea of independence as *not being subject to the choice of any other person*. In trying to explain freedom as independence from another's choice, Ripstein claims that individuals, unlike things, are capable of setting their own purposes. Ripstein's contention is that individuals exercise their freedom when they are free to set their ends or purposes in keeping with the means that they have. Ripstein uses a very particular idea of what it means to set an end, that he ascribes to Kant as well as to Aristotle<sup>45</sup>. According to this idea, that is crucial in Ripstein's account, "you can only do something if you set out to do it, and *you can only set out to do what you take yourself to have the power to do*"<sup>46</sup>. Thus, following both Aristotle and Kant, *choice* must be differentiated from *wish*, on the grounds that in order to choose something, a person must have the *means* available to achieve it. This, in turn, implies that "having means with which to pursue purposes is conceptually prior to setting those purposes"<sup>47</sup>. Without certain means or powers, I can *wish* something but I cannot *choose* it. In Ripstein's words, "you can wish that you

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<sup>44</sup> Arthur Ripstein *Force and Freedom* (Harvard University Press 2009). Unlike other authors that also have been engaged in the revival of Kant's political philosophy, Ripstein's libertarian approach boasts of its "orthodox" interpretation of Kant's *Doctrine of Right*. However, unlike other "orthodox" interpretations of Kant's political philosophy, Ripstein's interpretation is presented in a propositive way. In other words, most of the time it seems that Ripstein tries to give the best interpretation of Kant's political philosophy, while also supporting it. *Force and Freedom*, then, aims to provide a sort of Kantian *theory of justice*.

<sup>45</sup> *ibid* 40ss.

<sup>46</sup> *ibid* 40.

<sup>47</sup> *ibid* 14.

could fly, but you cannot choose to fly unless you have or acquire means that enable you to do so<sup>48</sup>. Ripstein uses this framework integrated by need, wish and choice in order to make sense of two important ideas. First, that freedom cannot be subject to the needs or wishes of others and second, that for Kant's *Doctrine of Right*, the important thing is how to conciliate our choices.

Hence, according to Ripstein, the freedom that the innate right protects is the freedom to control your means in order to set your purposes. Your freedom, then, depends exclusively on that you, and no one else, set your purposes in accordance with your means (otherwise, another would be determining your purposes). However, even if I have the means to pursue the purposes I set, this does not mean that I have complete control to achieve them. Ripstein's emphasis on the idea of freedom as *independence* sometimes seems to suggest that the idea of freedom he proposes entails an absolute control over our own purposes and therefore, control over our own lives. But, thus stated, the claim would be absurd: for example, I cannot control whom I marry and neither can I control whether or not I have a successful marriage<sup>49</sup>. Others' choices can change the context in which I have to act to pursue my ends, eventually making it more difficult or even impossible to achieve them. When this happens, the others are not wronging me, Ripstein says, but just *changing the context in which I act*<sup>50</sup>. This occurs because I "cannot be independent of the *effects* of choices made by other people, except by limiting the freedom of those people"<sup>51</sup>. Others affect my freedom, and therefore wrong me, *only when they affect the means I already have*, and more precisely, *when they affect my rights*. It is for this reason that having private property is consistent with the freedom of others: "[n]obody else is deprived of his means simply because you have external things as yours. At most, your use of what is yours deprives him of things that he might wish for, but frustrating the wishes of others is not inconsistent with their freedom,

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<sup>48</sup> *ibid.*

<sup>49</sup> John Bennett "Freedom and Enforcement: Comments on Ripstein" (2006) 92 *Virginia Law Review* 1439.

<sup>50</sup> Ripstein (n 44) 14.

<sup>51</sup> *ibid* 33.

because nobody is entitled to have others organize their pursuits around his or her wishes", Ripstein claims<sup>52</sup>.

This understanding of freedom -in which you are independent when you control your means to set your purposes and nobody else determines what to do with them- fits perfectly well with the view that private property enhances freedom, as Kant's *Postulate* contends: the possibility of having private property is, in Ripstein's terms, the possibility of having means other than our own persons (with their bodily powers) for setting and pursuing our own purposes<sup>53</sup>. Private property, on the other hand, "is consistent with the freedom of others, because it never deprives another person of something that person already has"<sup>54</sup>. In this understanding of freedom, private property does not

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<sup>52</sup> *ibid* 19.

<sup>53</sup> For Ripstein not every kind of entitlement over things is appropriate. According to Ripstein, the only way that a person could have external objects is through an entitlement to do whatever she wants to do with them because only in that case is she independent. That is why Ripstein concludes that "*anything less than fully private rights of property* would create a restriction on freedom that was illegitimate because it would be based on something other than freedom, that it, in other's *wish or need*". Ripstein (n 44) 62. In contrast to Ripstein, Westphal asserts that Kant is not committed to the justification of a liberal conceptualization of private property. According to Westphal, Kant is justifying what he calls intelligible possession and to "justify 'possession' is not to justify the whole liberal concept of ownership" Westphal (n 43). Westphal's analysis is focused on Kant's concept of possession and his main conclusion is that Kant uses this concept to show that what is required by freedom is the individual use of objects, even without holding them physically. Therefore, what Kant is justifying is neither private property nor a liberal conceptualization of private property, but rather a sort of *usufruct*. Along the same lines, Hodgson recognizes that "Kant's argument only requires *some* system of rights allowing one to exclude others from using a certain object for a certain amount of time, regardless of whether one is holding it or not" (p. 62). Although Hodgson does not develop the aforementioned argument, he explicitly asserts that Kant's requirement that individuals must be able to control objects without holding them all the time "could be achieved by a system under which the means of production are communally owned, so long as it appropriately determines who has the right to use a given object at a given time" (p. 62). In the same way, for Korsgaard, "we cannot make *effective* use of means of production, without some guarantee that they will be reserved for us exclusively during the time of use even if we are not holding them". However, the effective use of objects, and more concretely of means of production, does not demand private property but "only that the means of production and action must be reserved to the exclusive use of certain individuals in certain times and places" (p. 325). For that reason, according to Korsgaard, "the means of production might be communally owned and 'lent out' to particular users" (p. 326). Luis Philippe Hodgson "Kant on Property Rights and the State" (2010) 15 *Kantian Review* 57; Christine Korsgaard "Taking the law into Our Own Hands: Kant on the Right to Revolution", in Andrews Reath, Barbara Herman, Christine M. Korsgaard (eds) *Reclaiming the History of Ethics: Essays for John Rawls* (Cambridge University Press 1997).

<sup>54</sup> Ripstein (n 44) 62.

affect others' freedom since using my means does not deprive others of control of their means: "[y]ou remain independent if nobody gets to tell you what purposes to pursue with your means"<sup>55</sup>. Private property, then, is justified as a rightful relation on the base that it enhances the freedom of owners and does not affect others' freedom.

As we can see, Ripstein's freedom turns out to be a *moralized* understanding of freedom in the sense we saw in Chapter 2 of the thesis<sup>56</sup>: your private property does not restrict others' freedom because you affect others' freedom only by depriving of their rights and, according to the innate right to freedom, nobody has a right to private property. Moreover, lacking means does not limit one's freedom because freedom has nothing to do with either achieving purposes or acting unhindered by others. That I - and no one else- set my purposes in accordance to my means is the only thing freedom depends on.

However, although private property is rightful, *acquisition* in the state of nature is problematic because of its *unilateralism*. Acquisition changes unilaterally the normative status of every other person and therefore conflicts with *innate equality*, which we saw Kant defines as "independence from being bound by others to more than one can in turn bind them". It is for this reason that Weinrib asks, "[c]an it be that ownership is consistent with equal reciprocal freedom but that acquisition – the mechanism for becoming an owner – is not? This would mean that ownership is a legitimate condition that can never legitimately be brought about"<sup>57</sup>. The libertarian solution to this question is to say that once we arrive at the civil condition, the equality of innate right to freedom is honoured with the establishment of a system of acquisition in which everyone has an *equal legal opportunity* to be an owner. The fact that we are all entitled to be owners,

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<sup>55</sup> *ibid* 34.

<sup>56</sup> An idea along similar lines can be founded in Laura Valentini "Kant, Ripstein and the Circle of Freedom: A Critical Note" (2012) 20 *European Journal of Philosophy* 450; Andrea Sangiovanni, "Can the Innate Right to Freedom Alone Ground a System of Public and Private Rights?" (2012) 20 *European Journal of Philosophy* 460; Kyla Ebels-Duggan "Critical Notice of Arthur Ripstein Force and Freedom" (2011) 41 *Canadian Journal of Philosophy* 569.

<sup>57</sup> Ernest Weinrib "Ownership, Use, and Exclusivity: The Kantian Approach" (2018) 31 *Ratio Juris* 123, 134

being nobody legally excluded from the opportunity to acquire, would be sufficient to justify acquisitions. In this libertarian understanding of Kant, a system of private property is justified on grounds that it both enhances the freedom of owners and gives everybody the *legal* opportunity to become an owner.

In this libertarian understanding, redistribution does not appear as a condition for justification of a private property system. Redistribution would only be allowed as a way to prevent social conflict. In this way, Wolfgang Kersting claims that “if social tensions, class conflicts and economic inequality threaten to undermine the firmness of the legal order and destabilize the rule of law then it is necessary, if only for public justice's own sake, to launch appropriate welfare state programmes”<sup>58</sup>. However, for Kersting “[i]t is not possible to derive logically principles of the welfare state from the basic concepts of the entirely legally formulated Kantian idea of justice, from the conceptions of liberty and equality. Logical and conceptual justification arguments and instrumental and empirical justification arguments should not be confused”<sup>59</sup>.

A libertarian interpretation of Kant’s political philosophy along these lines has been usual, and still today remains a popular understanding<sup>60</sup>. In the next section, we will see that this interpretation of Kant’s justification of private property assumes a moralized understanding of freedom and fails to consider the freedom that is inherent to an innate right to freedom: the freedom to be independent of others for survival.

## **3.2. Independence from owners and redistribution**

### **3.2.1. The duty to support the poor as a constitutive part of the justification of private property**

As we will see in the next chapter, one of the most important problems that Locke’s account of appropriation seeks to solve is what happens with

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<sup>58</sup> Wolfgang Kersting “Kant’s Concept of the State”, in H. L. Williams (ed) *Essays on Kant’s Political Philosophy* (University of Chicago Press 1992) 164.

<sup>59</sup> *ibid.*

<sup>60</sup> Howard Williams “Kant and Libertarianism”, in Mark Timmons and Sorin Baiasu *Kant on Practical Justification* (Oxford University Press 2013).

newcomers once the whole world has been acquired, and, more generally, what happens with those who never had the *substantive* opportunity to acquire. To solve this problem Locke endorses a condition that imposes limits to appropriation: appropriation through labour only is possible if everyone else has a substantive opportunity to own both an equal quantity and quality of goods<sup>61</sup>. Unlike what happens in Locke's, what I see is clear in Kant's justification of private property is that such concerns do not arise: there is no right to private property nor there is a *right* to an opportunity to acquire and be an owner. Thus, once the *Postulate* (with its *Permissive Law*) has been posited, property rights (over an unowned object) are acquired through occupation and there is no proviso that limits such acquisitions.

In this last section, I want to claim that the existence of people who own nothing (significant) is a relevant consideration to justify a system of private property. Lately some scholars have viewed in Kant's *Doctrine of Right* some latitude for a more egalitarian reading of Kant's justification of private property<sup>62</sup>. In general terms, their idea is that not only the definitive features of property rights but also their distribution within a system of private property can only be achieved once we arrive at the civil condition. For these interpretations, the provisional nature of property rights gives room for understanding the civil condition as a stage at which an important transformation of both property rights' structure and distribution occurs. The idea of an original social contract and a united will provides the basis to think that such transformation has to be done according to an egalitarian principle of distribution. However, this is not an easy move. Kant does not conceive the original social contract either as a real or a hypothetical contract, but as an "idea of reason"<sup>63</sup>. That Kant does not conceive the social contract as a real or hypothetical agreement is reinforced

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<sup>61</sup> See below chapter 4, specifically sections 3.1.5, 3.3.2 and 3.3.3.

<sup>62</sup> Alexander Kaufman, *Welfare in Kantian State* (Oxford University Press 1999); Paul Guyer, *Kant on Freedom, Law and Happiness* (Cambridge University Press 2000); Jeremy Waldron, "Kant's Legal Positivism" (1996) 109 *Harvard Law Review*; Anna Stilz *Liberal Loyalty. Freedom, Obligation and the state* (Princeton University Press 2009); Baynes (n 15).

<sup>63</sup> Baynes (n 15) 444ss; Flikschuh (n 5) 172ss.

by the idea that leaving the state of nature in order to enter into the civil condition is a necessity, required not by the interests of individuals (the interests of owners in protecting their property, as we will see is the case of Locke's account)<sup>64</sup> but rather by the *Universal Principle of Right*, and its innate right to freedom. The social contract that institutes the civil condition, then, is *pushed* by Kant's understanding of justice<sup>65</sup>.

In this section I want to provide another interpretation of Kant's justification of private property; an interpretation that is concerned with distribution and that is a better reconstruction of Kant's arguments as offered in the *Doctrine of Right*. In this interpretation, distribution is not only crucial but also intertwined with a justification of a system of private property, and therefore, it is at the core of Kant's understanding of justice.

As we already know, in a state in which there exists only a Hohfeldian liberty and no right over our bodies, individuals live without security and in "continual fear, and danger of violent death; and the life of man, solitary, poor,

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<sup>64</sup> In the view of Paul Guyer's book *Kant on Freedom, Law, and Happiness*, the provisional character of acquisitions allows us to say that in Kant's justification acquisitions are definitive only once they are *accepted by all*. In other words, for Guyer, property rights distribution depends on a hypothetical agreement. Being this the case, Guyer says, "one has no pragmatic reason to *expect* others actually to agree to one's control over any property if that agreement is not *part of a system of property rights that is sufficiently advantageous to them as well*" (281). Property rights, then, are only justified within a system of property on which all persons can agree. According to Guyer, Rawls's difference principle is a plausible interpretation of a system that would be rational to consent. For Guyer, then, "Kant is committed to the conclusion that there can be external or public legislation enforcing the right to property, but only under conditions of equality like those defined by Rawls's second principle of justice" (285). The problem of this view, as I say in the main text, is that the civil condition neither relies on an agreement that goes in the interests of all the contracting parties nor an agreement from which can be derived a principle of justice.

<sup>65</sup> According to Alexander Kaufmann's book *Welfare in Kantian State*, "the state does not merely endorse provisional property holdings deriving from original acquisition in the state of nature. Rather, *the state must allocate property* in such a way that a rightful condition of civil society is achieved and maintained. The sovereign must, therefore, allocate property according to a *just distributive principle*" (12). For Kaufmann property rights are contingent upon their conformity to a just distributive principle, which has to be specified by the general will. Kaufman, however, does not give an accurate content to this principle; he only says that it must embody an "equal possession of the potential to realize unconditioned purposiveness" (152). He neither explains from where this just distributive principle arises. Kaufman only says that "economic inequality is inherently a hindrance to [external] freedom".

nasty, brutish, and short”<sup>66</sup>. Kant’s innate right to freedom gives individuals a right to bodily integrity and, by giving them that right, their freedom is enhanced *equally*. Innate right treats each individual as innately equal regarding one’s own body, its capacities and the space it occupies. This, however, is not the case with property rights. Unlike what happens with my innate right to exclude others from using and possessing my body, having property rights over some objects is *contingent*, not necessary: unlike the innate right, private property is *acquired* through the *performance of an act*<sup>67</sup>. To the extent that private property is constituted by what Kant calls “intelligible possession”, that is, possession without physical detention, *accumulation becomes possible*: now individuals can have things for their own without being physically attached to them. With private property, therefore, it becomes possible that the resulting acquisitions leave some with no (significant) private property

Kant’s fully liberal justification of private property is particularly interesting precisely because in arguing for taxing the wealthy to provide for the poor, he seems to perceive the problem that private property may create for those who own nothing relevant. In contrast to libertarian thought, Kant is here clearly demanding *redistribution*. Some scholars, such as Kersting, as we have seen, understand Kant’s redistributive measures as an expression of political prudence<sup>68</sup>. However, this is incoherent with Kant’s rejection of any instrumentalist conception of the state and public authority. On the other hand, we saw that Kant’s *Right* is not concerned with “the relation of one’s choice to the mere *wish* (hence also to the mere *need*) of the other, as in actions of beneficence or callousness, but only a relation to the other’s *choice*”<sup>69</sup>.

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<sup>66</sup> Thomas Hobbes *Leviathan* (Oxford University Press 1996) 84.

<sup>67</sup> Weinrib (n 34) 807.

<sup>68</sup> Mary Gregor asserts, as well, that “while Kant holds that it is legitimate for the State to secure the well-being of its citizens to the extent necessary to make them content to remain within it, such legislation is only in the nature of a means to an end”. Mary Gregor *Laws of Freedom* (First Edition, Barnes & Noble Inc 1963) 36. Kersting (n 61) 164.

<sup>69</sup> Kant (n 4) section 230.

In the absence of instrumental reasons to sustain the poor and the lack of any role fulfilled by needs, the duty to support the poor becomes intelligible as a constitutive part of the justification of private property and acquisitions. Kant's duty to support the poor, then, is *intertwined* with the justification of acquisitions and the problem that they may involve. In the line of Ernest Weinrib's argument, the state owes this duty not because individuals' needs must be satisfied for their own sake, but rather because those who cannot satisfy their "most necessary natural needs" have become dependent on owners for their survival, *as they were not in the state of nature*<sup>70</sup>. In the state of nature, when there exists only the innate right to freedom and not yet property rights, nobody is dependent on others. Even those who cannot satisfy their needs are not dependent on others: I cannot snatch the apple you hold in your hand to satisfy my needs because you have an innate right to freedom, a right that is not acquired and therefore, a right that does not depend on any of your actions<sup>71</sup>. The innate right to freedom protects your holding of an apple even if I need that apple to survive and you do not. The fact that I cannot satisfy my needs does not subject me to your choice.

Before the existence of private property, then, the innate right to freedom makes all individuals *equally independent* from each other. However, once a system of private property is established, I may become dependent on you *as a consequence of your acts of acquisition*: you may accumulate all the apples I could have eaten. Private property may create a dependency on owners not only because the right of exclusion that constitutes private property makes unavailable things that otherwise would be available to be used (if nobody currently holds them) but also because private property allows *accumulation*: you may have acquired much more than what you can hold, making objects out of my reach<sup>72</sup>.

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<sup>70</sup> Weinrib (n 34) 814.

<sup>71</sup> *ibid.*

<sup>72</sup> It is important to note here that the problem centres not on needs but on dependence. This means that the relevant baseline is not only the satisfaction of basic biological needs, perhaps the only kind of needs that may exist in the state of nature. The criterion, then, is not that once biological needs are satisfied, there is no problem of dependence. The baseline is

In this understanding of Kant's justification, as we can see, an *equal legal opportunity* to be an owner does not suffice to justify a private property system. Here distributive concerns are crucial to the extent that a system of private property only is legitimate if *it creates the conditions so that the poor are not dependent on the rich to sustain their existence*. These conditions do not demand *private property* distribution: the innate right does not require that people have some (or a sufficient amount of) private property. However, innate right does demand welfare rights that enable independence from owners. These rights are owed to the poor *as a matter of right*, this is, regardless the reasons for their poverty.

Importantly, this means that we cannot consider these welfare rights only as ameliorating rights. If private property makes individuals potentially dependent for their survival on the owners' choice, and given the problematic nature of dependence in regards to the innate right to freedom, then, the rules that articulate the fulfilment of these welfare rights cannot be regarded merely as ameliorating rules, but rather as rules that give effect to the true understanding of property<sup>73</sup>. These rules (these rights) must be understood as an integral part of the justification of private property.

### **3.2.2. Dependence on a beneficent or exploitative will of another**

Someone is dependent on owners for survival when the satisfaction of her needs depends on the *charitable* will of owners: when my needs are unmet, I depend on the owners' willingness to share their property. One might say, however, that if my needs are unmet and therefore, I have nothing to eat, no clothing to wear, and no place to live, then, I am also vulnerable to the *exploitative will* of those in a more powerful position. Paradigmatically, I depend on those who own the means that would enable me to survive by using my own body and its capacities.

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dependence on owners, regardless of how needs are conceptualized at a specific place and time.

<sup>73</sup> James Penner "The State Duty to Support the Poor in Kant's Doctrine of Right" (2010) 12 *The British Journal of Politics and International Relations* 88, 102.

The problem, however, is that Kant puts this kind of dependence on another level. In the *Doctrine of Right* Kant differentiates between active and passive citizenship, conferring the right to vote only to active citizenship, and attributing this kind of citizenship "to individuals who already possess the quality of being independent in virtue of their status as the owners of property of a certain type", that is, as the owners of means of production<sup>74</sup>. Kant employs illustrative examples to show what kind of individuals are not able to vote because of their "dependence upon the will of others"<sup>75</sup>. Thus, Kant says, individuals who are not independent like

an apprentice in the service of a merchant or artisan; a domestic servant (as distinguished from a civil servant); a minor (*naturaliter vel civiliter*); all women and, in general, anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state). All these people lack civil personality and their existence is, as it were, only inherence. The woodcutter I hire to work in my yard; the blacksmith in India, who goes into people's houses to work on iron with his hammer, anvil, and bellows, as compared with the European carpenter or blacksmith who can put the products of his work up as goods for sale to the public the private tutor, as compared with the schoolteacher; the tenant farmer as compared with the leasehold farmer, and so forth; these are mere underlings [*Handlanger*] of the commonwealth because they have to be under the direction or protection of other individuals, and so do not possess civil independence<sup>76</sup>.

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<sup>74</sup> David James "Independence and Property in Kant's Rechtslehre" (2016) *British Journal for the History of Philosophy* 1, 5.

<sup>75</sup> Kant (n 4) section 315.

<sup>76</sup> *ibid.* Kant also develops briefly this idea in his *Political Writings*: "The only qualification required by a citizen (apart, of course, from being an adult male) is that he must be his own master (*sui iuris*), and must have some property (which can include any skill, trade, fine art or science) to support himself. In cases where he must earn his living from others, he must earn it only by selling that which is his, and not by allowing others to make use of him; for he must in the true sense of the word serve no--one but the commonwealth". Kant here is differentiating between two kinds of labor: the labor of the wage laborer, who does not sell the product of her labor but more precisely sells her labor-power to somebody that uses that power to her own purposes, and the labor that it performs the independent laborer, that through her skills and some means, produce something (a good or a service) than then she sells to somebody else. According to Kant, the latter, "in pursuing his trade, exchanges his property with someone else" while the former "allows someone else to make use of him". Immanuel Kant, *Political Writings* (Cambridge University Press 1991) 78.

From the above quotation, we can see that those whose ability to live from their labour is dependent on the owners of means of production are excluded from full citizenship<sup>77</sup>. For Kant, such dependence on owners is certainly problematic: in order to be a co-legislator, one cannot be subject to the *will of another*. However, for Kant this seems not to be a problem at the level of the justification of private property. But it becomes an issue if we accept the central premises of Kant's justification: the idea that private property, as an acquired right, cannot contradict the right to be independent from others' choices (for survival) that the innate right to freedom protects. Although Weinrib does not further elaborate this point, he claims that private property is what "make[s] the exercise of my freedom dependent on the beneficent or *exploitative will of another*"<sup>78</sup>. In Weinrib's view, the problem that property may create seems to be more serious than the mere fact that one may become dependent on the charity of owners to survive: one also may become dependent on the exploitative will of owners, that is, on a will that takes unfair advantage of others' dependence on their property.

Kant's central premises provide us the resources to contend that a system of private property can only be justified if it does not make the exercise of one freedom dependent on the charitable or *exploitative will of owners*, even if this contention conflicts with Kant's explicit assertion about citizenship abovementioned. In the understanding developed in this section, the problem of the poor is not only that they depend on the charity of owners to obtain food and shelter, but also that they depend on the owners of means of production to survive by using their own body and capacities.

In the state of nature, everyone can use objects that nobody holds, thereby potentially allowing them to satisfy their basic needs. However, with the advent of private property, it turns out that I might be left with nothing, as a consequence of others' act of acquisition. If this is the case, then, I need the

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<sup>77</sup> James (n 74) 7.

<sup>78</sup> Weinrib (n 34) 817.

permission from a landowner to use their land in order to produce basic goods to keep me alive. Imagine that when I ask for permission, an owner says that she authorizes me to use her land to produce some goods for my family and me, provided *I produce some goods for her*. As we can note, she is not only deciding how I should use my body and its capacities but also she is deciding that I should pursue her purpose, not mine.

This example more precisely and accurately illustrates the situation of dependence that private property can potentially create within a private property system. A private property system may hinder the freedom of others not only because owners can deny you the resources you need to survive, but more importantly because they can make your ability to live by using your own body and capacities dependent on their decisions. As Allen Wood sees it, "if I must either face destitution or else live only by working for you on your terms, then I am not free to choose how I live"<sup>79</sup>. In this understanding, the innate right to freedom protects us from the dominating power of capitalist owners.

Although Kant ultimately falls short, his central idea enables us to claim that the innate right to freedom as independence of others' choices protects us from forms of domination that are a function of private property.

### **3.2.3. A substantive understanding of freedom**

The libertarian justification of private property does not see distribution as an integral part of a justification of private property. However, unlike libertarians, Ripstein is eager to show that in his interpretation of Kant the state underwrites private property rights but only if it provides for the poor. According to Ripstein, the problem of poverty is the dependence that it causes: "the poor are completely *subject* to the choice of those in more fortunate circumstances"<sup>80</sup>.

If according to Ripstein private property never affects others' freedom, and if freedom only can be restricted for the sake of freedom, why is it legitimate for

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<sup>79</sup> Alan Wood "Right and Ethics: Arthur Ripstein's *Force and Freedom*", in Sari Kisilevsky and Martin Stone (eds) *Freedom and Force: Essays on Kant's Legal Philosophy* (Hart Publishing 2017) 157.

<sup>80</sup> Ripstein (n 44) 274.

the state to affect peoples' acquisitions? Ripstein seems to endow the concept of dependence with a substantive content that enables us to view poverty as a real problem that could affect individuals' innate right to freedom. However, under Ripstein's moralized understanding of freedom, you are not subject to me by the fact that you die if I do not provide you shelter, because your freedom is not affected by my actions<sup>81</sup>. You only have the *wish* that I help you, but not a choice that law has to make compatible with mine. If you do not have a right to the necessary means for your survival, you only have a *wish* to stay alive, but not a choice. In Ripstein's moralized freedom, then, you do not depend on me. You remain independent of owners because their choices about how to share their property do not wrong you but rather are part of the *context in which you have to live*. Their property is just a background condition to you (like the forces of nature are a background condition to you).

Ripstein insists on this point when he states that “[d]eath, as such, is of no direct significance to right; your own person, like everything else, is subject to natural deterioration. But if *another person is entitled to determine* whether you will maintain control of your own person, you are subject to that person's choice”<sup>82</sup>. However, Ripstein once again gives the concept of entitlement a *substantive* content. The problem is that in Ripstein's understanding of freedom, I am not entitled, as an owner, to determine whether you will maintain control of your own person. I am only entitled to exclude you from my property, and the outcome of exercising my property rights is part of the context in which you have to live. Certainly, the exercise of my rights, consequently, may determine whether you will maintain control of your own person. But this is a fact, not an entitlement I have over you.

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<sup>81</sup> Moreover, as Flikschuh explains, it is problematic to contend that individuals have an entitlement to use her own person. The reason is that such characterization of innate right comes very close to attributing property rights in their own bodies to persons, an idea that, unlike Locke, Kant completely denies. Katrin Flikschuh, “Innate Right and Acquired Right in Arthur Ripstein's *Force and Freedom*” (2010) 1 *Jurisprudence* 295, 300.

<sup>82</sup> Ripstein (n 44) 280.

As we saw, Ripstein claims that the innate right to freedom protects the *freedom to do whatever you want with your means*, unhindered by others. The question then is, can objects be means for us? Ripstein's answer is positive and draws from that property does not affect others' means and more precisely, it does not affect others' rights. In this moralized understanding of freedom, private property does not constrain anyone's freedom. As occurs with libertarians, Ripstein does not see the constraints that private property imposes because he assumes a right-based understanding of freedom. However, we saw in Chapter 2 that property does constrain others' freedom to act. Indeed, these are the constraints on freedom that may potentially cause some people to become dependent on owners' charity to sustain their existence.

Ripstein must assume a *non-moralized* notion of freedom in order to argue for a duty to support the poor that arises as a consequence of the poor's dependence on owners. Only by assuming a substantive understanding, can Ripstein see how private property significantly restricts the freedom of non-owners and thereby he can provide a rationality for limiting private property through taxing the wealthy. This means, however, that the freedom that innate right protects cannot be understood in this moralized way that Ripstein conceives it, this is, as a freedom to control your means, and therefore, as a freedom private property expands but never constrains. To perceive the dependence of poverty one needs an understanding of freedom capable of perceiving the freedom that property constrains, as I largely show in Chapter 2. In this understanding, the role of the *Universal Principle of Right* (with its innate right) is to restrict our freedom in order to make it compatible with everybody's freedom. Private property constrains others' freedom to act, and for that reason, private property cannot be analytically contained in the innate right to freedom. This is why the *Postulate* is needed. Here the *Postulate* works through an argument that claims that although property rights in external objects restrict the freedom of others, this restriction is much less serious than the restriction that we would face in the absence of any private property rights. The reason is that in a world without private property our ends and purposes would be severely limited to what our

bodies can physically possess; complex ends, long-term plans or temporally extended purposes would not be possible. Thus, in this understanding, private property permits a more valuable freedom regarding objects, but is justified *only under the condition* that the restrictions on freedom that it imposes do not make some dependent on owners for their survival.

Private property introduces a tension between the (property) *rights* of some and the innate *right* to freedom of all, which contains a right to be independent of others' choices for survival. Note that this tension is not between *rights* and the *interests* of others (to satisfy their needs), but rather between (property) *rights* and everybody's innate *right* to freedom. In light of this tension, distribution does not appear to be an act of *moral solidarity*, but rather an act of *justice* that is owed once a system of private property is created. Kant requires redistribution to justify private property. Without it, his political philosophy risks inconsistency because private property, as an *acquired* right, must be compatible with the *innate* right to freedom.

## CHAPTER 4. PRIVATE PROPERTY IN LOCKE'S ACCOUNT OF PROPERTY

### 1. Introduction

It is safe to say that no justification of private property has had more impact than Locke's. Not only conceptually, on the academic level, but also as a powerful tool employed to support the process of enclosure of the commons, colonialism, and capitalism.

In this chapter, we will see that Locke provides two different justifications of property rights. Importantly, both justifications are completely intertwined with the interests of non-owners. The best-known justification rests on an argument that aims to justify private property by appealing to a particular act that grounds it. According to Locke, labour is the act that makes private appropriation possible. We will see, however, that labour cannot justify the private appropriation of its outcomes. But even if it could, it is still not a sufficient condition for appropriation. Locke adds another condition: appropriation through labour only is possible if everyone else has a substantive opportunity to become an owner.

This sort of egalitarian justification of private property is rapidly overcome once a second kind of justification emerges from Locke's account. One of the most remarkable aspects of Locke's account is the explicit intention to justify not only private property but also its unequal distribution as it is deployed through capitalist property. The second kind of justification that we find in Locke's account aims to justify precisely the latter. Here private property and particularly its unequal distribution is justified because it produces wealth, and by producing wealth, it makes everybody better off. I will argue that the argument contained in this second justification rests on a kind of common good-based argument that claims that private property must not only serve the

owners' interests but also the interests of all others. In this justification, the greatly unequal distributions of private property cannot be justified by appealing to the interests of owners, but rather to the interests of everyone else.

We will see, however, that the kind of common good-based argument that Locke offers is insufficient to the extent that it provides a very low baseline for measuring such interests. Moreover, this argument about the improvement that the unequal distribution of private property produces is problematic in relation to Locke's own idea of property rights as natural rights, that is, as rights that can limit governmental intervention on that basis.

## 2. Locke's account of private property

### 2.1. General overview

Locke's *Two Treatises of Government* is, without any doubt, one of the most important texts of liberal political philosophy<sup>1</sup>. One of the reasons for that importance is the fact that, although Locke's *Two Treatises* sustain a *modern* comprehension of the state and political authority -because it no longer rests on tradition but on peoples' will-, the state and authority are at the same time limited by the natural rights that individuals hold before its constitution. Locke says that clearly: individuals create the state to protect their natural rights, especially, their private property rights<sup>2</sup>.

Locke's *Two Treatises* has also transcended the realm of political philosophy because of its justification of private property. His work has served as a justification not only of private property, but even more importantly, as a justification of its *greatly unequal distribution*. The reason, which today is almost

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<sup>1</sup> John Locke *Two Treatises of Government* (Cambridge University Press 1988). References to Locke's *Two Treatises of Government* will be made specifying the Treatise (I or II) and the section - paragraph.

<sup>2</sup> Locke repeats several times the idea that the chief end of civil society and government is the preservation of Property: "The great and chief end therefore, of Men uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property", Locke (n 1) II. 124); "The Reason why Men enter into Society, is the preservation of their Property", Locke (n 1) II 222). However, Locke *sometimes refers to property in a very broad sense*. For example, in II 123 he asserts that individuals leave the state of nature "to unite for the mutual Preservation of their Lives, Liberties and Estates, which I call by the general Name, Property".

a platitude in the literature, is that Locke was providing a justification of two phenomena that were taking place in seventeenth century England. On the one hand, the process of enclosure of lands that were held in common, in which many people used to labour for surviving<sup>3</sup>. And, on the other hand, the emergence of agrarian *capitalism*<sup>4</sup>.

## 2.2. Labour, the provisos and money

One of the most important questions –if not, the foremost question– that Locke poses in *Two Treatises* is "how any one should ever come to have a Property in any thing"<sup>5</sup>. Locke, however, wants to give an answer that differs from the one given by Filmer. Filmer's argument is that God gave the earth not to mankind but to Adam, and thus, all property descends from Adam. Rejecting this idea, Locke instead asks how private property could originate if God gave the earth not to Adam but to all human beings *in common*.

It is important to determine what kind of community (or common ownership) Locke contemplates when he says that God gave the earth to mankind in common. Although John Simmons identifies at least four different kinds of communities, common ownership in a negative sense and in a positive sense are the most important kinds of common ownership attributable to Locke<sup>6</sup>. In a negative sense, the earth is not owned by anyone (it would be something similar to *res nullius*); in a positive sense, the earth is owned by everyone. The

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<sup>3</sup> To understand that this was an important issue for Locke see Will Kymlicka, *Contemporary Political Philosophy* (Oxford University Press 2002) 113ss.

<sup>4</sup> Neal Wood *John Locke and Agrarian Capitalism* (University of California Press 1984). Locke's justification also brings a powerful justification to colonialism. Locke's labor account of property had considerable implications for the European incursion into America. As Waldron states, "on the Lockean account, the Europeans found lands that native Americans roamed over and from time to time established fleeting settlements on, but not land which they had cultivated, not land that they had taken into their possession as property by labour, in the sense designated by Locke's philosophy". Jeremy Waldron "To Bestow Stability Upon Possession. Hume's Alternative to Locke", in James Penner and Henry Smith (eds) *Philosophical Foundations of Property Law* (Oxford University Press 2013) 8. See also David Armitage's compelling piece about how Locke's colonial activities in Carolina left traces in his major works, and paradigmatically, in his account of private property. David Armitage, "John Locke, Carolina, and the Two Treatises of Government" (2004) 32 *Political Theory* 602.

<sup>5</sup> Locke (n 1) II. 25.

<sup>6</sup> John Simmons *The Lockean Theory of Rights* (Princeton University Press 1992) 238.

distinction is important because whatever the starting point may be, it will determine the requirements to abandon this community. For most authors it seems difficult to reconcile unilateral appropriation with common ownership understood in a positive sense. For that reason, correctly, most authors tend to attribute to Locke the idea of an original community in a negative sense, that is, limited to a system in which nobody owns anything<sup>7</sup>. The state of nature, then, would have to be a state of *non-ownership*.

In answering the question of how private property could originate from this state of non-ownership Locke faces a major challenge. His challenge lies in avoiding the answer given both by Grotius and Pufendorf, namely, that private property is possible because everyone consents to it<sup>8</sup>. Locke explicitly departs from both authors. Indeed, in the beginning of Chapter V (*Of Property*), Locke shapes precisely the question he has to solve: "*how Men might come to have a property in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners*"<sup>9</sup>. In other words, Locke has to show, if the earth belongs to mankind in common, how an individual can appropriate something without obtaining previous consent from the rest of mankind. Locke's justification, then, is one of *unilateral acquisition* because it is not founded on the consent of any other man. However, unlike what happens in Kant's, in Locke's account these unilateral acquisitions must be already *definitive* before the advent of civil society.

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<sup>7</sup> See for example Leif Wenar, "Original Acquisition of Private Property" (1998) 107 *Mind* 799, 804; Matthew Kramer *John Locke and the Origins of Private Property: Philosophical Explorations of Individualism, Community, and Equality* (Cambridge University Press 1997) 109.

<sup>8</sup> For both Grotius and Pufendorf only general or universal consent, either express or tacit, justify private appropriation. Consent is so important for them because appropriation involves the exclusion of others from the appropriated object. Pufendorf repeats this idea several times, for example, in B.4, C.4, p.5 and B.4, C.4, p.9. Grotius, as well, in 2.2.5. Hugo Grotius, *The Rights of War and Peace*. Edited and with an Introduction by Richard Tuck (Liberty Fund 2005); Craig L. Carr (ed) *The Political Writings of Samuel Pufendorf* (Oxford University Press 1994).

<sup>9</sup> Locke (n 1) II. 25.

At the beginning of Locke's justification of property rights, the first statement in Chapter V, is Locke's assertion about the *right to self-preservation*<sup>10</sup>. According to Locke, self-preservation is the fundamental law of nature. The problem is that in order to use the resources that the earth brings, that is, even for eating a nourishing apple, "there must of necessity be a means to appropriate them some way or other before they can be of any use"<sup>11</sup>. Locke departs again from Kant because for Locke as soon as a person uses part of the world in a way that excludes others, even by eating an apple, that person has made a claim of ownership<sup>12</sup>.

How could someone appropriate something? As appropriation creates new duties for everybody else to refrain from using the acquired thing, Locke has to find in the act of appropriation something that makes such a big moral difference that it could entitle those who perform it to appropriate something<sup>13</sup>. Locke finds this entitlement in *labour* and it is worth noting that he says so explicitly. As Locke puts it, "every Man has a *Property* in his own *Person*. The *Labour* of his *Body*, and the *Work* of his *Hands*, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*"<sup>14</sup>. According to this idea, a person

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<sup>10</sup> *ibid* II. 25. Also in Book I. 86.

<sup>11</sup> *ibid* II. 30.

<sup>12</sup> As Kramer explains, "Locke tended to suppose that the wealth of nature could not be used in earliest times unless acquisitions of that wealth conferred rights of property on the people who engaged in the acquisitions. That is, he virtually equated the *use* of goods with the *ownership* of goods, when discussing the primal state of humanity". Kramer (n 7) 108. Unlike Locke, we saw in chapter 3 that in Kant's account, before the advent of private property, individuals have a right to use the objects they are holding. Thus, to eat the apple I hold I do not need property rights.

<sup>13</sup> Jeremy Waldron, *The Right to Private Property* (Clarendon Press 1988) 172. According to John Christman, Locke needs "to show that there is a method of establishing a title which does not require universal consent but which also can be distinguished from mere declaration. It must be the case that the actions that one takes to establish ownership have greater moral weight than *mere* acquisition and labeling 'this is mine'". John Christman *The Myth of Property* (Oxford University Press 1994) 50.

<sup>14</sup> Locke (n 1) II. 27. The idea of having property over oneself was not an entirely new idea in Locke's time. Indeed, it seems that Locke adapted and modified Levellers's idea of self-proprietty. According to Leveller Overton's tract of 1646, *An Arrow against all Tyrants*: "To every Individuall in nature is given an individual property by nature, not to be invaded or

appropriates something because she mixes something with her labour and labour is part of that individual's own person. In the same vein, Locke says immediately afterwards that "The Fruit, or Venison, which nourishes the wild Indian, who knows no Inclosure, and is still a Tenant in common, must be his, and so his, i.e. *a part of him*, that another can no longer have any right to it"<sup>15</sup>.

With both statements quoted above Locke justifies his *labour theory of property*, which is crucial for his enterprise of justifying private property as a natural right, namely, as a right whose existence and content do not depend either on consent or on any authoritative decision.

Importantly, however, in Locke's account of appropriation, labour alone does not suffice to claim legitimate appropriation. Two other conditions must be satisfied: the "sufficiency proviso" and the "spoliation proviso". According to the "spoliation proviso", no one can appropriate more than what she can use before it spoils<sup>16</sup>. The meaning of what I will call the "enough, and as good" clause<sup>17</sup>, the clause on which the "sufficiency proviso" is based, has been understood in at least two different ways, as we will see later in sections 3.3.2 and 3.3.3. The most common understanding is that appropriation is only legitimate when individuals leave "enough, and as good in common for others". According to this view, if an individual appropriates something but leaves a sufficient amount of unowned objects of equal quality for everyone else, then no one is harmed or prejudiced. In other words, the impact on others is as if no appropriation has occurred at all: "For he that leaves as much as another can make use of, does as good as take nothing at all"<sup>18</sup>. In Locke's account, the fact that private appropriation affects the *freedom* of others (because appropriation places everyone else under a general duty to abstain from using

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usurped by any: for every one as he is himselfe, so he hath a selfe propriety, else could he not be himselfe, and on this no second may presume to deprive any of, without manifest violation and affront to the very principles of nature, and of the Rules of equity and justice between man and man; mine and thine cannot be, except this be ...".

<sup>15</sup> Locke (n 1) II. 26.

<sup>16</sup> *ibid* II. 31, 37

<sup>17</sup> *ibid* II. 27. Also Locke, II. 33.

<sup>18</sup> *ibid* II. 33.

the appropriated object) is not a problem if it does not *harm* others, whose opportunity to own remains in force.

However, to the extent that Locke seeks a justification of private property that depicts and supports the reality of England at the beginning of modernity, both provisos are problematic. None of them fit with the large accumulations and inequalities that the emergence of England's agrarian capitalism was bringing. If no one can accumulate more than what she can consume and also must leave enough and as good to others, how can Locke explain, consistently, the existence of vast accumulation of land and property-less people?

Locke's account offers an answer. Locke's answer lies in the advent of money: "as different degrees of Industry were apt to give Men Possessions in different Proportions, so this Invention of Money gave them the opportunity to continue and enlarge them"<sup>19</sup>. Because money does not spoil, money can be accumulated; money lasts, is scarce and valuable. And its value, Locke says, derives "only from the *consent* of Men"<sup>20</sup>.

The stage of money brings a rupture in Locke's justification because although labour can "give Men Possessions in different Proportions", it cannot justify great inequalities and large accumulations of property. It is money, as Locke says, that gives individuals "the opportunity to *continue and enlarge*" their possessions. If the use and the value of money rely on consent, the question that immediately arises is whether this consent also applies to the consequences of money, and more specifically, to inequalities in property distributions. Locke answers affirmatively: "it is plain, that *Men have agreed to disproportionate and unequal Possession of the Earth*, they having by a tacit and voluntary consent found out a way, how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, Gold and Silver,

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<sup>19</sup> *ibid* II. 48.

<sup>20</sup> *ibid* II. 50.

which may be hoarded up without injury to any one, these metals not spoiling or decaying in the hands of the possessor"<sup>21</sup>.

It is important to note that this consent does not imply that civil society has emerged yet. The consent that the use of money implies is not the kind of consent needed to enter in the civil society. Thus, due to the use of money, in the state of nature individuals already have *definitive* property rights in their acquisitions. Private acquisitions, regardless how unequal they may be, are not provisional as in Kant's justification of private property. Because property rights are full-fledged rights, individuals may enforce them. For Locke, indeed, there is no difference between a right and its enforcement; moreover, there is no difference between someone having a right and having the authority to enforce it by herself<sup>22</sup>. However, private enforcement is ultimately *inconvenient*, because when each person enforces her own rights, the result is social disorder<sup>23</sup>. Since this disorder is contrary to the interests of individuals, it is better to join into a political state, each one transferring their executive authority to a government<sup>24</sup>. Therefore, the upshot of private enforcement of rights pushes individuals to the civil condition.

### **3. An analysis and critique of Locke's justification of private property**

#### **3.1. A labour theory of property**

##### **3.1.1. Labour and abundance**

As I said above, Locke needs to provide a justification of private appropriation that does not depend on consent. This is why the act of appropriation has to be much more than a mere declaration or a mere act of occupation. The act must have a sort of "moral" or "natural" element because it is from that act that property arises. Locke believes that he found that act in *labour*. The problem is

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<sup>21</sup> *ibid.*

<sup>22</sup> Luis Philippe Hodgson "Kant on Property Rights and the State" (2010) 15 *Kantian Review* 57, 73.

<sup>23</sup> Locke (n 1) II. 124-126.

<sup>24</sup> Christine Korsgaard "Taking the law into Our Own Hands: Kant on the Right to Revolution", in Andrews Reath, Barbara Herman, Christine M. Korsgaard (eds) *Reclaiming the History of Ethics: Essays for John Rawls* (Cambridge University Press 1997) 301.

that labour cannot fulfil the role that Locke seeks, as we will see in the following sections of this chapter.

Locke does not want to say that things like acorns, apples, animals or water are appropriated by incorporation, merely on the basis of the sheer fact of their consumption. For that reason, he tries to distance appropriation from the moment of consumption to the moment when the object is removed from the commons and mixed with labour<sup>25</sup>. Locke's idea is to endow a special nature to that moment and to the action of "remov[al] from the commons", in order to distinguish it from first occupation.

However, sometimes it is difficult to understand in what sense labour, as an activity that demands toil, is present in the first stage that Locke depicts, namely, the stage before the emergence of money. Indeed, in some examples that Locke uses to explain his idea, it seems that toil is irrelevant to the act of appropriating something from the world. Such appears to be the case, for instance, when Locke states, "He that is nourished by the Acorns he picks up under an Oak, or the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself. No Body can deny but the nourishment is his. I ask then, When did they begin to be his? When he digested? Or when he eats? Or when he boiled?"<sup>26</sup>. Or when Locke states that "No Body could think himself injur'd by the drinking of another Man, though he took a good Draught, who had a whole River of the same Water left him to quench his thirst"<sup>27</sup>. For even on a reasonably broad view of what labour is, as Cohen perceptively notes, picking up a few fallen acorns and immersing one's head in a stream and swallowing some of its water are not good examples of labour, or, if they are indeed labour, then, they are not the kind of labour which it would be plausible to cite in defence of the relevant private appropriations<sup>28</sup>.

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<sup>25</sup> Onora O' Neill "II. Nozick's entitlements" (1976) 19 *Inquiry* 468, 475.

<sup>26</sup> Locke (n 1) II. 28.

<sup>27</sup> Locke (n 1) II. 33.

<sup>28</sup> Gerald Cohen "Nozick on Appropriation" (1985) 150 *New Left Review*, 93. As Cohen says "it is, moreover, worth remarking that some of Locke's most plausible examples of legitimate appropriation cannot reasonably be said to result from labour, unless all acting on the world

In light of labour's apparently insignificant role in some of the descriptions of appropriation that Locke presents, abundance acquires relevance. Indeed, for Judith Jarvis Thomson, *abundance* is a *sufficient condition* for giving rise to legitimate property rights<sup>29</sup>. The same emphasis can be seen in Olivecrona's interpretation. According to Olivecrona, Locke's account of appropriation only makes sense when natural resources "were available in excess of men's needs"<sup>30</sup>. Olivecrona calls this first period "the age of abundance", suggesting that abundance -not labour- is the most relevant feature for appropriation. In this regard, Olivecrona recognizes that what allows appropriation "need not necessarily be labour in the usual sense of the word", because in this context labour means just an "action"<sup>31</sup>.

One might think that in a world of abundance private property would not be needed. As Hume noted, without scarcity, there is no circumstances for "justice" and thus, property arrangements are not needed<sup>32</sup>. According to Kramer, however, when Locke portrayed the inexhaustible supplies of natural wealth, he envisioned things that were boundlessly available, *but that require labour in order to have them*<sup>33</sup>. For that reason, in line with Kramer's argument, the mere fact of abundance does not necessarily imply that there is no need for private

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is regarded as labouring. If you were asked what justified your appropriation of the water from the stream, you could not credibly reply: well, to begin with, the labour of dunking my head and opening my mouth. Your powerful reply is to say that no one has good reason to complain about your appropriation of the water, since no one is negatively affected by it". (p. 93). In the same way, according to Alan Ryan, "there is nothing very special about the labour involved -nothing complicated, intellectually sophisticated, or skilled; no hard work either. All there is, is the work involving in taking and consuming; bending down and taking a drink from the stream is a paradigmatic case" Alan Ryan *Property and Political Theory* (Blackwell 1984) 33.

<sup>29</sup> Judith Jarvis Thomson "Property acquisition" (1976) 73 *The Journal of Philosophy* 664.

<sup>30</sup> Karl Olivecrona "Locke's Theory of Appropriation" (1974) 24 *The Philosophical Quarterly* 220, 220.

<sup>31</sup> *ibid* 224.

<sup>32</sup> In his *Theory of Justice* Rawls develops Hume's idea by calling it "the circumstances of justice", that is, the conditions under which human cooperation is both possible and necessary. According to Rawls, "the circumstances of justice obtain whenever persons put forward conflicting claims to the division of social advantages under conditions of *moderate scarcity*". John Rawls *Theory of Justice. Revised Edition* (The Belnap Press of Harvard University Press 1999) 110.

<sup>33</sup> Kramer (n 7) 104.

property or any other property arrangement. Despite abundance, if at least *some* action is needed in order to obtain resources, then, it might be necessary to agree upon a property arrangement in order to avoid disputes or free riders.

### 3.1.2. Mixing one's own labour

How does Locke ground a *labour theory of property*? At the beginning of Chapter V, Locke proposes a famous framework when he asserts that "every Man has a Property in his own Person. The Labour of his Body and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, *he hath mixed his Labour with, and joyned to it* something that is his own, and thereby makes it his Property"<sup>34</sup>. Immediately in the same paragraph, Locke refers to the relation between labour and objects, again, as *joining or annexing* labour into the objects: "It being by him removed from the common future Nature placed it in, it hath by this labour something *annexed to it*, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once *joyned to*, at least where there is enough, and as good left in common for others"<sup>35</sup>.

Locke's argument is basically one that recalls the *principle of accession* –a person acquires a property right over un-owned objects by mixing her labour with them, because she *owns* the labour that she mixes with the objects. Therefore, every person has a right to own that which she has mixed with her labour.

Waldron, Day, Kramer and even Nozick, among many others scholars, have criticized Locke's mixing labour argument. Nozick, for example, with sharp rhetorical questions, states: "why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't? If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?"<sup>36</sup>. As

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<sup>34</sup> Locke (n 1) II. 27.

<sup>35</sup> *ibid.*

<sup>36</sup> Robert Nozick *Anarchy, State, and Utopia* (Blackwell 1974) 174-175.

Nozick puts it, why should anyone think that mixing one's labour with an object is a way of making that object one's own rather than a way of losing one's labour?

With a more articulated argument than Nozick's, Waldron rejects the mixing idea because of its "fundamentally incoherent" character. The reason is that the mixing argument seems based on a categorical mistake because the only things that can be mixed with objects are other objects and labour involves actions<sup>37</sup>. A similar objection was developed first by Day, who suggests that the problem of the mixing labour argument is due to Locke's failure to distinguish between the *two different senses of labour* asserted in the two following statements: (a) every man has a right to own the labour of his person; and (b) every man has a right to own that which he has mixed the labour of his person with<sup>38</sup>. According to Day, Locke uses statement (a) as a premise, and statement (b) as a conclusion. The problem is that (b) cannot be the conclusion to (a) because (a) is a statement about labour as an *activity*, while (b) is a statement in which labour does not appear as an activity but rather an *achievement*<sup>39</sup>. Locke's argument is therefore *invalid*: there is no inconsistency in accepting the premise (a) and rejecting the conclusion (b).

Similarly, according to Kramer, the mixing labour argument is either tautological (and, thus, irrelevant) or invalid. It is tautological if Locke's idea of "labour" is understood within the subject all the time (as an activity or energy). If this is the case, the idea of mixing is needless. It is *invalid*, as Day claims, if the labour within the subject and the labour within the object are not identical<sup>40</sup>. Thus, Locke is mistaken in deriving that the labourer has a right to own the product of her labour (labour as an object, achievement or outcome) from the

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<sup>37</sup> Jeremy Waldron "Two Worries About Mixing One's Labour" (1983) 33 *The Philosophical Quarterly* 37, 40.

<sup>38</sup> J. P. Day "Locke on Property" (1966) 16 *The Philosophical Quarterly* 207, 208-209.

<sup>39</sup> *ibid* 209.

<sup>40</sup> Kramer (n 7) 146ss.

premise that everyone has a right to own her labour (as an activity). Labour is an activity, not a substance and therefore it cannot be *mixed* with objects<sup>41</sup>.

### 3.1.3. A labour theory of value

Beyond the mixing argument, labour also appears systematically treated as a *value adding activity*. For this reason, many authors have pointed that what Locke develops in Chapter V is something like a *labour theory of value*<sup>42</sup>. According to this theory, in the case of many important objects, the labour that has been expended on them is the source of the greater part of the value they possess.

That Locke's thought approaches this theory can be seen when he asserts that it is "labour indeed that *puts the difference of value on every thing*"<sup>43</sup> or when he says that "labour *makes the far greatest part of the value of things, we enjoy in this World*"<sup>44</sup>. Or even, when he states "Is Labour then which *puts the greatest part of Value upon Land, without which it would scarcely be worth anything*"<sup>45</sup>. It seems very clear that according to Locke, labour is responsible for almost all of the value of things, *including land*<sup>46</sup>.

However, Locke fails to explain how we should calculate the labour-value. Is it just on the basis of the toil involved, disregarding anything else? Or is it the

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<sup>41</sup> Wenar (n 7) 808.

<sup>42</sup> However, Marx was the first to explicitly and exhaustively develop a labor theory of value. Marx develops this theory to explain exploitation and capitalism's crises in *Capital. A Critique of Political Economy*.

<sup>43</sup> Locke (n 1) II. 40.

<sup>44</sup> *ibid* II. 40.

<sup>45</sup> *ibid* II. 43.

<sup>46</sup> John Stuart Mill, for instance, agrees with Locke that "the institution of property, when limited to its essential elements, consists in the recognition, in each person, of a right to the exclusive disposal of what he or she have produced by their own exertions, or received either by gift or by fair agreement, without force or fraud, from those who produced it. The foundation of the whole is the right of producers to what they themselves have produced" (II.2.2). However, Mill maintains that *this principle cannot justify private property in land*: "When the 'sacredness of property' is talked of, it should always be remembered, that any such sacredness does not belong in the same degree to landed property. *No man made the land*. It is the original inheritance of the whole species" (II.2.26). John Stuart Mill *The Principles of Political Economy with some of their Applications to Social Philosophy* (Cosimo Inc. 2006).

market value?<sup>47</sup> Nor does Locke explain why individuals should appropriate the object and not only the value that it contains.

Most importantly, Locke's property theory does not explain why, by adding value to objects, one gains a property right over them. A labour theory of property does not straightforwardly arise from a labour theory of value. Even if labour contributes to a major share of the value of things, it does not follow necessarily that such things must be owned by the person who labours on them. It is always possible, for example, that the value created by labour is added either to the commons or to another's property<sup>48</sup>. Thus, there is no magical link between the value that an individual's labour creates and property entitlements over the object that contains such labour. The reason is that the labour theory of value is an *economic theory*, not a labour theory of property. The latter is a normative theory that claims that individuals should have property on the outcomes of their labour. Indeed, the idea that labour creates value is a sort of materialist idea, far from Locke's methodological individualism.

All the more noteworthy is that in modernity, most things are produced collectively, and therefore, they contain the labour-value of many, not only the labour of one individual. In our modern world, production is not carried out by individuals labouring alone. An apple is normally picked by a single individual; but most objects are produced by several<sup>49</sup>. Given our complex societies, labour property theories are impossibly individualistic to the extent

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<sup>47</sup> According to Ellen Meiksins Wood, the labour value things possess is clearly not use value but exchange value. In Meiksins view, this can be observed quite easily in the paragraph 43, when Locke says that an acre in America is not worth 1/1000 the English acre. For Meiksins, the reason of such a big difference has to do with the profit that could be obtained with its market value. Ellen Meiksins Wood, *Property and Liberty* (Verso 2012) 112ss. With the opposite view, Waldron asserts that Locke provides a theory of use value. Waldron (n 13) 192.

<sup>48</sup> As Ripstein states in his *Force and Freedom*, property has priority over labour and for that reason "you do not have a right to the value you create unless you have a right to the things that bear the value. Instead, your right to the value follows from the right to the thing, and so cannot ground a right to a thing". Arthur Ripstein *Force and Freedom* (Harvard University Press 2009) 101.

<sup>49</sup> Day (n 38) 210.

they construct labour atomistically<sup>50</sup>. Today –and even in Locke's time– labour is mainly cooperative; labour is not articulated in isolation as one individual performing a self-contained task with a unitary outcome<sup>51</sup>. In our contemporary world, labour's finished product is the joint work of many individuals, passing through the hands of many people. In these circumstances, Locke's labour theory of value serves more as justification of collective property than a justification of private property.

#### **3.1.4. Labour, desert and distribution**

In regards to the idea of desert, the reasoning is similar to the aforementioned: if labour is what gives almost all the value to things, the labourer who gives it has a legitimate claim to deserve property rights on the product she creates, because of her contribution. The idea of desert usually has a favourable impact over us. Maybe this is one of the reasons why Locke's theory of property has been so powerful in property thought.

The problem is that there is no intrinsic connection between what an individual deserves for creating new value and property rights over the object that contains that value. Certainly, the worker who creates value has a legitimate claim to deserve *something* for her contribution. However, the only necessary connection that a desert theory of labour requires is *some kind of reward* for labour; a reward that need not be private property rights over production. The reward could instead be recognition (praise, honour, gratitude, for example) or some rights (but not every right that private property involves) over some goods, but not necessarily property rights over the outcomes of labour. The point is that the desert claim might be fulfilled through property rights, but on other goods and not on the same labour's outcome<sup>52</sup>.

If there is no natural and no determined connection between labour and the kind of reward deserved, then, an agreement of some kind is needed. Hence, the sheer act of labour does not suffice to make that specific connection, as

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<sup>50</sup> Ross Poole "Locke and the Bourgeois State" (1980) 28 *Political Studies* 222, 225.

<sup>51</sup> *ibid.*

<sup>52</sup> Simmons (n 6) 241-242.

Locke would like. In other words, labour *alone* cannot be a title for private appropriation of its outcome or any other object. What is needed, then, is an agreement on some *distributive justice account* that ascribes property rights over some objects, based on the fact that both the toil that labour demands and the value that labour creates, deserve to be rewarded through property rights. In this sense, labour, more than the private property underpinning, provides rationale for a type of distribution based on desert.

### 3.1.5. Appropriation and distributive concerns

However, even in the case that labour were a title for private appropriation of its outcome, a significant question still remains: why should we permit people to work on un-owned objects just because they arrive first, before everyone else?<sup>53</sup> There is no moral ground for rewarding with a property entitlement to those who labour just because they arrived first to the non-owned objects. If labour is to be considered a title for appropriation, one might think that we should not let people labour on non-owned objects on a first-come basis.

At least *in situations of scarcity* labour alone does not suffice for acquiring property rights over things: although *necessary*, labour is not a *sufficient condition* for acquisition. Additionally, Locke sets two *conditions* for appropriation, namely, the "sufficiency proviso" and the "spoliation proviso". In the next sections we will see that the "enough and as good" clause has been understood both as a *description* of a state of plenty, and as a *prescription*. As a prescription, the "enough and as good" clause is a proviso that places limits on appropriation: appropriation through labour only is possible if individuals leave enough (quantitative) and good (qualitative) resources for others<sup>54</sup>. Thus, in the *first justification* that Locke provides, appropriation only is justified when everyone

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<sup>53</sup> For this reason, for example, many countries have established fishing quotas.

<sup>54</sup> Unlike Locke, for Kant the problem of acquisitions in the state of nature is not related to the actual burdens that property rights may impose to others. As Ripstein explains, "your right to freedom is at issue when others change your normative situation, even if you have other options so that the situation is not burdensome". Ripstein (n 48) 150.

else has a substantive opportunity to own both an equal quantity and quality of goods<sup>55</sup>.

An important consequence of Locke's first justification of appropriation is that scarce resources must remain in common or, at least they cannot be individually owned. The reason is clear: when resources are scarce, their appropriation does not leave "enough and as good" for others. In circumstances of scarcity, someone's appropriation is a loss for everyone else. In this justification, Locke's account would forbid the private appropriation of land, (finite) natural resources and means of production. Lawrence Becker, for example, who understands Locke's property theory as based on desert, arrives at the same conclusions. Taking Locke's account, Becker proposes a labour-desert argument for the justification of private property, in basically the following terms: "When, in terms of the purpose of the labor, nothing but property rights in the thing produced can be considered a fitting benefit for the labor, and when the benefit provided by such rights is proportional to the value produced by the labor, the property rights are deserved"<sup>56</sup>. However, Becker adds to this conceptualization a "sufficiency proviso", which requires that *appropriation not diminish others' opportunity for appropriation*. It is in virtue of this condition that Becker excludes land from private appropriation, and at least, the major means of production<sup>57</sup>. In Becker's interpretation, Locke's theory "becomes a *foundation for socialism* rather than 'possessive individualism'. Land, other natural resources and the major means of production...cannot be privately owned"<sup>58</sup>.

Although Locke does not see in appropriation a problem of freedom, he does not ignore how appropriation, in a situation of scarcity, affects the interests of all the others. Thus, in this first justification Locke would be justifying mainly property for consumption (not over land or means of production) and, in no

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<sup>55</sup> However, Locke's account is not be able to guarantee a *right* to private property because for Locke appropriation demands the special and voluntary act of labour.

<sup>56</sup> Lawrence Becker, *Property Rights. Philosophic Foundations* (Routledge & Kegan Paul 1977) 54.

<sup>57</sup> *ibid* 43.

<sup>58</sup> *ibid*.

case, great inequalities. However, we will see in the next sections that there is a *second* justification in Locke's account of property. In the second justification, which ultimately takes precedence over the first, Locke aims to justify not only private property but also immense inequalities, and, even further, capitalist property.

### 3.2. Scarcity, money and inequality

#### 3.2.1. The advent of money and Locke's provisos

As I said in the beginning, Locke explicitly argues that money makes the spoilation proviso useless: money does not spoil. However, it is not entirely clear what Locke aims to convey with the clause "enough and as good left"<sup>59</sup>. Some authors have questioned the character of this clause as a necessary condition for appropriation (that is, as a *prescription*) by arguing that it is just a kind of *description* of original circumstances.

According to Waldron, for example, we should refrain from interpreting the "enough and as good" clause as a necessary condition for appropriation. For Waldron, if basic resources were not available in sufficient quantity for everyone and if the "enough and as good" clause were a necessary condition for appropriation, it follows that everyone will die of starvation since no appropriation would leave enough and as good in common for the others<sup>60</sup>. But that would be absurd, because we would all perish when some could have been preserved. For that reason, in Waldron's interpretation, the sufficiency proviso should not be understood as a condition, but only as a *fact* whose existence is basically the effect of the operation of the spoilation proviso<sup>61</sup>.

Three reasons might sustain the idea that the correct approach to the clause is to regard it as a description of a situation of abundance<sup>62</sup>. The first one is that unlike the spoilation proviso, Locke never explicitly refers to the "enough and

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<sup>59</sup> Locke, II. 27.

<sup>60</sup> Jeremy Waldron "Enough and as Good Left for Others" (1979) 29 *The Philosophical Quarterly* 319, 325.

<sup>61</sup> *ibid*; Waldron (n 13) 218ss. Along the same lines, James Harris *Property and Justice* (Oxford University Press 2002) 198.

<sup>62</sup> Olivecrona (n 30).

as good" clause as a *condition*. And, in a literal interpretation of the two times that Locke appeals to it, the clause seems to resemble a description of a state of affairs rather than a prescription. The second reason has to do with a consistency requirement. If the "enough and as good" clause were a condition, Locke would need to justify how it is possible to reconcile such a proviso with the great inequalities that the stage of money allows. Locke, however, neither justifies nor even explains how such inequalities are possible if there is a condition that only authorizes private appropriation when there are enough and good resources left to others. The last reason concerns Locke's project, to the extent that Locke is looking for a theory not only coherent with the emergent agrarian capitalism of his time but also that legitimizes it. Needless to say, something like a sufficiency proviso would undermine that goal.

If the "enough and as good" clause is a description, then, there is no moral limit to inequality. This is also consistent with the advent of money, which shows that the aim of the spoliation proviso is not to set a limit to accumulation *per se*, but only to avoid the waste of resources<sup>63</sup>.

The invention and use of money is crucial in Locke's property theory because it allows him to justify great disparities in property distribution. According to Locke, these great disparities are justified through *consent*. Locke's argument about consent are nonetheless weak: it is not possible to derive consent on inequality *from* consent on money, as Locke claims. The problem is the object of consent. Consenting to assign value to money in order to use it does not imply consent in the unlimited appropriation that money allows, and therefore, the inequality that brings with it.

Worthy of note here is that the consent to money that Locke imagines is not general, as is the consent to establish civil society. Contrarily, consent is limited

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<sup>63</sup> In this light, one might think that Locke's "spoliation proviso" is not a moral limitation to appropriation but a rational limit –there is no rationality in letting things get wasted. In fact, the easy way this proviso is overcome by money reveals its real nature. The proviso arise *not in consideration of others*—its aim is not to prevent accumulation *per se*, but to avoid unprofitable (and foolish) accumulations that let things spoil. S. B. Drury "Locke and Nozick on Property" (1982) 30 *Political Studies* 28, 34.

to the private realm, that is, only between those who interchange. But, in the case of those who interchange, to what are they consenting? If Locke's justification of private acquisitions is truly based on labour, then, to what individuals consent when they interchange cannot be great inequalities. At most, they consent to the use of money that will permit them to accumulate the value that their labour creates. The problem is that the value that labour creates cannot generate great accumulations of money. True, it can allow *some* inequalities - given that the effort involved in the acquisitions of things through labour is not the same for all persons-, but not *great* inequalities.

However, the use of money, Locke recognizes, allows great inequalities<sup>64</sup>. How is that possible?

### 3.2.2. Labour and wage labour

After the introduction of money, labour ceases to be the bedrock of Locke's account of private appropriation. The reason is that with the emergence of money, it is possible to *purchase another individual's labour power* to appropriate the value that person's work creates<sup>65</sup>.

Indeed, I dare say that one of the most controversial statements of Locke's property theory concerns wage labour: "the taking of this or that part, does not depend on the express consent of all the Commoners. Thus the Grass my Horse has bit; *the Turfs my Servant has cut*; and the Ore I have digg'd in any place where I have a right to them in common with others, *become my Property*, without the assignation or consent of any body"<sup>66</sup>. Note here that "the Turfs *my servant has cut... become my property*" in the same way as my own labour makes something my property, that is, in the same way that "the Ore I have digg'd... become my Property".

Strikingly, we can see that according to Locke, *private property can be acquired through the labour of others*. This is why it can be argued that in Locke's property

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<sup>64</sup> Indeed, one might argue that it is the inequality that money allows what makes Locke so insistent in the need of consent.

<sup>65</sup> Wood (n 4) 56. In the same sense, Drury (n 63).

<sup>66</sup> Locke (n 1) II. 28.

account, there is no direct correspondence between labour and property, since with the emergence of money one individual can appropriate the labour of another. The consequence of this idea, for Locke's labour theory, is twofold. On the one hand, it means that some (a few) can acquire property not through their own labour but rather with another individual's labour, by purchasing it. It is important to be precise here: what is bought is not labour in the sense of its product but labour in the sense of labour's activity. Marx sharply captures this idea by saying that what the capitalist buys is *labour power*. On the other hand, wage labour means that for some others (the majority), their own labour will not imply an entitlement to appropriate what they produce.

Marx understood this incompatibility in Locke's theory when he states that "the capitalist mode of appropriation, the result of the capitalist mode of production, produces capitalist private property. This is the first negation of individual private property, as founded on the labour of the proprietor"<sup>67</sup>. In this regard, Locke commits the same mistake that Marx attributes to political economy, which "confuses on principle two very different kinds of private property, of which one rests on the producers' own labour, the other on the employment of the labour of others. It forgets that the latter not only is the direct antithesis of the former, but absolutely grows on its tomb only"<sup>68</sup>. Accordingly, at least in capitalist economies, labour cannot be understood as a title for the appropriation of its product. In capitalist economies, labour involves a title just to a benefit (a wage), and only if there exists an (express or tacit) agreement about it.

The point is that Locke's idea of labour as a title for appropriation is completely defeated after the emergence of money. As Neal Wood points out, "while Locke originally stated that labor was the foundation of property, such labor need not be one's own. Instead, it could be that of another who was employed for the purpose, thereby overcoming the labor limitation on appropriation"<sup>69</sup>. In fact, Locke seems less concerned about labour as an activity, energy or toil than

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<sup>67</sup> Karl Marx *Capital. A Critique of Political Economy*, Vol 1 (Penguin Books 1976) 929.

<sup>68</sup> *ibid* 931.

<sup>69</sup> Wood (n 4) 56.

about labour as a product, because, "in calculating the value of the acre in America, for instance, he refers not to the Indian's labour, his expenditure of effort, but to the lack of profit he receives, in the absence of a well-developed commerce. The issue, in other words, is not the labour of a human being but the productivity of property and its application to commercial profit"<sup>70</sup>. For this reason, it seems that Locke "*conflates* labour with the productive utilization of property"<sup>71</sup>. Locke invites us to ascribe not only the fruits but also the attributes of labour to the property owner.

### **3.3. Property as improvement: a property theory of value**

#### **3.3.1. Private property and the creation of wealth**

In Locke's second justification of private property the idea is not that the value that labour creates makes possible the appropriation of the object that contains such labour, but the other way around. *Private property is what creates value.*

In this justification, Locke sees private property as the condition for improvement. Private property drives improvement while common property jeopardizes it. This idea is clear when Locke makes the reader consider "what the difference is between an Acre of Land planted with Tobacco, or Sugar, sown with Wheat or Barley; and an Acre of the same Land *lying in common*, without any Husbandry upon it, and he will find, that the improvement of labour makes the far greater part of the value. I think it will be but a very modest Computation to say, that of the Products of the Earth useful to the Life of Man 1/10 are the effects of labour"<sup>72</sup>. Indeed, Locke reiterates that idea in his contrast between America and England: "I aske whether in the wild woods and uncultivated wast of America left to Nature, without any improvement, tillage or husbandry, a thousand acres will yield the needy and wretched inhabitants as many conveniences of life as ten acres of equally fertile land doe in Devonshire where they are well cultivated?"<sup>73</sup>

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<sup>70</sup> Meiksins (n 47) 274.

<sup>71</sup> *ibid* 275.

<sup>72</sup> Locke (n 1) II. 40.

<sup>73</sup> *ibid* II. 37.

Improvement can only be achieved when there is private property, Locke alleges<sup>74</sup>. The idea is simple: *property creates wealth*. The problem, however, is that the nature of this justificatory argument is totally different from the argument about labour. While the argument of labour grounds private property on the importance of protecting *particular* rights that emerge from *particular* events, the argument about the wealth that property creates is, paradigmatically, a kind of *common good-based argument*. It is a common good-based argument because its point is that the wealth that property creates benefits us all. The crucial point, then, is that *private property is better for all* because, in Locke's own words, "he who appropriates land to himself by his labour, *does not lessen but increase the common stock of mankind*. For the provisions serving to the support of human life, produced by one acre of inclosed and cultivated land, are (to speak much within compasse) ten times more, than those, which are yielded by an acre of Land, of an equal richnesse, lying wast in common"<sup>75</sup>. Private property, by producing improvement, *improves the conditions of everyone else*.

Even more radically, Locke defends the inequalities of "developed societies", such as England's emergent *agrarian capitalist society*, appealing to the fact that the worst off in these societies are better than those who are in a superior position in undeveloped societies. Locke is quite drastic when he argues, at this point, that even "a king of a large and fruitful territory [in America], feeds, lodges, and is clad *worse* than a *day-labourer* in England"<sup>76</sup>. The idea is that the effect of property improvement would be, in certain important respects, even advantageous to property-less people<sup>77</sup>.

Given the aforementioned, one might think Locke's idea about consent to the inequality that money brings as a rather *hypothetical consent*: it would be foolish to refuse the advent of money given its benefits. In this sense, it is rational to

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<sup>74</sup> O' Neill (n 25) 478.

<sup>75</sup> Locke (n 1) II. 37.

<sup>76</sup> *ibid* II. 41.

<sup>77</sup> Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford University Press 1983).

consent to inequality because, despite it, everybody will be better<sup>78</sup>. Indeed, as section 3.3.3 will show, we can also understand the "enough and as good" clause in the same light. As I stated above, it is coherent with Locke's account to understand this clause just as a description of a stage of abundance. However, for most authors the "enough and as good" clause works as a *prescription*, that is, as a necessary condition for private appropriation. In this interpretation of the clause, private appropriation always requires individuals to leave enough and as good resources for others. To fulfil its role, this necessary condition must remain in that status even with the emergence of money, and the scarcity that it brings.

### **3.3.2. The sufficiency proviso as a limit to appropriation**

But, if the prescriptive character of the "enough and as good" clause is still in force with the advent of money, how can Locke explain the fact that in his time a few owned vast amounts of land, while most possessed nothing at all? It seems that the few left nothing to the many. Yet Locke does not want to conclude that all appropriations are illegitimate because of the breach of the proviso. How does Locke solve this problem?

According to Tully's well-known interpretation of Locke, the sufficiency proviso becomes useless with the introduction of money and since that moment, "appropriation without consent is invalid"<sup>79</sup>. In Tully's own words, with the emergence of money, "things necessary for comfort and support, including land, belong to all and must be individuated. Civil law now determines what is mine and thine"<sup>80</sup>.

However, it seems that Tully construes Locke's statements to coincide with what probably he would have liked to hear him say. It is quite clear that in

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<sup>78</sup> That is why, assuming the weakness of Locke's idea of consent on inequality, Ryan says that "the more effective argument *does not rest upon consent*; it simply points out *the benefit going to the worst off* under a system where there is greater inequality than in the state of nature". Ryan (n 28) 40-41.

<sup>79</sup> James Tully, *A Discourse on Property. John Locke and his Adversaries* (Cambridge University Press 1980) 153.

<sup>80</sup> *ibid* 165.

Locke's account the emergence of money not only does not invalidate prior private appropriations, but rather expands them<sup>81</sup>. This can be observed in his assertion that, "as different degrees of Industry were apt to give Men Possessions in different Proportions, so *this Invention of Money gave them the opportunity to continue and enlarge them*"<sup>82</sup>. Another irrefutable aspect is that according to Locke individuals enter into civil society in order to preserve their acquired possessions. This is why civil governments have, in Locke's account, *limited* authority: "the Supream Power cannot take from any Man any part of his Property without his own consent"<sup>83</sup>.

From the advent of money, Locke's problem regarding the "sufficiency proviso" remains elusive.

### **3.3.3. The sufficiency proviso as a right not to be worsened**

For C.B Macpherson, with the emergence of money the "enough and as good" condition does not disappear but *changes its content to a right to a certain level of welfare*<sup>84</sup>. With this change, private appropriations are legitimate -even when there are not enough and as good resources for everyone- *if they do not make others worse off than before*. And appropriations would not do that because private property enhances productivity, and thus, everyone's conditions, including the conditions of those who are left with no property. As Alan Ryan states, in an insightful paragraph worth quoting at length,

the reason why inequality and the occupation of all the vacant land do not violate anyone else's rights is that what the appropriator has to do is leave enough and as good for others, not in the sense of leaving as much land for others, but in the sense of leaving others just as able as they were before what Locke terms a 'living'. The day-labourer who has no land none the less gets a good bargain from the process whereby money and inequality have advanced together, for he lives,

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<sup>81</sup> Against Tully's contention, see Waldron (n 13) 140ss and Kramer (n 7) 215ss.

<sup>82</sup> Locke (n 1) II. 48.

<sup>83</sup> Locke (n 1) II. 138.

<sup>84</sup> Crawford Brough Macpherson, *The Political Theory of Possessive Individualism* (Oxford University Press 1962) 213. This change is not very difficult to accept once we note that the *nature of the proviso does not change*, since in both cases we are facing *material* provisos, not formal provisos about freedom.

lodges and is clad better than the king of an Indian tribe in the empty wastes of inland America<sup>85</sup>.

In the same vein, Leo Strauss asserts that according to Locke's argument the day labourer has no right to complain about others' appropriation because "the exercise of all the rights and privileges of the state of nature would give him less wealth than he gets by receiving 'subsistence' wages for his work. Far from being straitened by the emancipation of acquisitiveness, the poor are enriched by it"<sup>86</sup>.

Like Macpherson, Ryan and Strauss, in Nozick's interpretation of Locke the sufficiency proviso also changes its content. In Nozick's words, the crucial point of Locke's sufficiency proviso "is whether an appropriation of an un-owned object worsens the situation of others"<sup>87</sup>. And, according to Nozick's interpretation of Locke proviso -which he not only supports but also uses as the basis for his own theory of just acquisition-<sup>88</sup>, appropriation worsens the situation of the others if they are worse than they would be if *resources would have remained in general use*. Given that baseline, according to Nozick, the fact that there are people unable to appropriate (because there are no more unowned objects) is not worsened by a system allowing appropriation and permanent property. The reason is that private property increases the social product and therefore such articulation improves every person's situation.

In this understanding of Locke's proviso, private appropriations are justified if those who have appropriated nothing are not worse off than they would have been, had the world remained non-owned<sup>89</sup>. As we saw in section 3.3.1, this is

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<sup>85</sup> Ryan (n 28) 41.

<sup>86</sup> Leo Strauss "On Locke's Doctrine of Natural Right" (1952) 61 *The Philosophical Review* 475, 495.

<sup>87</sup> Nozick (n 36) 175 and 178.

<sup>88</sup> For Nozick's account of "justice in acquisition", a proviso of this kind is crucial. The reason is that Nozick does not rely in labour (and neither in any act that has a similar moral character) to justify the acquisition of unowned objects. Thus, for Nozick this proviso is the *only* relevant consideration for justifying appropriation.

<sup>89</sup> Schmidtz claims that Locke's proviso should be read not as *permitting* to remove goods from the commons, but rather as *requiring* to remove scarce goods from the commons. Only removing goods from the commons in order to appropriate them improves the situation of

consistent with how Locke argues in defence not only of private appropriations but also of the great inequalities of “developed societies” such as England in Locke’s time<sup>90</sup>. To defend the private appropriation of something as limited and scarce as land, Locke argues by saying that it “does not lessen but [rather] increase[s] the common stock of mankind” because what such land produces once appropriated is “ten times more” than what land would produce “*wast[ed] in common*”<sup>91</sup>. The great inequalities, as they are articulated in capitalist societies -with vast accumulations of property in the case of a few, and no productive property to labour on it for the many- are justified because property-less people are in a better material situation than they would have been if property were left open to everyone. Even “a king of a large and fruitful territory [in America], feeds, lodges, and is clad *worse* than a day-labourer in England”, says Locke to support this view<sup>92</sup>.

#### **4. The problematic justification of capitalist property**

##### **4.1. The argumentative brake in Locke’s justification of property**

In Locke's account, property rights are a natural consequence of the way human beings engage with a non-owned world, or more precisely, the consequence of individual corporal acts, which Locke calls "labour".

To the extent that Locke's intention is to justify the emergent capitalist configuration of his time, with its prevailing inequalities, his theory of appropriation based on labour is unable to give a satisfactory justification. Locke’s problem is that he cannot pull the private property rabbit in its capitalist configuration from the hat of a mere corporal act of one person in a specific context. It is difficult to see how the justification for the appropriation of an acorn could be the same as the justification of vast accumulations of land that leaves many with nothing. A labour theory of property cannot justify

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everyone else. David Schmidtz “When is Original Appropriation Required?” (1990) 73 *The Monist* 504, 506-507.

<sup>90</sup> Kymlicka (n 3) 113ss.

<sup>91</sup> Locke (n 1) II. 37. Also II. 40

<sup>92</sup> *ibid* II. 41.

capitalist property, given that in capitalism those who appropriate the outcomes of labour are not those who labour, but capitalist owners. Locke, however, agrees that capitalist owners can appropriate the outcomes of others' labour by purchasing their labour-power. For that reason, Locke needs to introduce the stage of money.

The problem is that consent in the use of money cannot sustain the unequal distribution of private property: consent in the use of money is not equivalent to consent in an unequal distribution of private property. To the extent that neither labour nor consent can justify private property in its capitalist articulation, Locke's answer is to argue that it does not worsen the material welfare of even the lowest paid labourers, if compared with the material situation they would have in the absence of any *property arrangement*.

There are two significant problems with this second justification offered by Locke. The first problem arises from the fact that in Locke's second justification, what is crucial for justifying private property rights is not an argument based on the owner's interests, but rather a *common good-based argument*. As Strauss contends, Locke "justifies the emancipation of acquisitiveness in the *only way in which it can be defended*: he shows that it is conducive to the *common good*, to public happiness or the temporal prosperity of society"<sup>93</sup>. This is crucially important to the extent that Locke correctly understands that he cannot justify great unequal distributions of private property by appealing to the interests of owners, but rather the interests of everyone else, and particularly, the interests of those who are in the worst off position in the distribution that Locke's aims to justify. The problem of this argumentative turn, however, is that it makes it impossible to justify private property rights as *natural* rights. I will develop this argument in section 4.3.

The second problematic issue is that this kind of common good argument - which claims that (capitalist) private property if not improves at least does not

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<sup>93</sup> Strauss (n 86) 495, emphasis added.

worsen the situation in which we all would be if there were no property arrangement at all- is subject to two important criticisms<sup>94</sup>. We will see them in the next section.

#### **4.2. The problem of Locke's common good based argument**

The first critique of Locke's common good-based argument is that it requires that nobody is worse off only in terms of *material* welfare, but not in terms of freedom or other values. This common good-based argument asserts that capitalist property improves everyone's position because in a property system even the most disadvantaged earn higher income and can obtain consumer goods impossible to attain without a property arrangement. But, why not also consider the situation of those who are worst off in terms of other values such as freedom or autonomy?

Suppose that you and I share a tract of land that we use to obtain the necessary means to sustain our lives, and then I appropriate that land for myself. How could I contend that now you are better off, or at least not worse off than before? We may further imagine the following scenario: I tell you that if you labour for me I will give you an amount of goods similar to what you used to obtain by labouring. Do I worsen your situation? Maybe not from the point of view of your material welfare, but from the point of view of freedom certainly you lost something. You lost the important freedom you formerly had in the process of labour, that is, the freedom to decide how much time you will labour, the way that you will labour, and what you will produce through your labour. In short, if I am the owner of the land, you become subject to my will in all these matters.

Thus, although everybody might be better off in terms of material welfare in a capitalist system, it is far from clear whether every individual is also better off in terms of freedom and autonomy<sup>95</sup>. Unlike in the past, now individuals

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<sup>94</sup> Kymlicka (n 3) 116ss.

<sup>95</sup> According to Gopal Sreenivasan, there are two important differences between the situation of landless laborers and the commoners of the original community. The first difference is that "unlike laborers, commoners generally were formerly at liberty to enjoy the fruits of the full potential of their labour. In other words, commoners were formerly at liberty to produce not merely their subsistence but a surplus". Landless commoners, instead "are not at liberty

depend upon capitalist owners for their survival, who have acquired *power over* them. The material welfare focus disregards the power relations produced by unequal distributions of private property<sup>96</sup>.

The second critique has to do with the *baseline of comparison*: why should we compare a (capitalist) system of private property with a situation in which there is no property arrangement at all? The common good-based argument we are assessing is problematic because it compares a system of private property with a baseline in which there is no rule at all regarding objects. This common good-based argument, then, offers only one alternative to private property, namely, a situation in which resources are accessible to all according to each one's own initiative (in other words, a system of *free access*). Locke's kind of common good-based argument narrows the class of alternatives with which has to be compared a system of private property<sup>97</sup>.

However, a free access system is clearly not a rational system for developing resources. This is why not only a private property system but almost *any* system with property rules would be better than free access. The Manichean idea that the only solution to a regimen of open access is a system of private property

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even to produce a surplus, since their access to the necessary materials depends on the permission of the landowners...The benefit of labour's abundance—which Locke so celebrates—is therefore placed at the exclusive disposal of the landowners". (114). The second difference is that "under common ownership the access to the common materials enjoyed by commoners generally is the same for each commoner. That is, they all enjoy *equal* access, whereas the access to those materials enjoyed by any and every landless commoner is, *ex hypothesi*, radically unequal to that enjoyed by any and every landowner" (115). Gopal Sreenivasan *The Limits of Lockean Rights in Property* (Oxford University Press 1995). An exclusive focus on material welfare also leaves out of account *social status*: the equality and freedom from power relations that exist in a situation of free access might give a greater degree of satisfaction than the *material* welfare that capitalism provides to the worst off. In this line, Ryan argues that the welfare of one individual can be affected by what happens to the other: "to argue that the day labourer really is better off than the Indian chief, even, say against the evidence that the labourer regards his cottage with less enthusiasm than the Indian regards his tepee, we have to 'correct' his wants –the rational labourer wants shelter not a status symbol, and if he is better sheltered, he is better off". Ryan (n 28) 42.

<sup>96</sup> Additionally, to understand that the relevant comparison is material welfare presupposes that the only relevant interests that have to be considered are the passive desires of consume and not persons' interests as *producers*. Andrew Kernohan "Capitalism and Self-Ownership" (1988) 6 *Social Philosophy and Policy* 60.

<sup>97</sup> Cohen (n 28) 95ss.

was spread by Hardin's famous "tragedy of the commons". Nevertheless, other property regimes are able to solve this tragedy as well, because open access is a very low baseline to contrast. The interesting question, then, is whether a capitalist system of private property is better for each individual than *any other property arrangement*. Being this the relevant baseline, the common good-based argument we are considering would have to show that the worst paid labourer is better off under a capitalist system of private property than in any other system of property rights.

The idea that a full justification of a capitalist property system must be supported by the argument that the worst paid labourer is better off than the worst off under *any other property system*, resembles Rawls's difference principle<sup>98</sup>. According to what arguably is the best version of that principle, the inequalities of a given economic system are legitimate only if those who are worst off in that system are better off than the worst off would be under any alternative system. The logic, thus, is not if a capitalist system of private property is better for the worst off than a regime where there is no property arrangement (weak version) but rather if it is better than any other regime (strong version).

As we can see, Locke's kind of common good-based argument does not provide a full justification of private property and its unequal distribution but only a *partial justification*<sup>99</sup>.

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<sup>98</sup> *ibid* 102. See also Ryan (n 28) 42.

<sup>99</sup> As Grunebaum asserts, "if the standard of justification is the production of greater benefit or utility for each than the state-of-nature commons, then private ownership, private usufruct, and collective cooperative ownership may be morally justified.... A *complete justification* would have to show that private ownership and only private ownership fulfils the standard of justification. Other forms of ownership must therefore be examined and shown not to fulfil the standards. Arguments which show that private ownership (or any other form) is grounded upon original appropriation, but which fail to show that only private ownership (or some other form) is so grounded, I shall call *partial justifications*". James Grunebaum "Property as Theft" (1990) 73 *The Monist* 544, 545.

### 4.3. Locke's common good based argument and natural rights

The idea of *natural* rights usually means that (i) these are rights that every person has for the mere fact of being human; (ii) these rights are not created or conferred by convention and therefore, their existence is independent of institutional arrangements. The idea of a natural right to private property in Locke means the latter (ii) but not the former (i), because as we have seen, private property is the outcome of a contingent act: labour. Therefore, the idea of property rights as natural rights is (ii), namely, that they are rights persons already have before the establishment of civil society and political institutions. It is important to note that this is not a claim about what happened in a preterit time when there was no government but rather a political claim: property rights are rights that do not presuppose any political relation or social arrangement between individuals.

Therefore, if property rights are natural in that sense, they have to emerge from a kind of special act that individuals have the moral power to perform and that does not presuppose any social arrangement. This act is labour, and indeed, it does not presuppose any kind of relation with other individuals. In Locke's representation of labour, the only relevant elements are the object and the individual who labours upon it.

However, as we saw, with the advent of money it is possible to purchase others' labour (power), and therefore to accumulate private property without any concern about leaving others with nothing. This change inevitably affects Locke's justification of property rights as natural rights<sup>100</sup>. The reason is that now the crucial matter for a justification of property rights no longer is that particular individuals labour upon some objects, fulfilling Locke's conditions. What becomes relevant now are *empirical considerations about consequences*. When Locke asserts that private property, and even further, capitalist property,

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<sup>100</sup> Also, it is affected if one considers that Locke's justification based on labour entails deontological rights over one's body and the labor of one's body, as Grunebaum asserts in James O. Grunebaum "Two Justifications of Property" (1980) 17 *American Philosophical Quarterly* 53, 55.

make everybody better off, he is using a common good-based argument; a common good-based argument that although not utilitarian, has a consequentialist nature<sup>101</sup>.

However, the consequentialist nature of Locke's common good-based argument makes it potentially vulnerable to counterarguments. It is clear that private property enhances the owner's freedom, but it is not obvious that (greatly unequal distributions of) private property improves everybody's position. As we saw in the previous section, it is insufficient to assert that private property improves the material situation of everyone in comparison to a situation of open access.

Once private property arrangements appeal to consequentialist reasons, property rights lose their natural right character. In Locke's account, that character has the important function of limiting governmental intervention. Now property rights depend on rational judgments that also must be empirically assessed, if we are going to take consequences seriously. Locke's account is not able to offer a justification of private property in its capitalist configuration on a non-consequentialist basis, and therefore, as a natural right that can limit government's intervention on that basis.

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<sup>101</sup> They are not utilitarian because unlike utilitarianism, they demand attention to the fate of *each person* and not just to the aggregate amount of welfare.



## PART II. THE DOMINATING POWER OF CAPITALIST PROPERTY

### Introduction to Part II

As I said in the introductory Chapter 1, the second part of the thesis is dedicated to showing that *capitalist property gives owners a dominating power* in two main spheres: the political and the economic spheres.

Domination is a wrong: when we say that someone dominates another we are making a normative judgment about the wrongness of the situation. When individuals are dominated, they do not act and choose freely: the degree of voluntariness with which they act is considerably weakened. They act and choose as the powerful wants. What the powerful force them to choose, on the other hand, does not enhance their interests but rather the interests of the powerful. The problem of domination, then, is mainly relational. Through their dominating power, the powerful extract valuable social goods from those who are subject to them: husbands extract care work and household services from their wives, masters and lords extract labour from slaves and serfs, respectively. The powerful, then, extract *non-reciprocal* benefits from the powerless.

In this light, capitalist property is particularly problematic. Its dominating power allows owners to extract benefits from workers (I will call this instantiation of domination *exploitation*), and to impose their will upon the political sphere in important economic matters. This does not only undermine the principle of political equality, but also weakens democracy's capacity to restrain owners' economic power in favour of redistributive arrangements.

From the point of view of a justification of private property, one might say that private property in its capitalist configuration cannot be justified on account of the freedom that it gives to owners because this is a freedom to dominate others. The fact that capitalist property indeed is the source of a dominating power provides a (pro-tanto) reason to limit the kind of articulation of private property that may be justified. In this light, one might contend that the private property regime should be applied to consumer goods, but not to means of production.

Or one might pursue a weaker argument, as well. According to this argument, the dominating power that capitalist property gives to owners provides reasons to limit it or repair its harm.

In this thesis, I do not attempt to argue about the precise moral weight that these considerations should have in a justification of private property. My goal is only to explain how capitalist property gives owners a dominating power. However, the task of demonstrating that is not an easy matter. Like power, in general, domination has not been a central issue of either political theory or theories of justice. Indeed, usually the concept of power has been developed by relying on political power as the relevant instance of power<sup>1</sup>. Private domination, especially of economic matter, has not been an important issue for political philosophy<sup>2</sup>.

The idea that capitalist property gives a dominating power, then, does not find in political philosophy a general framework to rely on. In Chapter 5, we will see that neo-republicans, especially Philippe Pettit<sup>3</sup> within the liberal political

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<sup>1</sup> Thomas Wartenberg, *The Forms of Power. From Domination to Transformation* (Temple University Press 1990) 40.

<sup>2</sup> In this regard, Iris Marion Young has made a sharp critique of this oblivion. According to Young, political philosophy has been prey of what she calls the “distributive paradigm”; a paradigm that is only concerned with how resources should be distributed. For Young, “the concepts of domination and oppression, rather than the concept of distribution, should be the starting point for a conception of social justice”. Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 1990) 16. In the same vein, according to Rainer Forst, the “distributive paradigm” leaves important questions out of account “for, by concentrating on overcoming deficiencies in the distribution of goods, someone who suffers deprivation as a result of a natural catastrophe is equivalent to someone who suffers deprivation as a result of economic or political exploitation”. Although distribution is required in both cases, according to Forst, “the grammar of justice it is required in the one case as an act of *moral solidarity*, in the other as an act of *justice* conditioned by the nature of one’s *involvement in relations of exploitation* and injustice and the specific wrong in question”. Rainer Forst, *Justification and critique* (Polity Press 2014) 19. Elizabeth Anderson, also have made a powerful critique to “luck egalitarians”, precisely for claiming that the fundamental aim of equality is to make individuals responsible for their choices and to compensate them in case of undeserved “bad luck”. What rather should matter to egalitarians, Anderson contends, is to end *oppression, domination and exploitation*. Elizabeth Anderson, “What is the point of equality” (1990) 109 *Ethics* 287.

<sup>3</sup> And Quentin Skinner in a more historical view.

philosophy tradition, have developed the idea of freedom as non-domination<sup>4</sup>. We will see, however, that Pettit identifies domination mainly with coercion and for that reason he cannot identify *exploitative exchanges* as an instance of domination. I will refute that narrow view of domination, and I will offer the main tenets of a comprehensive understanding of domination. In such understanding, domination not only acts by subjecting the will of the powerless, but also by shaping their interests and beliefs to adjust their choices in keeping with the interests of the powerful. Moreover, in this view, domination is not only deployed through its *exercise*: like power, domination is a *capacity*. Perhaps the most radical feature of Pettit's account of domination is related precisely to this idea: the master dominates the slave when she has the capacity to dominate her, even if she is a good master and is not prone to exert her dominating power against the slave. The idea that there is domination whenever someone has the capacity to dominate means that resources and social structures have a crucial place in an account of domination –as that is the *locus* of the power to dominate. However, if possession of this dominating power –regardless of the likelihood of exerting it against another– is already a form of domination, then, it is not difficult to claim, as I do at the end of Chapter 5, that structural domination is a form of *indirect domination* that should also concern us. Drawing from this form of domination, I will claim in Chapter 6 that wage labour is *structurally exploitative*.

In Chapter 6, I attempt to explain that not only sweatshop labour but also wage labour more generally involves exploitation. There I review the non-Marxist literature about exploitation, which in the last three decades has proposed different *baselines* to determine when exchanges are unfair, and therefore, exploitative. This literature aims to advance an account of exploitation within the liberal framework, that is, without discarding some of its current basic features such as markets and capitalist property. Alan Wertheimer, for

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<sup>4</sup> Although for neo-republicans the classical image of domination is the slave-master relation, which is an image of *private domination*, the main neo-republican concern seems to be *public domination*, that is, the legitimacy of political power.

example, argues that the relevant baseline is the competitive market price. However, although the competitive market price criterion is able to explain the exploitative character of prices that stem from a monopoly or dominant market positions, that framework does not explain some exchanges that we usually consider exploitative but are in line with competitive market prices, as may occur with sweatshop labour. Following a compatibilist line (between markets and exploitation), some accounts claim that competitive markets do not preclude exploitation because the relevant baseline is not the competitive market price but rather basic needs. For this view, sweatshop wages that arise from competitive labour markets are exploitative if they leave workers' basic needs unmet. Problematic here are the cases where capitalist owners are *compelled* to pay their workers sweatshop wages, otherwise they risk being left out of the market. These are cases of structural exploitation, which only can be seen as cases of exploitation if one applies this concept to assess the *structure* that compel owners to pay miserable wages to their workers. This is the perspective that I use to explain wage labour as exploitative: my point is not to assess the particular interaction between a capitalist owner and a worker, but rather the structural relation between workers and capitalist owners.

Finally, in Chapter 7, I explain an idea that appears to be widely believed today: capitalist owners have political power from the mere fact of their ownership. There I defend this idea by explaining how both the *instrumental* and the *structural* power that capitalist property gives to owners unfold. *Instrumental power* is the power that not only capitalist owners but also wealthy people more generally have to influence political decisions in their own interests. By using the resources they have -mainly wealth and cohesion -, capitalist owners deliberately act through campaign finance, lobby and the creation of opinion in mass media, among others. It is true that other groups also have instrumental power, but we will see that none others can rival the resources at the disposal of capitalist owners. Today they enjoy an instrumental power that is incomparable to any other group. I will argue, moreover, that capitalist owners also have structural power, a power that arises from the privileged position that

they enjoy in the economy. In virtue of this position, they have the capacity to harm the economy (for example, by restraining investment) when some policy threatens to reduce their profits. Commonly, this capacity in itself is sufficient to make politicians and governments dependent on capitalist owners, since individual welfare depends directly and indirectly on the economy. We will see that today this structural power is huge in comparison to the power they had during the thirty years that followed the Second World War. A significant factor has been the weakening of workers' collective power in the last four decades. The most important reason, however, is related to the capital mobility owners have gained, which provides them an easy exit from their jurisdiction every time governments' policies threaten their accumulation of profits.



## CHAPTER 5. DOMINATION AND ITS DOMAIN

### 1. Introduction

As an instance of *power over others*, domination essentially involves an imbalance of power in which the powerful detrimentally affect the interests of the subjugated. With this idea as the point of departure, in this chapter, the first of the second part, I offer the main tenets of a comprehensive understanding of domination; an understanding that sees domination as a broader phenomenon than coercion. Unlike Philip Pettit's account of freedom as non-domination, which only is able to see direct and overt domination, and tends to equate domination with coercion (i.e. threats), I will claim, in the first place, that domination can also be exerted through unfair/exploitative offers, which lead to unfair/exploitative exchanges. In the understanding of domination I lay out here, exploitation is one of its instantiations.

Then we will see that domination not only is deployed by affecting the will of the powerless through threats and exploitative offers, but also subvertly, by shaping their interests and beliefs to such a degree that there is no need to subject their will. In this way, domination operates by shaping the interests of the powerless so their choices conform to the interests of the powerful.

In the last section of the chapter, I explain that domination is not always the result of opportunistic agents who exercise their power, affecting the interests of those subjugated to them, but also a capacity, which arises from resources and social structures. There I will contend that those resources and social structures that give some the capacity to dominate others, may also determine the outcomes of certain interactions, thus creating instances of what can be called structural domination.

## 2. Power and domination

### 2.1. Power to and power over

In general, the literature agrees that the concept of power has two different dimensions, *power to* and *power over*<sup>1</sup>. *Power to* refers to the capacity or ability to do or become something: X's power to Y is X's capacity to Y. It is worth noting that this variant of power does not presuppose a social relation: the only important thing is that X has power to Y. This dimension of power can be related to a positive conceptualization of freedom. The other variant of power - *power over*-, denotes the power that individuals or groups can have *over others to make them do (and choose) what otherwise they would not do (or choose)*. As we can see from the aforementioned, *power over* always supposes a social relation in which power is asymmetrically distributed so as to make others behave in the way the powerful want. Unlike *power to*, *power over* is always a relational concept.

Most authors make a distinction between these two dimensions of power. However, some have contended that *power to* is the main dimension of power, and that *power over* is reducible to *power to*<sup>2</sup>. Some other literature contends, by contrast, that the main dimension is *power over*, and that *power to* is a variation of *power over*<sup>3</sup>. Here I contend that although *power over* certainly requires one to have *power to* do something, it is important to make the distinction between these two variants of power because only *power over* necessarily entails a relational conceptualization of power. Unlike what happens with *power to*, when we talk about domination we are engaged in a discourse about the relations we have with each other; a discourse that may raise concerns about those relations. On the other hand, it seems also important to preserve the dimension of *power to* because most of the time *power over* is unable to

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<sup>1</sup> Amy Allen adds another category: "power with", which denotes the ability to act together. Amy Allen, *The Power of Feminist Theory* (Boulder Co: Westview Press, 1999).

<sup>2</sup> Peter Morriss contends that *power to* is the central dimension of power. Peter Morriss, *Power* (Manchester University Press 2002).

<sup>3</sup> Pamela Pansardi "Power To and Power Over: Two Distinct Concepts of Power?" (2012) 5 *Journal of Political Power* 73. According to Pansardi, not only *power over*, but also *power to* describe social relations.

encompass the many situations in which we refer to power as an ability we have to achieve goals and aims that do not involve a *power over* others.

In this second part of the thesis, the focus is on *power over* others, and particularly, when *power over* takes the form of *domination*, which is the *negative dimension of power over*, as we will see immediately in the next section. It is important to be clear about our focus of attention to avoid misunderstandings. As Alan Wartenberg notes, many times, depending on which aspect of power is taken as the basis, studies can arrive at different models of the role of power in the social sphere<sup>4</sup>. Hanna Arendt, for example, has a very positive view of power, because when she talks about power she is not thinking of domination but of *power to*. Arendt's positive view of power might be difficult to understand considering that she is interested in political power, which is generally depicted as some having *power over* others. However, Arendt's position becomes clear when we realize that her view of political power does not follow the classic command-obedience model, but one centred on consent. According to Arendt, political power is *the people* acting together: acting together, the people gain political *power to* create a political community<sup>5</sup>. Unlike Arendt, Steven Lukes used to understand power exclusively from the point of view of domination, as he explicitly recognizes in the second edition of his seminal book *Power. A Radical View*<sup>6</sup>. Because Lukes equated *power over* with *domination*, his view of power was conflictual, asymmetrical and negative.

## **2.2. Power over and domination**

Contrary to what Lukes thought and wrote in the first edition of his book, *power over* is not always detrimental to the freedom and interest of others. In other words, not every instance of *power over* another takes such a negative form, namely, the form of *domination*. Sometimes, as Lukes would recognize later, *power over* can be productive, transformative and compatible with the dignity

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<sup>4</sup> Thomas Wartenberg, *The Forms of Power. From Domination to Transformation* (Temple University Press 1990) 27.

<sup>5</sup> "Power springs up whenever people get together and act in concert", Arendt says in Hanna Arendt, *On Violence* (Penguin, 1970) 52.

<sup>6</sup> Steven Lukes, *Power. A Radical View* (2nd Edition Palgrave Macmillan 2005).

of others<sup>7</sup>. The reason is that there are relations of asymmetrical power where power is exerted in the interest of the powerless agent. Typical cases are teaching and parenting, situations that in fact are the opposite of domination. *Power over*, then, is a broader phenomenon than domination: not all instances of *power over* are instances of domination. Therefore, *power over* can be positive or negative for the interests of the powerless agent.

The importance of this distinction between *power over* and *domination* cannot be overstated. By making this distinction, we can say that *power over* involves an imbalance of power in which the will of the powerless is subject to the powerful, *either to her benefit or her detriment*, while *domination* involves an imbalance of power, which detrimentally *affects the interests of those subjugated*. Thus, when we claim that someone is dominating or has a dominating power we are already making a normative judgment: the *wrongness* of domination is part of its content<sup>8</sup>.

As an instance of *power over*, domination essentially involves an *imbalance of power*, that is, a social relation in which power is asymmetrically distributed, enabling one to induce another to do (and choose) what otherwise she would not do. This imbalance, however, is not always easy to discern. This is why many accounts of domination are focused on explaining how domination is exerted or how we can identify it through its outcomes. Hence, in sections 3.2 and 3.3 we will see that domination acts both by subjecting the will of the powerless and by shaping their interests and beliefs. In the last section (3.4) of the Chapter we will see the incidence that resources and legal and social structures have in the imbalance of power that is constitutive of domination. There we will note that even Pettit's account, which attempts to explain domination by explaining its exercise, cannot entirely disregard the resources and structures that give the powerful a dominating power.

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<sup>7</sup> *ibid* 109.

<sup>8</sup> It is safe to say that almost all accounts of domination understand domination as a *wrong*. However, the fact that we understand domination as a wrong does not prevent its non-normative conceptualization.

### 3. The domain of domination

#### 3.1. A comprehensive conceptualization of domination

How to conceptualize domination? The cases we identify as instances of domination depend on how one conceptualizes domination, which makes this a significant question. A *narrow* understanding of domination is blind to many instances in which domination is deployed. A *comprehensive* understanding of domination, instead, is able to see all these instances of domination. Such an understanding, however, cannot rely on a non-normative conceptualization of domination; nor can its main task be to attribute individual responsibility.

As I stated in the introduction to the thesis (Chapter 1, section 4.2.1), in general, the mainstream liberal tradition, for many reasons, tends to be blind to domination. Still within the liberal tradition but departing from the mainstream, *neo-republicans* have been engaged in developing another understanding of freedom. Instead of freedom as non-interference, they propose a conceptualization of freedom *as non-domination*. In their view, this conceptualization of freedom is better because it can make sense of two important and common situations that freedom as non-interference cannot. Firstly, it can make sense of all the cases of *legitimate* interferences. As we know, freedom must have limits to be valuable. Unlike freedom as non-interference, freedom as non-domination accepts interferences when they are not *arbitrary* interferences. In the second place, freedom as non-domination can make sense of the cases where there is no interference but someone's freedom still is affected, as would be the case of a benevolent dictator that does not interfere in individuals' actions. The reason is that for neo-republicanism, domination involves not only *actual* arbitrary interferences but also the *capacity* to interfere arbitrarily in another's freedom<sup>9</sup>.

One might think that neo-republicanism may provide an account of domination capable of explaining the dominating power that an unequal distribution of

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<sup>9</sup> We will see in section 3.4.2 of this chapter that it seems that Pettit has recanted from this idea in his last two books.

private property, and particularly capitalist property, gives to owners. If this were the case, neo-republicans would provide the conceptual framework of the second part of the thesis. The problem, however, is that Philipp Pettit's account of domination, which represents the most fully articulated neo-republican account of freedom as non-domination, does not offer the tools for a sharp critique of *private* domination<sup>10</sup>. It is striking that even when the master-slave relation is the paradigmatic image that neo-republicanism uses to explain domination, neither Pettit nor neo-republicans has made a systematic application of the idea of non-domination to the private sphere, much less to the way that capitalist property operates as a dominating power. Likewise, Quentin Skinner concedes, neo-republicanism "have little to say about the dimensions of freedom and oppression inherent in such institutions as the family or the *labour market*"<sup>11</sup>. This is certainly problematic for neo-republicanism, which explicitly attempts to explain both public domination (*imperium*) and private domination (*dominus*). Neo-republicanism is an approach that claims to provide not only the basis for a legitimate form of rule but also the basis for social justice.

There are, at least, two reasons that explain why Pettit's account does not offer the necessary means to grasp the phenomenon of private domination. In the first place, there is Pettit's *non-evaluative conceptualization* of domination<sup>12</sup>. According to Pettit, freedom as non-domination is a term that has "a perfectly descriptive, determinable meaning, and people can agree on when it applies and when it does not apply, independently of differences in the values they espouse; it is not a value-dependent or moralized term"<sup>13</sup>. Put differently, in Pettit's account to say that some interaction is a case of domination involves a

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<sup>10</sup> According to Pettit, there is a relation of domination when *someone has the capacity to interfere in other's choices on an arbitrary basis*. Philip Pettit, *Republicanism: a Theory of Freedom and Government* (Oxford University Press 1997) 52.

<sup>11</sup> Quentin Skinner, *Liberty Before Liberalism* (Cambridge University Press 2012) 17 (emphasis added).

<sup>12</sup> Note that by saying that domination demands interference on an *arbitrary basis* Pettit is understanding domination as a *wrong*. However, in Pettit's account arbitrariness is not conceptualized in evaluative terms.

<sup>13</sup> Philippe Pettit *On the People's Terms* (Cambridge University Press 2012) 58.

*factual claim*, not a normative one. It is true that Pettit's account of private domination provides a non-evaluative conceptualization of domination, in the specific sense that in order to identify private domination one does not need to make use of evaluative terms. However, Pettit cannot claim that his account is neutral; his account is predicated upon a normative stance<sup>14</sup>; a stance that dismisses as instances of domination all cases that a purely descriptive account cannot see. We will see that Pettit's non-evaluative conceptualization of freedom as non-domination limits his capacity to view both *unfair offers* (i.e. exploitation) and the way that domination acts *subvertly*, by shaping the interests of the dominated.

The second reason Pettit's account falls short in understanding the phenomenon of domination is related to the fact that his account is guided by the idea of individual responsibility. According to Pettit "a dominating party will always be an agent – it cannot just be a system or a network or whatever"<sup>15</sup>. This is why, for example, Pettit claims that domination "always has to be more or less *intentional* in character: it cannot occur by accident"<sup>16</sup>. Domination, then, is an action performed by agents who can be held individually responsible. For this reason, the fact that I take advantage of your unjust background conditions, for which I am not *responsible*, to exploit you, disqualifies our relation as an instance of domination. It is for this same reason that Pettit's account does not comprise *structural domination* as a case of domination.

My claim is that Pettit offers a *narrow* understanding of private domination. Given his starting points (i.e. a non-evaluative conceptualization of domination together with the focus on the attribution of individual responsibility), his

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<sup>14</sup> I think it is important to make the following distinction: a concept like domination (or exploitation) can be conceptualized without reference to evaluative terms. However, this does not mean that such conceptualization is neutral in the sense that it does not involve an ethical or political position. A similar (but not the same) idea is defended by Ian Carter in "Value-Freeness and Value-Neutrality in the Analysis of Political Concepts", in David Sobel, Peter Vallentyne, and Steven Wall (eds) *Oxford Studies in Political Philosophy* Volume 1 (Oxford University Press 2015).

<sup>15</sup> Pettit (n 10) 52, emphasis added.

<sup>16</sup> *ibid.*

understanding of domination is only able to see *direct* and *overt* domination, that is, mainly the cases in which one individual overtly coerces the will of another. What Pettit understands as domination is only what can be observed and does not demand a controversial judgment. As a result, Pettit's neo-republican account of domination fails to explain the other dimensions in which domination is deployed. And without them Pettit's account poses no challenge to the current economic order.

Here I do not aim to provide a full account of domination. Rather, I offer the main tenets of a *comprehensive* account of domination to comprise an account that can make sense of the cases that Pettit and neo-republicanism ignore. Hence, in the next sections we will see that exploitation can be understood as an instance of domination (3.2); that domination is deployed not only overtly, by subordinating the will of another, but also subvertly by shaping her interests and beliefs so there is no need to subject her will (3.3). Finally, we will see the role that resources and structures have in relations of domination. There I will claim that resources and structures give to some not only the capacity to dominate others, but also may create instances of what can be called *structural domination* (3.4).

## **3.2. Constraint of choices and dependence relations**

### **3.2.1. Threats and offers**

There are, at least, two important ways to conceptualize domination when power over is deployed *overtly*, by *subjecting the will* of the powerless to the powerful.

Representing the first view, Pettit contends that an act only entails domination when it interferes in the choices of another, *worsening another's actual situation*. "Interference cannot take the form of a bribe or a reward; when I interfere I make things *worse for you*, not better", Pettit claims<sup>17</sup>. This means that, for Pettit, an interference in another's freedom has to constrain choices, not expand them. This fits perfectly in an account that aims to conceptualize *public* domination.

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<sup>17</sup> *ibid.*

The state and the government typically acts by constraining the available choices of individuals through sanctions. Thus, for example, after the enactment of a rule that criminalizes collusion, although the prior choice to collude is still available, it is not a good choice anymore because of the criminal sanction. Public power, in a significant way, constrains individual choices by making some options ineligible or unattractive.

Pettit's requirement that an act of interference has to worsen another situation, allows us to grasp the phenomenon of private domination only when individuals dominate either by *coercing* the body or the will of others (that is, by *threatening*). Even though Pettit mainly resorts to coercion of the will to explain domination, he never defines precisely what he understands by coercion. It is clear, however, that Pettit understands coercion in the *classical* sense, which relies on a non-evaluative conceptualization: as an act that intentionally changes the range of actions or choices available to another, making her considerably worse off than she would have been according to the *status quo situation prior the action*<sup>18</sup>.

This means that coercion of the will (i.e. threats) constrains choices because it changes the range of choices that are already opened to another, making some of them ineligible or unattractive. So, for example, imagine that I am a prisoner and you the police. You say to me that I have to confess otherwise you will torture me. As we can see, although the best option for me is not to confess,

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<sup>18</sup> Alexander Zimmerman, "Coercive Wage Offers" (1981) 10 *Philosophy & Public Affairs* 121, 133. What I call the "heterodox" approach to coercion relies on *evaluative considerations*: coercion is an act that intentionally changes the range of actions or choices available to another, making her considerably worse off than she would have been according to some *moral baseline*. The difference between what I call the classical and the heterodox approach to coercion is depicted by Nozick in the following example: imagine that A comes upon B, who is drowning. A proposes to rescue B if B agrees to pay A the amount of \$10,000. If the baseline is the status quo (B is drowning), A's proposal benefits B and, therefore is non-coercive. However, if we compare A's proposal with a *moral baseline* in which there is a moral duty to help others in need, the proposal is coercive. Robert Nozick *Socratic Puzzles* (Harvard University Press 1997) 26-27. According to the classical approach to coercion, offers can be coercive only to the extent that she who is offering is at the same time responsible for the bad circumstances of the offeree: if was A who pushed B into the water, then his proposal can be understood as coercive.

your threat (to torture me) interferes with my choices, leading me to confess. But Pettit also asserts that threats do not need to involve a clearly wrongful act, like torture<sup>19</sup>. Thus, imagine the same case, but now you are a prosecutor and you tell me that only if I confess, will you pursue a low jail sentence. Although the prosecutor is acting within her rights, she is still threatening me.

In this regard, it is important to note that, from this point of view, *exploitative transactions* -which I broadly define as transactions that although *non-coercive*, one party takes an *unfair* advantage of the other party's vulnerability<sup>20</sup>- are not an instance of domination. The reason is that *exploitative transactions* are the outcome of *exploitative offers*, and *offers* never entail domination because they *expand choices*. Being this the case, capitalists owners make *wage-offers* to individuals and therefore, they do not dominate workers: capitalist owners do not restrain individuals' freedom of choice but rather expand it by offering wages for their work, even though those wages may be so low that workers remain impoverished. The same applies to any other offer, no matter how *exploitative* it may be, and even in cases in which others are forced to accept such offers because they do not have any other *real choice*<sup>21</sup>. Thus, for example, imagine that I am in the middle of the desert dying of thirst and you offer to rescue me but only if I give you all the money I own. Or, imagine that I am poor and I am starving and you offer to give me some money if I have sex with you or I give you my kidney. Or consider that I am a woman without economic independence (in my culture women neither study a for career nor work outside the home because they take care of children and the household) and you, my future husband, offers me some of your money but only if I obey you. All these cases cannot be understood as instances of domination to the extent

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<sup>19</sup> Pettit (n 10) 54.

<sup>20</sup> See below Chapter 6, section 2.

<sup>21</sup> In *On the People's Terms* Pettit explicitly (but also briefly) dismisses these kind of cases as cases of interference in another's freedom by saying that "strictly" *exploitative offers* does not reduce freedom, although an offer "may establish a relationship between us, as exploitation is generally taken to do, in which I dominate you". Pettit (n 13) 54, on footnote 31.

that the offers that are made expand others' choices, regardless of how *unfair* they may be.

Importantly for my topic, Pettit contends that an unequal distribution of private property, when *not intended*, is never a source of domination<sup>22</sup>. According to Pettit, if unequal distributions of private property are the outcome of unintended decisions of many individuals, they cannot be seen as an obstruction to others' freedom. Since the private property distribution would be *unintentional*, the obstacles private property entail for the dispossessed would not mean an interference in their freedom. The hindrances that capitalist property places on non-owners' choice such as compelling them to labour in exchange for (extremely low) wages would not compromise their freedom.

One would think, however, that even if the unequal distribution of private property were not intentional, it is problematic when it gives an unequal bargaining power that forces other people to choose and do things that they otherwise would not do. For Pettit, however, this is not a problem: a different bargaining power in the market is not a source of domination. The reason is that market exchanges are the outcome of *offers*. *Offers*, Pettit explains, expand choices; only threats constrain them. Indeed, Pettit thinks that market offers, which lead to market exchanges, *reward* people for choosing options they already have. Suppose, Pettit says, that

as things stand you have the option of choosing any of three options: A, B, or C. Suppose also that someone offers you a *reward* for doing A – an offer to pay you something, for example, in return for doing A. I assume that whereas an option changes if it is associated with a prospective penalty, or indeed reward, it will not change just in virtue of the addition of an extra option to the set in which it appears as a member. What the party will do in making an offer to reward the choice of A, then, is reveal that you actually have four options: the

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<sup>22</sup> In "Freedom in the Market", Pettit argues that an unequal distribution of private property when is not *intended*, is not inimical to freedom as such. An unequal distribution, Pettit says, "like the natural environment, it will certainly affect the range or the ease with which people enjoy their status as undominated agents, and it may warrant complaint on that account, but it will not itself be a source of domination. It will not be a *source of domination* so far as it is the cumulative, *unintended effect* of people's mutual adjustments". Philip Pettit, "Freedom in the Market" (2006) 5 *Politics, Philosophy and Economics* 131, 139.

existing options, A, B, and C, and a new option, A-plus (that is, A together with the reward)<sup>23</sup>.

The ideal way in which Pettit views market exchanges is remarkable. It is difficult to contend that market offers are *rewards* that give people a reason for doing something that for them is *already an option* even without the reward. On the one hand, market offers are better conceptualized as *compensations*. Following the aforementioned examples of exploitative offers, we can say that monetary offers are not a reward for having sex with you, for giving you my kidney or for working for you, but rather a compensation for something that I would not otherwise do if I were not starving and therefore not dependent on you. On the other hand, all those actions are not options which were available for me before your offer. In these examples, I only have the option to starve (we can label this option as "B") or to beg money (we can label this option as "C"); having sex with you, giving you my kidney or working for you is not an option (we can label this option as "A"). Those options only appear to me when you offer me an (exploitative) exchange. As we saw in Chapter 2, private property imposes limits on non-owners' freedom to act: if I do not own some means of production, I cannot independently choose to labour by using others' ownership. Somebody has to give me the opportunity to do that.

### 3.2.2. Relations of dependence

According to a second type of approach, what is crucial for there to be domination is a *dependence relation*. Thus, what is most important for these accounts is not the way domination is exerted, but rather the fact that someone is dependent on another.

According to Pamela Pansardi, *power over* is a particular kind of social exchange, characterized by a differential in the distribution of social resources (for example, violence, economic resources or symbolic resources)<sup>24</sup>. *Domination* is an extreme situation of a *power over* relation, where there is unilateral

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<sup>23</sup> *ibid* 143.

<sup>24</sup> Pamela Pansardi (2013) "A Non-Normative Theory of Power and Domination" (2013) 16 *Critical Review of International Social and Political Philosophy* 614, 618.

dependence, because one party possesses all the resources that are salient for others, and the others possess no salient resources. Given this understanding of domination, in Pansardi's account, "dominating power does not necessarily take the form of the infliction of negative sanctions; it can also be, and probably more often is, exercised through the use of *positive sanctions*"<sup>25</sup>. Take the case, she says, "in which I offer a considerable amount of money to an individual who is starving to death, on the condition that she kills my enemy. In such a case, I make her situation better, not worse ... in the sense that I am giving her additional options without removing any. Nonetheless I am exercising power over her in the sense that I am driving a very hard bargain"<sup>26</sup>. For Pansardi, the structural difference between threats and offers is irrelevant for the existence of domination, provided there is a stable relation of unilateral dependence.

Frank Lovett follows a similar path in this matter. He also argues that what is central for an account of domination is the existence of a dependency relation. This is why, provided "we recognize that *threats and offers both count as genuine instruments of exercising power over another*, it will usually not be important to determine which has been employed in a particular case"<sup>27</sup>. For this reason, Lovett says, few people would object that "Walmart exercises tremendous market power over its product suppliers merely because it issues what are technically offers (not threats) to buy from them only at very low prices"<sup>28</sup>. For Lovett *social power* is deployed either by influencing choices or by raising or lowering the costs and benefits attached to choices. In the latter case, Lovett says, both threats and offers are useful as means to raise or lower the cost and benefits of the different options involved in a choice<sup>29</sup>.

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<sup>25</sup> *ibid* 626, emphasis added.

<sup>26</sup> *ibid* 626.

<sup>27</sup> Frank Lovett *Domination and Justice* (Oxford University Press 2010) 77.

<sup>28</sup> *ibid*.

<sup>29</sup> *ibid* 78.

Lately, some voices have emerged that show republicanism has much more to say about capitalist economy, and especially, regarding wage labour<sup>30</sup>. They have made a powerful critique of neo-republicanism's silence on that issue, considering that "the master slave dialectic lies at the heart, not to mention the birth, of republican thought"<sup>31</sup>. According to Alex Gourevitch, wage labour is not *free labour* because it involves domination. In the current capitalist articulation of private property, Gourevitch says, individuals are dependent on capitalist owners in order to survive. For Gourevitch this structural domination is nonetheless intentional domination because owners "*intend* that property rights be respected even if the overall distribution of control over productive assets means that some will be forced to sell their labor to others"<sup>32</sup>.

These three accounts are interesting for they do not consider coercion as the only way domination unfolds: either they explicitly assert that offers can also be a way domination is deployed, or they contend, as Gourevitch, that someone's dependence on another's will is the only relevant feature of domination, provided it is intentional. However, I will not rely on these views to claim that capitalist owners have a dominating power even when they do not coerce those whom they subjugate, because none of these accounts is completely satisfactory. Pansardi, who aims to offer a non-evaluative account of domination, cannot explain the cases in which *power over* is exerted in the interest of the powerless agent. This is why, ultimately, she has to say that parenting "does, on my view, represent a case of dominating power, although one that is commonly exercised in the interests of the child"<sup>33</sup>. Although Pansardi differentiates power over from domination, it seems that domination

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<sup>30</sup> Alex Gourevitch "Labor and Republican Liberty" (2011) 18 *Constellations* 431; Alex Gourevitch "Labor Republicanism and the Transformation of Work" (2013) 41 *Political Theory* 591. Also making a critique of neo-republican's oblivion of wage labour, but providing a more historical view, Geoff Kennedy "Freemen, Free Labor, and Republican Discourses of Liberty in Early Modern England" (2013) 8 *Contributions to the History of Concepts* 25; Geoff Kennedy, "Digger Radicalism and Agrarian Capitalism" (2006) 14 *Historical Materialism* 113.

<sup>31</sup> Gourevitch "Labor and Republican Liberty" (n 30) 431.

<sup>32</sup> Gourevitch "Labor Republicanism and the Transformation of Work" (n 30) 602.

<sup>33</sup> Pansardi (n 24) 620.

is not always wrong: there can be good domination and bad domination. Like Pettit's, Lovett's account also offers a narrow conceptualization of domination. For Lovett there is domination within a relation of dependence when social power is exerted arbitrarily, and this is the case when "its potential exercise is not *externally constrained* by effective rules, procedures, or goals that are common knowledge to all persons or groups concerned"<sup>34</sup>. As long as Lovett thinks these external constraints do not need to resort to the interests of those over whom domination is exerted<sup>35</sup>, it is possible to say that it does not matter how arbitrariness is constrained provided it is constrained in some way. Finally, although appealing, Gourevitch's account is too concerned with tracking the historical roots of the free labour claim, when the importance of free labour can be better explained, I think, by arguing that wage labour involves exploitation. Exploitation shows that even though workers produce all that has value, they are deprived of the freedom to control the production that they collectively create.

In the next section I will explain, against Pettit's understanding, why exploitative offers (and therefore, exploitative transactions) can be understood as an instance of domination.

### **3.2.3. Unfair offers as an instance of domination**

Although it is not possible to ignore the existence of a structural difference between threats and offers it is important to ask: is this structural difference *normatively relevant* in the case of *exploitative offers*? Consider the following situations:

- I am in the middle of the desert dying of thirst and you offer to rescue me but only if I give you all the money I own. (offer)
- I am poor and I am starving and you offer to give me some money if I have sex with you first. (offer)
- We are low skilled workers and you, the owner of Nike propose that we work for you in exchange for a wage that falls below the minimum (offer)

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<sup>34</sup> Lovett (n 27) 96.

<sup>35</sup> *ibid* 114.

- I am your wife and, according to legal rules, you have to authorize me first if I want to buy anything. You only authorize me to buy if I buy what you want me to buy. For example, you only authorize me to buy clothing you like me to wear. (offer)
- I am your daughter and I want to go to university, but I do not have any money to pay for it. You are my father and you tell me that you will pay for my studies but only if I study law, which I hate. (offer)
- I am your wife and you tell me that you will beat me if I do not do the housework. (threat)
- I am a worker and you are my employer. You tell me that you will fire me if I do not work overtime. (threat)
- I am a prisoner and you the police. You say to me that I have to confess, otherwise you will torture me. (threat)

As we can see, in all these cases dismissing either your exploitative offer or your threat would affect my interests. Although I am not physically constrained to act the way you want, in both kind of cases there seems to be no reasonable choice other than to accept your offer or your threat. For example, dismissing your offer to rescue me or your wage-offer will lead me to die or starve; rejecting your offer to authorize me to buy what you want or your offer to pay a law career will prevent me from buying or studying anything at all. The consequence of ignoring your threats, on the other hand, is that I will be beaten, tortured or fired. In both types of cases (exploitative offers and threats), as we can see, I am *forced* to choose what you want me to choose, because *I do not have other better choices*. From the point of view of the *effects* on my choice, in both cases I am forced to choose the way you want.

Certainly, in the case of threats, you are directly responsible for my situation. It is because of your threat that the option I would like to choose is no longer eligible. The fact that you will beat me, torture me, fire me, punish me, is what makes me choose what you want me to choose. In the case of exploitative offers, this is only partially true. You are not directly responsible for the unfortunate situation in which I find myself: that I am isolated in the desert, that I have no money, that I have no means of production, that I have no right to buy anything without your authorization. Here I have no better choices not because of your

offer, but rather because of the bad circumstances in which I find myself. In these situations what makes me obey you are not threats, but the fact that *I depend on you for satisfying my needs*<sup>36</sup>.

However, the fact that I depend on you is not enough to say that I am forced to obey you, or, in other words, that I am subordinate to your will. The reason is that the offer you make me could be fair. This is why I have claimed that offers and transactions are instances of domination when they are *unfair*, and therefore, *exploitative*. Consequently, domination demands not only dependence, but also unfairness. Only when your offer is unfair can I claim that you dominate me: I am subject to your will because I act for reasons that *are not independent of your power over me*. Even if I depend on you, if your offer is fair, I would not be acting for reasons related to your power, but rather for the fairness of your offer. When you make me an unfair offer, instead, I cannot claim that the reasons for accepting your offer are independent of your power over me, and therefore, of your will.

The point, to conclude, is that the structural difference between threats and offers is not sufficiently relevant as to discard *unfair offers* as instances of domination. The reason is that even if your exploitative offer enlarges my set of choices, my voluntariness is still undermined: the unfairness of your offer causes me to act and choose by subordinating my will to yours. From the point of view of comprehensive conceptualization of domination, what is normatively relevant is to be subject to another's will. In this view, there can be domination

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<sup>36</sup> This is, in fact, the way that Frederick Neuhouser describes Rousseau's understanding of freedom as non-domination. According to Neuhouser "what typically compels my actual obedience of another for Rousseau is not physical force or threatened penalties but my needing the cooperation of someone who is in a more advantaged position than I am... This suggests that the type of domination that interests Rousseau involves obeying a foreign will in a more robust sense than when one is coerced to obey by physical force or the threat of punishment...

When one is dominated in the way the Second Discourse is most concerned with, *one is motivated to obey others not by force or threats but by the prospect of finding one's needs unsatisfied*". Frederick Neuhouser, "Rousseau's Critique of Economic Inequality" (2013) 41 *Philosophy & Public Affairs* 193, 203-204.

without threat, that is, without coercion, because domination is a broader phenomenon than coercion.

It is true that unlike threats, domination requires offers to be *unfair*. This introduces a certain complexity because offers entail domination only when they are unfair and they are unfair when they do not accord with a *baseline*. Even if it may be difficult to draw a line between unfair and fair offers, it is conceptually possible. In the next chapter we will see different baselines that the literature has provided to identify the unfairness of offers, and therefore, exploitative exchanges.

### 3.3. Shaping the real interests of the powerless

Domination is deployed not only by constraining the will of the powerless through threats and exploitative offers, but also *by shaping their interests and beliefs*. In this case there is no constraint on their will, but domination is still restricting their choices by narrowing the set of actions and choices that appear as possible to them. Although Pettit does recognize *manipulation* as another kind of interference in addition to coercion, he does not develop what manipulation involves and how it unfolds. Moreover, as he departs from views that take into account the *real interests* of individuals<sup>37</sup>, Pettit cannot but ignore all the cases in which people adapt their beliefs and interests to subjection. Pettit's account, then, cannot recognize the cases in which domination acts *subvertly*, not through coercion but by framing others' choices.

In this section, I will develop this important way in which domination is deployed: not by threats or force but by making others choose as the powerful

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<sup>37</sup> In his seminal book *Republicanism*, Pettit does use the idea of interests. There, an interference is arbitrary if "it is chosen or rejected without reference to the interests, or the opinions, of those affected". Pettit (n 10) 55. Pettit would claim latter that what makes an act of interference in the *private sphere* non-arbitrary is the "fact that it is forced to track the *avowal-ready* interests of that particular person". Philip Pettit, "The Determinacy of Republican Policy: A Reply to McMahon" (2006) 33 *Philosophy & Public Affairs* 275, 280. The avowal-ready interests are the *conscious* interests of the interferee, or in other words, her *actual* interests. This means that the *real* interests of the affected person are not relevant in Pettit's account of private domination. In his latest books, Pettit has discarded any reference to *interests* in order to conceptualize the idea of arbitrary interference. He now talks of *uncontrolled* interference.

would like them to choose. In showing this I will explain Lukes' contribution to a significant debate regarding the social power individuals or groups may have in political decisions<sup>38</sup>. This debate gave rise to what today is known as the *three dimensions or faces of power*. This discussion will be relevant later, in Chapter 7, (a) to underscore capitalist owners' vast political power, which makes them a power elite and (b) to claim that neoliberalism's *hegemony* is the result of the deployment of power in its third dimension.

Here, however, by explaining this debate I aim to show that power is not only exerted *overtly*, subjecting the will of the powerless to the will of the powerful, but that it also can be exerted *subvertly*, by influencing and determining the interests of the powerless against their real interests. In other words, power also operates by shaping the interests of the powerless so their choices conform to the interests of the powerful. This is probably the most effective way domination acts. By shaping the interests of the powerless, they become blind to their own domination, allowing the powerful to perpetuate themselves in their powerful position.

### **3.3.1. The three dimensions of power**

The debate known as the "three dimensions of power" begins with Robert Dahl's critique of C. Wright Mills' book *The Power Elite*<sup>39</sup>, in which he contended that all political decisions in the United States were controlled by a small group of 400 people sharing a common culture. After empirical research in New Haven, Robert Dahl concludes, instead, that *power was dispersed among different and competing elite groups*<sup>40</sup>. We will see in Chapter 7 that Dahl's contention meant to say that capitalist owners had no privileged position in the political sphere.

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<sup>38</sup> It is worth to note that all of them, implicitly or explicitly, are talking about power over in its negative dimension.

<sup>39</sup> C. Wright Mills *The Power Elite* (Oxford University Press 1956).

<sup>40</sup> Robert Dahl, *Who Governs?: Democracy and Power in an American City* (Yale University Press 2005).

Dahl reaches this *pluralist* conclusion by using both a conceptualization and an approach to power that later will be called the *one-dimensional view of power*. According to Dahl, “A has power over B to the extent that he can get B to do something that B would not otherwise do”<sup>41</sup>. Additionally, the approach to this conceptualization of power is centred on the study of who participates and then prevails in a conflict of interests and preferences in a decision-making process<sup>42</sup>. Consequently, this view of power relies on the concrete and observable behaviour of individuals.

The problem with this one-dimensional view is that it focuses exclusively on overt conflicts. Inaction or non-participation is not considered because it would not be relevant to identify political power. The *two-dimensional view of power*, correctly grasps part of the explanatory *deficit* of the one-dimensional view of power: it only captures power when exerted in overt conflicts, whereas political power often consists in constraining the scope of decision-making. “Power may be, and often is, exercised by confining the scope of decision-making to relatively 'safe' issues”, Peter Bachrach and Morton Baratz affirm<sup>43</sup>. For these authors, the problem is that the one-dimensional view only sees the surface of conflicts. And if one looks only at the surface, specifically, the decision-making process, one may miss something: all the other conflicts that the powerful excludes from political consideration.

Hence, power over others is exerted not only when someone prevails against another in an overt conflict, but also when some issues are excluded from consideration in a decision-making process. According to Bachrach and Baratz, when power “effectively prevent certain grievances from developing into full-fledged issues which call for decisions, it can be said that a non-decision-

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<sup>41</sup> Robert Dahl “The Concept of Power” (1957) 2 *Behavioral Science* 201, 203. Notice here Dahl’s broad conceptualization of *power over*, which includes both threats and offers.

<sup>42</sup> *ibid.*

<sup>43</sup> Peter Bachrach and Morton Baratz, “The Two Faces of Power” (1962) 56 *The American Political Science Review* 947, 948.

making situation exists"<sup>44</sup>. For this reason, Bachrach and Baratz argue that an analysis of power has to examine both the decision-making and non-decision-making processes; or, in other words, the agenda setting process.

As we can see, the two dimensional view of power still focuses on behaviour and on actual, observable conflicts. This is, in fact, one of the main claims made by Bachrach and Baratz: their approach to power still allows observation because its focus is the *non decision-making process*, which they contend is different than the analysis of a merely *non-decision*, precisely because unlike the latter, the former is still subject to observation and analysis<sup>45</sup>. The problem of this two-dimensional view of power is that by focusing exclusively on behaviour and observable conflicts, it ignores how power shapes interests, how power influences the process of interest formation. Both the first and second dimensions of power still assume that individuals are aware of their real interests. However, according to Lukes' *three-dimensional view*, power is also involved in situations where there is no conflict, or the conflict is *latent* precisely because the interests of the powerless have been shaped, determined, influenced or transformed<sup>46</sup>. The point is that power can also act by shaping the interests of the powerless in order so they do not conflict with the interests of the powerful<sup>47</sup>. This is why, in Lukes' conceptualization of power, "A exercises power over B when A affects B in a manner contrary to B's interest"<sup>48</sup>.

Lukes' idea of interest cannot be equated with individual preferences or desires, nor with an individual's *actual* interests. Indeed, Lukes' point is precisely that a proper conceptualization of power as domination must understand individuals' interests as "what men would want and prefer, were they able to

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<sup>44</sup> Peter Bachrach and Morton Baratz, "Decisions and Non-Decisions: an Analytical Framework" (1963) 57 *The American Political Science Review* 632, 641.

<sup>45</sup> *ibid.*

<sup>46</sup> A conflict is latent when there would be a conflict of interests if the powerless were aware about their real interests. A latent conflict, then, is a conflict between the real interests of the powerless and the interests of the powerful.

<sup>47</sup> In an important sense, Lukes view of power is influenced by Gramsci's concept of hegemony. Gramsci's idea in turn resembles to the Marxist idea of ideology.

<sup>48</sup> Lukes (n 6) 30.

make the choice<sup>49</sup>. Lukes' idea, therefore, is that domination is better conceptualized as a power to affect the *real interest* of individuals. Of course, to determine in a particular situation which are the real interests of individuals or what would be required for them to live according to the dictates of their nature and judgment, is a controversial issue; an issue that demands evaluative judgments.

### **3.3.2. The Appalachian community and the three dimensions of power**

The importance of distinguishing these three dimensions of power in order to provide a conceptualization of the phenomenon of domination cannot be overstated. Here, employing John Gaventa's case study of the Appalachian Valley community, I shall illustrate this relevance.

In his book *Power and Powerlessness*, Gaventa studies the case of an extremely poor community in the Appalachian Valley. He describes it as

rich in natural resources, especially coal, yet its people remain poor: estimates here suggested that up to 70 per cent of the families remained below the poverty line, while up to 30 per cent were unemployed. Though the Valley is endowed with land abundant for its several thousand residents, the people are landless: some 75 per cent of the land-over 60,000 acres-is owned and controlled by a single corporate owner, the American Association, Ltd., a British company, controlled (at the time) by Sir Denys Lawson, a former Lord Mayor of London and one of Britain's wealthiest men<sup>50</sup>.

Moreover, Gaventa explains that in the Appalachian Valley most people work for the American Association Company, as coal miners, in very poor conditions. There they risk not only their health but also their lives, he explains.

What caught Gaventa's attention was the quiescence of this community; its passivity. The inequalities of Appalachian Valley did not seem to provoke any challenge within the community. Was there, therefore, no issue of power in the Appalachian Valley? Was the Appalachian Valley poor community's quiescence an indication that they had no grievances?

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<sup>49</sup> *ibid* 37-38.

<sup>50</sup> John Gaventa, *Power and Powerlessness* (Clarendon Press 1980) v-vi.

Different answers can be given depending on what dimension of power we use. According to the one-dimensional view of power, for example, there would be no situation of domination in Appalachian Valley. For this dimension of power, the American Association Company does not wield any power over the poor community. The reason is that in the absence of an overt conflict there is no behaviour to be analysed. Does the second dimension of power encompass the situation of the Appalachian Valley? The answer is negative, as well. The problem with the second dimension is that in the poor community of Appalachian Valley there is no overt conflict or even a suppressed conflict. It is not that the poor community's grievances are prevented from being voiced: the Appalachian community seems to have no grievances at all. Indeed, there seem to be certain consent regarding the status quo. Hence, for the second dimension of power, there would be no power situation. The poor community of Appalachian Valley would not be powerless *vis a vis* the American Association Company.

It is only through the third dimension of power that we can see the domination entrenched in this Appalachian community. What happens is that this community has internalized the subjugation to which it is subjected. According to the third dimension of power, power not only can prevent grievances from being voiced but also can prevent people from *having grievances*. This is, in fact, according to Lukes, a much more effective way in which the powerful wield their power over others. It is difficult to ignore that the representation of our own preferences and interests provides the basis for our actions, and, consequently, their self-misrepresentation makes it difficult either to get out from an unjust situation or even to challenge it.

### **3.3.3. Actual interests and real interests**

None of these three views of power can identify power straightforwardly because *power has a counterfactual nature*<sup>51</sup>. These means that the three views of

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<sup>51</sup> Mark Haugaard, "Concerted Power Over" (2015) 22 *Constellations* 147, 148.

power need to posit a counterfactual to identify what the powerless would have done if the powerful had not exerted power over them.

The first and second dimensional views of power articulate the relevant counterfactual –what the powerless would have otherwise done– by looking to the *revealed* preferences and interests of the powerless<sup>52</sup>. The third dimensional view, instead, refuses to accept the revealed or actual interests of the powerless as the only relevant criteria for assessing power. The reason is that power has a third face: it shapes the perceptions of persons' *real* interests<sup>53</sup>.

Today, Lukes' idea of "real interests" as opposed to "actual interests" is not entirely novel to philosophy and social sciences. Indeed, it is close to the idea of *adaptive preferences* raised by Marta Nussbaum and Amartya Sen in the context of their critique of utilitarianism. Such an idea arose from their empirical work in India, which showed that men and women tend to adapt themselves even to extreme forms of injustice, and through this adaptation, "discontent is replaced by acceptance, hopeless rebellion by conformist quiet, and – most relevantly in the present context – suffering and anger by cheerful endurance"<sup>54</sup>. Nussbaum's and Sen's basic point is that the phenomenon of adaptive preferences makes preference-based approaches problematic, to the extent that they do not have any critical perspective of the subjective preferences on which they rely. Preference-based approaches, as the name suggests, rely on the preferences that underlie individuals' choices. The problem, both Nussbaum and Sen contend, is that preferences are not static but rather adaptive to social circumstances.

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<sup>52</sup> Although the second dimension of power has a broader view of interests, it still considers that they are always consciously articulated by individuals.

<sup>53</sup> Lukes' notion of real interests aims neither to state *once and for all* which are the interests of individuals nor to provide a decontextualized attribution of them. On the contrary, according to Lukes, real interests are to be seen as "a function of one's explanatory framework, which in turn has to be justified. There is no reason to believe that there exists a canonical set of such interests that will constitute the 'last word on the matter'". Lukes (n 6) 148.

<sup>54</sup> Amartya Sen, *Resources, Values and Development* (Basil Blackwell 1984) 309.

In the light of this context, Lukes' idea of real interests, today, more than forty years after he introduced it, is not alien to political philosophy. Indeed, the idea that preference satisfaction does not suffice for freedom seems to be what made Isaiah Berlin change his conceptualization of negative freedom, which in 1958 was "the absence of obstacles to the fulfilment of a man's *desires*"<sup>55</sup>. It is interesting to note that Berlin overtly recognizes in the introduction of the new version of *Two Concepts of Liberty*, in 1969, that such conceptualization was wrong since "if degrees of freedom were a function of the satisfaction of desires, I could increase freedom as effectively by eliminating desires as by satisfying them: I could render men (including myself) free by conditioning them into losing the original desires which I have decided not to satisfy"<sup>56</sup>. In this view, the image of a contented slave, who thinks she is free because she never desires what she cannot get, is not an image of freedom. Rather, "[t]here is a clear sense in which to teach a man that, if he cannot get what he wants, he must learn to want only what he can get, may contribute to his happiness or his security; but it will not increase his civil or political freedom"<sup>57</sup>.

### **3.3.4. The limits of empirical observation**

As we saw, both the first and the second dimensional view of power base their counterfactual on the *actual interests* of the powerless because both views conceptualize power in a *purely* empirical way. This is why the question of what the powerless would have otherwise done if the powerful had not exerted their power over them is answered in these views by looking either at individuals' behaviour or their reported interests. Indeed, the point is stronger: both views contend that power can be properly conceptualized by *exclusively* relying on empirical observation, and therefore, on non-evaluative judgments. This is the same approach espoused by Pettit: as I said earlier, Pettit aims to avoid an evaluative conceptualization of domination and for that reason, he rejects any idea of real interests as part of it.

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<sup>55</sup> Isaiah Berlin, *Liberty* (Oxford University Press 1969) 30.

<sup>56</sup> *ibid* 31.

<sup>57</sup> *ibid* 32.

This, which one might call a *meta-idea* about domination, cannot be sustained. The reason is that in order to claim that power can be conceptualized by *exclusively* relying on empirical observation both views of power need to make the following contention: that individuals are always aware of their interests or that they are never mistaken about them. However, this contention is not empirical, but rather a normative stance. In other words, the claim that power can be conceptualized exclusively through empirical observation is based on a normative position, which is also a polemic position, insofar as it leads to the claim that power is involved only in contexts where there is a conflict of manifest preferences or revealed interests<sup>58</sup>.

The first and the second dimensional views of power stand on a controversial normative premise. It is controversial not only because today it is not novel to assert that often individuals tend to adapt to oppressive environments, but also because both the process of socialization and education, by defining what is normal and acceptable, might shape the interests of the powerless perpetuating their subjection. In the context of gender relations, the idea that quiescence is the upshot of probably the most effective way in which power deploys was stated by John Stuart Mill one hundred and fifty years ago when he said that “[a]ll men, except the most brutish, desire to have, in the woman most nearly connected with them, not a forced slave but a willing one, not a slave merely, but a favourite. *They have therefore put everything in practice to enslave their minds...* The masters of women wanted more than simple obedience, and *they turned the whole force of education to effect their purpose*”<sup>59</sup>.

The idea, for instance, that women in general choose to be at home taking care of the household, and for that reason, there is no conflict of interest with men

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<sup>58</sup> This is one of the reasons why Lukes' declares that domination is an *essentially contested concept*. According to Lukes, “how we think about power may serve to reproduce and reinforce power structures and relations, or alternatively it may challenge and subvert them. It may contribute to their continued functioning, or it may unmask their principles of operation, whose effectiveness is increased by their being hidden from view. To the extent that this is so, conceptual and methodological questions are inescapably political and so what ‘power’ means is ‘essentially contested’”. Lukes (n 6) 63.

<sup>59</sup> John Stuart Mill, *The Subjection of Women* (The Floating Press 2009) 28.

when they choose to develop themselves in the public realm, is difficult to sustain. This is why, to apply the first and second dimensional view of power to the case of men's power over women is problematic: for these views, women's passivity would be a case of absence of power and not a case of subjection. According to these dimensions of power, women's choice to remain at home follows from the representation they have of their *actual* interests, even if these interests (unsurprisingly) mostly benefit men: interests that in fact some men would like women to have.

Certainly, to identify in a specific situation what women's real interests are is not an easy matter. And there is also the risk of falling into paternalism. For the fact that we are able to see domination in cases where there is no overt interference does not mean that one should ignore or dismiss the choices the subjugated person makes, and claim that they do not represent their real interests. The identification of subvert domination does not necessarily involve paternalism, but rather awareness and empowerment<sup>60</sup>.

#### **3.4. Domination, resources and structures**

We saw that domination deploys *overtly*, by subjecting the will of the powerless through threats and unfair offers, and *subvertly* by shaping their interests so there is no need to subject their will. In this last section, I want to explain that domination can also be *indirect*. Unlike what happens with direct domination, which focuses on the particular agents, in the case of *indirect domination*, the focus is mainly on the social structures, which not only give to some the *capacity* to dominate others but also may *determine* the outcomes of certain interactions.

It is only when we look at both resources and social structures that we attain a sense of domination as an *enduring condition* of certain types of interaction and not merely as a contingent result of the action of opportunistic agents.

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<sup>60</sup> Indeed, one might contend that paternalism does not help to solve the problem of domination as it does awareness and empowerment.

### 3.4.1. Resources and social structures

As we have stated above, domination is an instance of a power over relation, in which the powerful by dint of their power constrain others' choices by interfering either overtly or subvertly. At this point in the discussion, it is important to look at *what gives that power to the powerful*.

One important critique of Lukes' account of domination is precisely that he ignores the fact that both power and domination are a *capacity*. As Peter Morriss explains, Lukes commits the *exercise fallacy*, in that he equates power with its exercise, when it happens that individuals can have dominating power without exercising it<sup>61</sup>. In other words, power and domination are not only events because they also involve a latent capacity. Recognizing Morriss' point, in the second edition to his book *Power. A radical view*, Lukes now asserts that "power is a dispositional concept, identifying an ability or a capacity, which may or may not be exercised"<sup>62</sup>. That is, power is a capacity that may or may not be triggered in a specific situation.

The question that then follows concerns the role that resources have regarding this capacity. According to the one-dimensional view, power-over relations are better identified not by looking at the immaterial or material resources individuals possess but rather how resources are used by their possessors to make their will prevail. The problem with this view is that it confuses power and domination with its exercise. It is true, nonetheless, that the amount of power an agent has cannot be immediately identified with her resources, like for example, with her money or strength. Resources are not identical to power: there is no way to know just by looking at their resources what amount of power someone has. The power that resources can have is *relative*, not absolute, and for this reason, the power of an agent cannot be immediately reduced to her resources. However, the fact that the power that resources give is relative does not mean that once we introduce the other relevant factors, we cannot have

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<sup>61</sup> Morriss (n 2) 16-18.

<sup>62</sup> Lukes (n 6) 109.

an idea of the magnitude of the power that a particular resource gives to some agent.

One important way to measure the power that resources can give to an agent is to consider its distribution, to the extent that even if power, as a capacity, does not merely depend on the amount of power-resources that an individual possesses, it predominantly depends on how they are distributed. That is, power-resources should be seen in relation to the overall distribution of those same resources that may exist in a particular society. Military resources, physical force, money, and property are all resources that, when unequally distributed, may confer a capacity to dominate upon their holders.

But resources are not the only source of dominating power. Social and legal structures are the other crucial source of power. Indeed, they both constitute and support practices that not only empower certain people *vis a vis* others but also may expand (or reduce) the capacity to dominate that (an unequal distribution of) resources gives to agents. The power a husband had and might today still have over his wife, is given not only because of the physical force men have, but rather on account of a set of social and legal rules, that, for example, constitute the institution of the patriarchal family. The dominating power of the master over the slave is mainly given by the institution of slavery, which allows masters to beat and abuse their slaves with impunity.

In this regard, it is important to note two things. First, what I called in Chapter 1 the *ambivalence of law*. Law both creates and supports structures that may give a dominating power to some but also may impose limits to domination. Consider, for instance, the countervailing power that organized workers can exert against employers, thanks to laws that recognize their collective bargaining rights. The second relevant issue is that power and domination are a *matter of degree*. Domination can increase or decrease, in similar fashion as resources and structures may enhance or constrain someone's dominating power.

From our starting point, that is, from a view that looks to the critical features of unequal distributions of private property, we cannot ignore the power relations over people that property as a resource makes possible when it is unequally distributed. Certainly, the magnitude of such capacity depends on how unequally distributed property may be. As I said, power and domination come in degrees. In any case, once again, social and legal structures are relevant to determine the capacity to dominate that resources can give to people. Consider the not so remote case of a sexist culture in which women have no private property, no economic independence. Women have to choose between destitution and dependence on their husbands. The economic dependence of wives on their husbands gives them an enormous capacity to dominate their wives. Or consider what happens with private property in its capitalist articulation. In its capitalist form, an unequal distribution of private property over means of production gives to capitalist owners an important power over people. We will see in the next two chapters that capitalist property gives owners a dominating power not only over workers but also over politicians. The idea, then, is that both resources and social structures (i.e. social and legal practices) play crucial role in measuring the capacity of power to dominate.

#### **3.4.2. Domination as a capacity**

The most important point, however, is that the mere capacity to dominate, in some sense, is itself a form of domination: you are in my power, whether or not I exercise it to dominate you. Indeed, one of Pettit's crucial mottos is that domination "can occur *without interference*, because it requires only that someone have the *capacity* to interfere arbitrarily in your affairs; no one need actually interfere"<sup>63</sup>. Indeed, slavery is essentially characterized by domination, Pettit says, but "not by actual interference: even if the slave's master proves to be entirely benign and permissive, he or she *continues to dominate* the slave"<sup>64</sup>. The reason why domination exists not only when someone interferes but also whenever someone has the capacity to dominate is that "the power-victim acts

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<sup>63</sup> Pettit (n 10) 23

<sup>64</sup> *ibid* 32, emphasis added.

in the relevant area by the leave, explicit or implicit, of the power-bearer; it means that they live at the mercy of that person, that they are in a position of a dependent or debtor or something of the kind”<sup>65</sup>. Thus, the powerless act in consideration of the capacity of the powerful to interfere with their freedom. The fact that employers have the capacity to fire their workers when they wish, even if they do not threaten them with that, makes workers attentive to their wishes. Capitalist owners' capacity to affect the economy (by disinvesting or making workers redundant, for example) makes politicians unwilling to pursue redistributive policies that may trigger that reaction (as we will see in Chapter 7).

In *Republicanism*, Pettit is quite radical on this point. He claims that for there to exist the capacity to dominate does not demand that the powerful be prone to interfere. Rather, according to Pettit, “the fact that another person is unlikely to interfere with me, just because they happen to have no interest in interfering, is consistent with their retaining access to the option of interfering with me”<sup>66</sup>. For Pettit, then, the aim should be not to make (arbitrary) interferences improbable but to make them *inaccessible*<sup>67</sup>.

Importantly, the idea that domination exists whenever someone has the capacity to dominate, means that resource distribution and social structures (this is, legal and social institutions) must have a crucial place in an account of domination. The source of domination can be traced not only to the particular interactions of individuals, but also *to the structure of a relation* in which someone has the capacity to interfere with another's freedom. It is toward these structures that one should look to prevent domination: how resources and practices shape the structure of relations of domination. It is difficult to think of

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<sup>65</sup> *ibid* 63; see also 123-124.

<sup>66</sup> *ibid* 88. Even more radically, what constitutes domination, Pettit says “is the fact that in some respect the power-bearer has the *capacity* to interfere arbitrarily, even if they are *never going to do so*”. *Ibid* 63-64, emphasis added.

<sup>67</sup> *ibid*.

a satisfactory account of domination if one focuses only on the direct interaction of the parties without taking into account the social structures.

It seems, however, that Pettit has now retracted his idea that someone enjoys non-domination only when “no other has the capacity to interfere on an arbitrary basis in their choices”<sup>68</sup>. It is striking that his most recent books no longer uphold the “capacity to interfere” to articulate his account of freedom as non-domination<sup>69</sup>. In *On the People’s Terms* Pettit develops a new distinction to explain domination. According to this distinction, there are two ways in which freedom of choice can be affected: invasion and vitiating. *Invasions* are “hindrances that affect the use of your resources for the specific purpose of satisfying your will, and not in a generic way”, while *vitiators* are “hindrances that affect the use of your resources for any purpose and so, in particular, for the purpose of satisfying your will”<sup>70</sup>. Pettit uses the following example to illustrate the distinction: imagine I have a car but I cannot use it because I am short of fuel, the car is damaged or the engine failed. In these cases, my freedom is hindered in a generic way: these obstacles are *vitiators*, which prevent me from using my car for any purpose I may have. The use of my car, however, can also be curtailed by *invader* factors. This is, by obstacles that specifically affect the use of my car for some particular purpose, like drive into the city centre. What is important to highlight here is that any lack of personal, natural or indeed social resources *vitiates* my freedom, provided it is not a lack deriving from the will of another agent regarding how I should make a choice<sup>71</sup>.

*Invasions* are inherently inimical to freedom, Pettit says, while *vitiators* are only incidentally inimical. Following this distinction, *only invasion constitutes domination* because only in this case there is a “subjection to another’s will”. Pettit uses this idea of vitiating to assert that

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<sup>68</sup> *ibid* 67.

<sup>69</sup> This is the case of both Pettit’s *On the People’s Terms* and Philip Pettit *Just Freedom: A Moral Compass for a Complex World* (W. W. Norton & Company 2014).

<sup>70</sup> Pettit (n 13) 37-38.

<sup>71</sup> *ibid*.

[i]t is usually because of the way that marriage law or workplace law is structured that husbands or employers have a dominating power over their wives or workers. *These modes of organization may vitiate, but not invade, choice* as when they emerge for example from customary practice, *but they can indirectly facilitate the worst forms of invasion and domination in a society*<sup>72</sup>.

According to Pettit, the modes of organization of certain relations facilitate but do not really constitute domination. If Pettit before said that domination exists whenever someone has the capacity to dominate, and we saw that the powerful have this capacity in virtue of how some relations are organized, now Pettit says that these modes of organization do not invade choice, and therefore, do not constitute domination in themselves. Pettit, then, seems to have retracted from his idea that someone is non-dominated only when no other person has the capacity to interfere in her choices. The fact that women may not be economically independent or the fact that employees can be fired whenever employers want, are all modes of organization that give some people the capacity to dominate others. For Pettit this capacity now does not constitute domination because it does not invade others' choices. If Pettit were still committed to the idea that having a capacity to interfere is a form of domination in itself, then, he would have to say that the structures that give such capacity to individuals do constitute, in a way, a form of *indirect domination*.

It is true that even if vitiating does not constitute domination, according to Pettit it is also problematic because it "may put such limits on your range of choice that you are subject, as a result, to a greater degree of invasion on the part of others"<sup>73</sup>. The problem is that for Pettit, *vitiating is not a wrong in itself*, but only to the extent it may entail further invasions from others. Vitiating neither shares the wrong of domination nor constitutes an independent wrong<sup>74</sup>. It seems that Pettit has abandoned one of the principal arguments that made his account appealing: the idea of domination without interference, typically depicted in

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<sup>72</sup> *ibid* 63 emphasis added. See also Pettit (n 71) 53-54.

<sup>73</sup> Pettit (n 13) 44.

<sup>74</sup> Lea Ypi, "Pettit's Republic" (2014) 22 *Renewal: A Journal of Social Democracy* 149, 151.

the image of the good master (private domination) and the benevolent dictator (public domination)<sup>75</sup>.

Although *indirect*, I claim (together with the former Pettit) that domination exists whenever structures give power to some people over others, whether or not the powerful exert their power. The reason, as we saw, is that even if the husband and the master do not exercise the power that social and legal structures give to them, it is by virtue of these structures that the wife and the slave still remain dependent on the goodwill, of the husband and master, respectively. They are dependent on the decision made by the husband and master not to exercise their dominating power.

### 3.4.3. Structural domination

Things get more complicated, though, when these structures or modes of organization bestow to persons a dominating power that *they cannot but exercise*. The idea of *structural domination*, indeed, conveys this sort of *inevitability*. Unlike the cases in which social and legal structures give to individuals a dominating power that they may or may not exercise, in cases of structural domination, structures determine individuals' actions.

For some accounts, like Pettit's, domination is always direct. It has to do with the interpersonal relation between individuals that are *agents*, that is, with individuals that could act differently than dominating others. Acknowledging that these kinds of accounts cannot encompass all the levels in which domination appears to us, other accounts conceptualize domination in a way that also includes cases in which individuals' actions are constrained by structures<sup>76</sup>. In these cases, individuals dominate by virtue of occupying a particular position in a structure in which they have a pre-determined role; a role that is a constitutive part of the structure. In such roles individuals perform pre-determined actions: the way in which they act is not optional, but fixed.

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<sup>75</sup> This also means that now Pettit cannot claim that his idea of freedom as non-domination is so much different from the traditional idea of freedom as non-interference.

<sup>76</sup> Cecile Laborde "Republicanism and Global Justice. A Sketch" (2010) 9 *European Journal of Political Theory* 48, 56ss.

It is only as structural domination that we can explain, for example, the austerity measures that debtor states have been bound to impose, under the threat of losing international financial aid or as a condition to financial support. The problem here is not Christine Lagarde<sup>77</sup> acting opportunistically but rather the International Monetary Fund's constitutive rules. The same can be predicated, as I argue in the next Chapter 6, of wage labour: the problem is not only some particular capitalist owners who unscrupulously take advantage, let us say, of vulnerable immigrant workers, but also the social structure that supports capital-labour exchanges. Those exchanges and interactions cannot be seen as the outcome of opportunistic agents but rather the outcome of institutional arrangements that lead them to act in that way.

The fact that Lagarde has no discretion over the conditions for giving financial aid to states is not relevant so as to reject this case as an instance of domination. Neither is relevant capitalist owners' claim that competitive pressure compels them to offer wages that do not meet workers' basic needs. To view the phenomenon of domination exclusively through the lens of agents that could have acted in a way different than dominating others loses sight of an important set of cases that are similar in their wrongs to the cases of direct domination. The idea of *structural domination* does not misrepresent the aforementioned situations but rather illuminates them.

Certainly, as in the case of the good master (or the good husband or the good employer), in the cases of structural domination it becomes difficult to blame individual persons for something that they could not avoid. However, the fact that we cannot attribute responsibility to persons individually does not mean that there is no domination. Individual responsibility is not a requirement for a comprehensive account of domination, which aims not (only) to attribute

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<sup>77</sup> Christine Lagarde was the Managing Director and Chairwoman of the International Monetary Fund between 2011-2019. From November 2019 onwards, Lagarde will become the President of the European Central Bank.

individual responsibility, but also to *locate* the sources of domination and to explain how they work.

There is no need to pose this matter as a dichotomy between structures devoid of any possibility to be held responsible and responsible agents that voluntarily decide to dominate. Structural domination means that individuals act in their roles as game players. The interesting aspect of the matter, then, is who sets the rules of the game, so that some benefit from these structures at the expense of others. Structures ultimately reflect the power of groups that support and sustain those structures. Thus, although Lukes rejects the idea of structural domination he concedes that "structures may be created, maintained, and destroyed by acts of power"<sup>78</sup>. The relevant questions for an account of domination that is also concerned with indirect domination, then, are how these structures came into being; how they are sustained and reinforced; how they benefit some at the expense of others.

In this light, structural domination does not preclude the attribution of collective responsibility for the creation and protection of the structures that compel some to dominate others. As Iris Marion Young explains, structural domination is created and sustained collectively; therefore, it must be confronted collectively<sup>79</sup>. I will add that those who systematically benefit from the structures have a special moral responsibility to change them.

It is now that we can make sense of Mill's idea that "women do not complain of the *power of husbands*, each complains of her own husband... It is the same in all other cases of servitude, at least in the commencement of the emancipatory movement. The serfs did not at first complain of the *power of their lords*, but only of their tyranny"<sup>80</sup>. Like happens with Pettit's account, those mostly affected by domination tend to focus much more on direct domination than indirect domination. Commonly, however, the problem is not some particular person

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<sup>78</sup> Steven Lukes *Essays in Social Theory* (The MacMillan Press Ltd 1977) 9.

<sup>79</sup> Iris Marion "Responsibility and Global Labor Justice" (2004) 12 *The Journal of Political Philosophy*, 365. Young parallels collective responsibility with political responsibility.

<sup>80</sup> Mill (n 59) 138.

(for example, Lagarde, or a particular employer or husband), but rather the structures that grant them their dominating power. An account of domination that ignores the role of structures cannot explain some paradigmatic cases of private domination.



## CHAPTER 6. EXPLOITATION AND WAGE LABOUR

### 1. Introduction

In the previous chapter we saw that domination can be exerted not only through threats but also by making unfair offers, which then lead to unfair exchanges. Here we will see that exploitation involves a failure in the fairness of an exchange, which is possible by dint of the power someone has over another. In virtue of this unfairness, the powerful extract non-reciprocal benefits from the powerless.

In the first part of this chapter I review the non-Marxist literature about exploitation and particularly I will examine three accounts that, by providing three different baselines, attempt to determine when exchanges are unfair, and therefore, exploitative. There we will see how these baselines deal with sweatshop labour, one of the typical cases that this very same literature discusses as an instance of exploitation. Drawing from the first two accounts, I will claim both that the problem of exploitation lies in the transaction itself (regardless of whether prior to the transaction there has occurred a violation of property rights) and that competitive markets are compatible with exploitation. The third account agrees with these claims. For this account, sweatshop wages remain exploitative even when they arise from a competitive labour market. The problem with this view, however, is that sweatshop labour is not always the outcome of opportunistic exploiters: often, capitalist owners are compelled by market pressures to pay their workers miserable wages. Sweatshop labour, then, may be a case of structural exploitation.

This structural perspective is what I use in the second part of the chapter to explain that exploitation is a critical feature of wage labour, and not only of sweatshop labour. Just as male domination is not reducible to domestic violence

against women, capitalist exploitation is not reducible to sweatshop labour<sup>1</sup>. In that part we will see that the exchange between workers and capitalist owners is unfair: workers produce all that has value and capitalist owners appropriate (in the form of profits) part of that value. Like Marx, but without the labour theory of value, the claim is that capitalist owners' profits are not deserved.

## 2. Consensual and beneficial transactions

### 2.1. Some concerns about transactions

Today to talk about exploitation is no longer the exclusive domain of Marxism. Over the last three decades, some non-Marxist scholars have been engaged in conceptualizing exploitation and its wrongs. They are concerned with discrete transactions that, although *non-coercive* and *mutually beneficial*, seem intuitively morally wrong. The concept of exploitation, then, helps to make sense of the intuitions regarding the wrongness of such transactions. The cases that these scholars try to fit in the concept of exploitation are usually ones in which the outcomes of the particular transactions seem deeply *unfair*. *Port of Caledonia* or *Rescue in the Desert*, are typical cases that the literature employ as paradigmatic cases of exploitation. In the first case, a vessel in difficulty asks for assistance from a nearby tugboat, which responds by offering a rope but only if it is paid an incredibly high sum of money (£1000)<sup>2</sup>. Similar is the second case, where a woman isolated in the desert is found by someone who offers to rescue her on the condition that she allow him to sodomize her first<sup>3</sup>. Other cases the literature has discussed as instances of exploitation are commercial surrogacy, organ sale and prostitution<sup>4</sup>. Pharmaceutical research tests either on poor people in the

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<sup>1</sup> The point is that male domination over women has many expressions, not only physical violence. Male domination persists even without domestic violence. The analogy between sweatshop labour and domestic violence is used by Kenan Ercel "Orientalization of Exploitation: A Class-Analytical Critique of the Sweatshop Discourse" (2006) 28 *Rethinking Marxism* 289.

<sup>2</sup> Alan Wertheimer, *Exploitation* (Princeton University Press 1996) 40.

<sup>3</sup> Chris Meyers "Wrongful Beneficence: Exploitation and Third World Sweatshops" (2004) 35 *Journal of Social Philosophy* 319.

<sup>4</sup> See for example: John Lawrence Hill, "Exploitation" (1993) 79 *Cornell Law Review* 631; Paul Hughes "Exploitation, Autonomy, and the Case for Organ Sales" (1998) 12 *International Journal of Applied Philosophy* 89; Stephen Wilkinson, *Bodies for Sale: Ethics and Exploitation in the Human Body Trade* (Routledge, 2003); Julian J. Koplin "Beyond Fair Benefits:

developing world or on prisoners has been also discussed in terms of exploitation.

Another emblematic case that the literature discusses today as an example of exploitation is *sweatshop labour*<sup>5</sup>. Arnold and Hartman define sweatshop labour as "any workplace in which workers are typically subject to two or more of the following conditions: income for a 48 hour workweek less than the overall poverty rate for that country; systematic forced overtime; systematic health and safety risks due to negligence or the wilful disregard of employee welfare; coercion; systematic deception that places workers at risk; and underpayment of earnings"<sup>6</sup>. In Arnold's and Hartman's definition, the wrong of exploitation seems quite clear, to the extent that its constitutive elements involve actions that conflict with the law.

However, the literature also discusses sweatshop labour more narrowly as a type of labour that demands long hours of work in exchange for *wages that fall below the living wage*. When I refer to *sweatshop labour* in this chapter I will be referring to *sweatshop labour* in this latter sense, that is, as labour that does not involve coercion<sup>7</sup>. In short, for the second part of the thesis, concerning the dominating power that capitalist property gives to owners, my primary focus will be sweatshop labour (and later, wage labour).

## **2.2. The paradox of exploitation?**

In principle, exploitation seems paradoxical because it involves transactions that are (1) explicitly *consented* and (2) compared with the *status quo*, benefit all individuals taking part in them. Thus, they are rational but exploitative.

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Reconsidering Exploitation Arguments Against Organ Markets" (2018) 26 *Health Care Anal* 33.

<sup>5</sup> It is striking to note that non-Marxist literature considers sweatshop labour a sort of paradigmatic case of exploitation, and it was that kind of sweatshop labour that was pervasive in Marx's time.

<sup>6</sup> Denis G. Arnold and Laura P. Hartman, "Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops" (2006) 28 *Human Rights Quarterly* 676, 677.

<sup>7</sup> Importantly, we are not dealing here with exploitation that arises from coercion or force, a category that today can be encompassed by the ideas of slavery, servitude, compulsory labour, human trafficking, sexual exploitation, among others. This kind of exploitation is considered a criminal offence in the *Modern Slavery Act 2015* (UK).

Benjamin Ferguson has called this feature of exploitation the "paradox of exploitation", that is, the paradox that there can be transactions that are both *Pareto improving* and *consensual*, but nevertheless intuitively wrong<sup>8</sup>. Along the same lines, Alan Wertheimer, in his seminal book *Exploitation*, suggests that

[e]ven a libertarian will grant that some harmful exploitation may be legitimately prohibited by the state, if only because it is harmful (or rights-violating) rather than because it is exploitative. By contrast, *it is more difficult to explain when and why it might be wrong* for A to gain from an action that *benefits B* and to which B *voluntarily consents*. And it is certainly more difficult to explain why society might be justified in prohibiting such transactions or refusing to enforce such agreements<sup>9</sup>.

Regarding consent, it is important to note that the idea of consented transactions means here transactions with no coercion, deceit, fraud, insufficient information or mental incapacities. Certainly, if exploitative transactions are consensual in that sense, someone might very well deny that they are exploitative<sup>10</sup>. For Nozick and libertarians, for instance, consensual transactions are not only non-exploitative, but rather *just* transactions: consent suffices for justice.

Why is consent so important that it seems to be the only relevant criterion for evaluating transactions? Two reasons account for the importance of consent in transactions. On the one hand, consent relies on the idea of private autonomy: to ignore consent would be paternalistic since each individual seems to be the best judge of which transactions are beneficial for her. On the other hand, there does not seem to be a *just price* that we can use as a baseline for measuring the fairness of our exchanges. As Hobbes explicitly states in a sentence that is the benchmark of the *subjective idea of value*, "the value of all things contracted for,

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<sup>8</sup> Benjamin Ferguson "The Paradox of Exploitation" (2016) 81 *Erkenntnis* 951. Let me stress here that a pareto improving transaction does not mean a fair transaction. Pareto improvement is a measure of efficiency not of fairness. For this reason, Pareto optimal transactions can involve very unequal transactions.

<sup>9</sup> Wertheimer (n 2) 13-14.

<sup>10</sup> As it is explicitly contended by Matt Zwolinski in Matt Zwolinski "Sweatshops, Choice and Exploitation" (2007) 17 *Business Ethics Quarterly* 689, and in Matt Zwolinski and Benjamin Powell "The Ethical and Economic Case Against Sweatshop Labor: A Critical Assessment" (2012) 107 *Journal of Business Ethics* 449.

is measured by the Appetite of the Contractors: and therefore the just value, is that which they be contented to give<sup>11</sup>. Indeed, today the idea of a fair price is generally ignored by the law of contracts<sup>12</sup>. However, even in the context of modernity, with free markets and liberalism as the hegemonic tradition, there exists a strong current of opinion that individual consent is not always the ultimate criterion. Additionally, we consider that some particular types of transactions are intrinsically unfair even when consented because we think they worsen the situations of individuals, as happens with consensual slavery, for example<sup>13</sup>. Such cases are few, however. The prevalent idea is that individuals know best what their interests are and what transactions advance those interests.

In addition to consent, the other feature of the exchanges we will take account of in this chapter is the fact that they are mutually beneficial, if the baseline is the *factual antecedent circumstances of the parties*. Put differently, they are beneficial not compared with an ideal baseline but with the *status quo*. This is an important feature that we already saw in Chapter 5: offers and the exchanges that follow them *expand the choices* of those who transact. Consider the case of the woman lost in the desert dying of thirst who is offered rescue in exchange for sex, or the case of vulnerable immigrant people who are offered low wages in exchange for their labour. The exploitative exchanges that we are considering here are mutually beneficial: they arise as the outcome of offers that by giving the other party an additional option, improve that party's (already bad) position.

Accordingly, individuals' consent and the fact that the transaction does not worsen their situation as it was prior to the exchange are the main features of

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<sup>11</sup> Thomas Hobbes *Leviathan* (Oxford University Press 1996) 100.

<sup>12</sup> However, there are two remedies in private law that seem to rely in the idea of a *fair pricing*: *laesio enormis*, in Civil Law and the doctrine of 'unconscionability' in Common Law. See James Gordley, *Foundations of Private Law* (Oxford University Press 2007) 364ss.

<sup>13</sup> It is interesting to note that the *UK Modern Slavery Act* states that a person's consent to any of the acts that constitute slavery, servitude or compulsory labour does not change the normative status of crime of such acts. See section 1(5) of the Act.

the exchanges that I address here. In light of these features, exploitation seems either non-existent or paradoxical.

### 2.3. Unfair advantage and imbalance of power

Exploitative transactions are not paradoxical once we note that *fairness* is the third element of transactions. It is true that in every transaction each party takes advantage of the other's needs and desires; otherwise there would be no reason for transacting. When, then, does taking advantage of others entail exploitation? The literature mostly agrees that in exploitative transactions one of the parties takes an *unfair* advantage of the other. The idea that taking an unfair advantage in a transaction is problematic is not entirely new; indeed it can be traced to an ancient idea about contractual transactions as acts of commutative justice that require *equality in exchange*<sup>14</sup>. According to James Gordley, both Aristotle and the Roman text *Corpus Iuris* held, as a principle of exchanges, that no one should become richer at another's expense<sup>15</sup>.

However, taking unfair advantage in itself is not a sufficient condition for exploitation. What is missing is to determine what allows one party to take an unfair advantage of the other. I contend that the *imbalance of power* that may exist in a particular situation is what makes possible exploitative transactions. This is, indeed, a crucial feature that makes exploitative exchanges an instance of domination. Hence, we can say that (a) taking an unfair advantage and (b) imbalance of power, are the two *individually necessary* and *jointly sufficient* conditions for exploitation<sup>16</sup>. The latter condition is not always clearly expressed or explicit in the accounts we will analyse. However, this key condition commonly is presupposed. The reason is that there are other ways in which someone can take an unfair advantage of another that do not presuppose an imbalance of power (for example, I can take an unfair advantage by deceiving you or by refusing to restore what you mistakenly give me).

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<sup>14</sup> James Gordley, "Equality in Exchange" (1981) 69 *California Law Review* 1587.

<sup>15</sup> *ibid* 1590ss.

<sup>16</sup> The normative force is in (a), not (b). (b) is what makes possible (a). We will see later that (b) does not need to be the result of a violation of rights or an injustice for us to claim that (a) is an injustice.

Although the imbalance of power may be *circumstantial* in some situations (think of the person who finds himself in a position to help the lost woman in the desert) it also allows us to explain the *persistence* of exploitation in other situations (as in the case of sweatshop labour).

*Sweatshop labour* and cases such as *Port of Caledonia* or *Rescue in the Desert* seem to meet the two necessary conditions mentioned above: (b) in all these cases it seems that, for either contingent or structural reasons, someone is in a particularly powerful position *vis a vis* another; (a) a position that makes the powerful party able to take an *unfair* advantage of the powerless one. Now, the relevant question is how to determine that the transaction is *unfair*. This is not an easy task considering that we are dealing with both consented and mutually beneficial transactions. In the next section we will briefly view the three most important non-Marxist accounts of exploitation. All three aim to advance a criterion to assess the unfairness of exploitative transactions. In the framework established in Chapter 5, these accounts seek to provide a criterion to determine when offers -which lead to exchanges- are *unfair*, and therefore, an instance of *domination*.

The examination of each one of these three accounts will show us something important about exploitation. This will allow me to claim in section 4 that wage labour is in itself exploitative or, in other words, that the exchange between workers and capitalist owners is *structurally exploitative*. There, I will first explain Marx labour theory of value, which provides another criterion of unfairness; a criterion that enables us to contend that capitalists take part of the value that workers (and only workers) create, and for that reason, the exchange between them is unfair. However, I will argue later that we do not need the labour theory of value to contend that the exchange between workers and capitalist owners is unfair: workers produce all that has value and capitalist owners appropriate (in the form of profits) part of that value once they sell in the market the objects that workers produce. Thus, the criterion of unfairness (a) is given by an argument that, like the labour theory value, shows that

capitalist owners' profits do not come from any productive activity they perform. This unfair exchange between capitalist and workers is possible (b) in virtue of the power that capitalist owners have over workers, which is given to them by their ownership over means of production, on the one hand, and the property-less condition of workers, on the other.

### **2.3. Benefiting at the expenses of the powerless**

In the chapter 1, I stated that domination is problematic from the point of view of justice. When I am dominated, I do not act freely: I am subject to your will, so I act as you want me to act. Domination reduces the degree of voluntariness of my actions. As I said above, this is problematic from the point of view of freedom of choice, and in light of the autonomy which this freedom serves. But this is not the only problem that arises from domination: when I am dominated by another, my interests are affected, as well. I choose and I act as you want, and by doing this I enhance your interests, not mine. By dominating me, you aim to extract valuable social goods: as your wife (or partner), you may extract from me care work and household services, for example.

This last idea is even clearer in the case of exploitation. We saw that exploitation involves a breach in the fairness of an exchange, which is possible by dint of the power someone has over another. It is because the exchange is unfair that the powerful extracts non-reciprocal benefits from the powerless. The problem here is not that someone does not receive adequate benefit according to some baseline of distributive justice, but rather that in virtue of a transaction the powerful gain undeserved benefits at another's expense. In some sense, this might be even more problematic because it involves not a failure in following some particular distributive account of justice, but rather a failure in the interactions that we ought to have with each other. As an instance of domination, we can see that the problem of exploitation is mainly relational.

In persistent exploitation relations such as sweatshop labour, this problem is more severe because the well-being of the exploiter depends on the efforts of

the exploited<sup>17</sup>: the rich get richer and the vulnerable people remain vulnerable, despite their toil.

### 3. Three accounts of exploitation

#### 3.1. Exploitation as prior injustice

This account might be categorized as the paradigmatic liberal view about exploitation. Hillel Steiner provides what he calls a "liberal criterion" of distributive fairness in contractual transactions; a criterion that do not presuppose "an objective standard of value"<sup>18</sup>. Steiner's account is explicitly based on a subjective theory of value because, in his words, "an object's value cannot be decided upon independently of whether and for what it would exchange. Specifically, its value is equal to the most that rational maximizers would give for it, taking their actual preferences ordering as given"<sup>19</sup>.

But, how do we know whether a transaction is exploitative if both parties involved in a transaction are exchanging goods voluntarily, because according to their own preferences they both value more what they are obtaining from the exchange? Recall that what Ferguson calls the "paradox" of exploitative transactions is precisely the fact that such transactions are consented and beneficial for both parties. If value is completely subjective, how can we know when a transaction is unfair? Steiner's answer is that a transaction is exploitative if the distribution involved in the transaction is the outcome of a *previous property rights' violation*. According to Steiner, this prior injustice is necessary to exploitation; if there is no such injustice, there is no exploitation. So, first of all,

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<sup>17</sup> Erik Olin Wright, *Class Counts: Comparative Studies in Class Analysis* (Cambridge University Press 2000). As Wright explains, in a situation of (non-exploitative) *oppression* the well-being of the oppressor does not depend on the oppressed in the sense that their disappearance would not make the oppressor worst off. Unlike exploiters, oppressors do not have any special interests in the existence of the oppressed.

<sup>18</sup> Hillel Steiner "Exploitation: A Liberal Theory Amended, Defended and Extended", in Andrew Reeve (ed) *Modern Theories of Exploitation* (Sage 1987) 134-135. Steiner describes the idea of an exploitative transaction as a "mutually self-interested, consensual exchange in which what one party transfers is -but need not have been- of greater value than what is received in return".

<sup>19</sup> *ibid* 135.

a theory of distributive justice is needed in order to determine to what rights individuals are entitled<sup>20</sup>.

Now we can ask, according to Steiner's approach, is the *Port of Caledonia's* exchange of £1000 for a rope, an exploitative exchange? If we take the transaction at face value, it is impossible to know. In Steiner's account, we need to find out if the vessel's distress can be attributed to a prior property rights' violation. If the vessel's distress was caused either by the bad choices of the vessel's master or bad luck, then, the *Port of Caledonia's* exchange is not exploitative. The same happens in the situation of *sweatshop labour*. By looking to the transaction between the company and its employees in itself, it is not possible to ascertain if it is exploitative. Instead, we need to look to the past to find out if the employees' poverty, which makes them sell their labour for an extremely low price and bad conditions, is due to a prior violation of their rights or is due to other reasons, such as for example, a high rate of unemployment. Only in the first case does sweatshop labour involve exploitation. There is exploitation only if workers, for example, were unjustly dispossessed of their means of production in the past<sup>21</sup>.

Thus, the most important problem of Steiner's account is that it cannot give a straightforward self-contained answer to paradigmatic cases of exploitation, like *Port of Caledonia*, *Rescue in the Desert* or *sweatshop labour*<sup>22</sup>. The reason is that for Steiner, the exploitative character of a transaction does not depend on the transaction itself, but on precedent circumstances<sup>23</sup>. If by looking to those

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<sup>20</sup> Hillel Steiner "Exploitation Takes Time", in John Vint J. Stanley Metcalfe Heinz D. Kurz Neri Salvadori Paul A. Samuelson (eds) *Economic Theory and Economic Thought: Essays in Honour of Ian Steedman* (Routledge 2010) 25-26.

<sup>21</sup> Think, for instance, of the injustice committed by England' enclosure on the seventeenth-century or colonialism.

<sup>22</sup> Neither can Steiner give a straightforward answer to the exploitative prices that stem from a monopoly position. The reason is that if a monopoly position emerges without prior violation of rights, there is no problem with the power that such positions may give in further transactions.

<sup>23</sup> It is important to note that on this account, the exploiter need not be the one who is responsible for the injustice that enables exploitation. The rights' violator not need to be the same person than the exploiter.

circumstances we discover that in the case of sweatshop labour employees did not suffer a violation of rights that placed them in a vulnerable position, Steiner would say that there is no exploitation involved. In other words, if their bad position is owed to bad luck or the bad choices they made, there is no exploitation. The same analysis applies to the case of *Port of Caledonia* or *Rescue in the Desert*. In Steiner framework, the transaction in itself has *derivative* but not *autonomous relevance*: what matters is whether or not someone's property rights had been violated prior to the transaction. But even if we agree that in all these cases no prior injustice was committed, we can still consider that there is something problematic in those transactions that makes them unfair transactions. The exploitative offer the rescuer makes me seems problematic even if I am lost in the desert because of the bad choices I made. The reason is that *the problem of an exploitative transaction is the transaction itself*, regardless if one of the parties involved was affected or not by a precedent violation of property rights. In other words, the transaction has autonomous relevance, not (only) derivative relevance<sup>24</sup>.

### 3.2. Exploitation and competitive market prices

In his seminal book *Exploitation*, Alan Wertheimer provides another criterion to assess when a particular transaction is exploitative. Unlike Steiner, Wertheimer's account is centred on the transaction itself, regardless of how the parties arrived at the position that compels them to transact in exploitative terms. Indeed, as we will see, Wertheimer's account is so centred on the

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<sup>24</sup> Another problem of Steiner's account, underscored by Steven Walt, has to do with what Walt calls the "omnipresence" of exploitation<sup>24</sup>. According to Walt, Steiner's account is problematic because the proximity of a rights violation to an exchange is irrelevant to identify it as exploitative. Therefore, if a rights violation occurs in the distant past, all subsequent transactions in which the victim is involved would be exploitative. If someone's rights were violated not only what appears to be an exploitative transaction would be so, but also all the other transactions she makes since her rights were violated. Transactions that seem non-exploitative would be exploitative on this account. The problem with Steiner's account, then, is that it cannot *identify* which transactions are exploitative and which are not, and therefore, it is *over-inclusive*. See Steven Walt "Comment on Steiner's Liberal Theory of Exploitation" (1984) 94 *Ethics* 242, 242-243.

transaction itself that he absolutely disregards the background conditions of the parties involved in the transaction.

According to Wertheimer's account, the criteria to measure the fairness of a transaction is "the price that would be generated by a *competitive market*"<sup>25</sup>. For Wertheimer, the competitive market price

does reflect a crucial moral dimension of the relationship between the parties to the transaction. The *competitive market price* is a price at which neither party takes *special* unfair advantage of particular defects in the other party's decision-making capacity or special vulnerabilities in the other party's situation. ...It may or may not be a "just price", all things considered, but it may well be a non-exploitative price, for neither party takes unfair advantage of the other party<sup>26</sup>.

Like Steiner, Wertheimer's account is based on a subjective conception of value while also offering an objective standard to measure exploitation: the *competitive market price*. This standard of fairness is certainly useful to explain many transactions that seem exploitative to most people. *Port of Caledonia's* transaction, for example, is exploitative precisely because the rope's price is far from being the competitive market price.

However, there are two problems with Wertheimer's account<sup>27</sup>. The first problem is that his account is not useful for measuring non-market transactions or transactions in which it is extremely difficult to think in terms of a hypothetical competitive market price, as happens in the *Rescue in a Desert* case. The second and most important problem for this thesis is that Wertheimer's account cannot explain why some transactions may accord competitive market prices but still we would consider them exploitative. According to Wertheimer's criteria, sweatshop wages are not exploitative if they are generated by competitive labour markets. Wertheimer's account, importantly,

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<sup>25</sup> Wertheimer (n 2) 230, emphasis added.

<sup>26</sup> *ibid* 232, emphasis added.

<sup>27</sup> According to Wertheimer, exploitation is a moralized concept (p. 6). Wertheimer seems to think that exploitation is a moralized concept because exploitation involves taking an *unfair* advantage of another, and *unfairness* is a normative concept. However, it is important to note that Wertheimer offers a value-free conceptualization of unfairness, this is, a conceptualization that does not resort to evaluative considerations.

can explain as exploitative the case of multinationals that offer low wages in third world countries in which there are no competitive markets. The problem is that while the competitive market price criterion is able to explain as exploitative the prices that stem from a monopoly or dominant market positions, it is not able to explain other kind of cases that we usually consider exploitative.

One such cases is *sweatshop labour*. Sweatshop wages that companies pay can be low while also arising from competitive markets<sup>28</sup>. This is because competitive market wages do not consider all the background conditions that may exist in particular contexts. In places where, for example, unions and workers' collective rights are protected, wages can be higher than the wages paid in places where there are policies that create significant obstacles to union organizing. Accordingly, while in Wertheimer's account it might be exploitative for Nike to pay its low skill workers \$4 per hour in UK, it might be non-exploitative to pay them the very same amount (for the very same work) in another country where there is competition but workers are more vulnerable.

Wertheimer's account limits the scope of his standard of fairness because he explicitly ignores all the background conditions involved in an exchange. The reason, according to Wertheimer, is that it is "unreasonable to expect the better-off party to repair those background conditions [of social injustice] by adjusting the terms of a particular transaction"<sup>29</sup>. From Wertheimer's view, unless companies have arranged structural injustices by themselves, they are not responsible for exploitation if the wages that they offer, even though according to the competitive markets, are still not enough to meet individuals' basic needs.

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<sup>28</sup> Like Wertheimer, the neo-classical economic view (i.e. capitalist's accounts) contends that what makes possible exploitation in labour relations is the existence of *imperfect* labour markets. However, as Fairlam explains, Adam Smith seemed to believe that labour markets systematically tend away from perfect competition. Thus, while in the case of most commodities there is tendency to preserve competitive equilibrium, in the case of commodified labour the tendency leads away competition. Horace Fairlam, "Adam Smith's Other Hand: A Capitalist Theory of Exploitation" (1996) 22 *Social Theory and Practice* 193.

<sup>29</sup> Wertheimer (n 2) 234.

As we saw above, for Nozick, consensual transactions are not only non-exploitative, but *just transactions*, regardless of whether one of the parties has a significant market power<sup>30</sup>. Wertheimer goes one step further by demanding *competition*. But, what kind of fairness sees Wertheimer in competition? It seems that for Wertheimer such fairness comes from the fact that in a competitive market *nobody can set the price of the transaction*<sup>31</sup>. In a perfectly competitive market, Wertheimer points out, "all buyers and sellers are *price-takers*...when we say that A takes unfair advantage of B, we typically assume that A could have chosen not to take unfair advantage of B, that their specific transaction could have occurred on fairer terms. And this is precisely what generally cannot occur in a perfectly competitive market"<sup>32</sup>. Furthermore, Wertheimer explains that "if an employer pays his employees too much, he will be driven out of business by competitors who can undersell him because they are paying less to their employees"<sup>33</sup>.

However, even assuming that if McDonald's charges more for its products to compensate for the wage rise it would lose its customers to competitors, it is possible to offset this wage rise "by lowering executive pay, or the pay of skilled workers and managers, or dividends paid to shareholders, or some mix of these policies", as Richard Arneson counteracts<sup>34</sup>. Although Arneson recognizes that in a truly competitive market it is not possible to enact these policies, "market forces' do not constrain us from acting in ways that would render the market

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<sup>30</sup> Regarding wages, Joseph Heat claims that Nozick justify too much because he "fails to provide any basis for preferring the wage rate determined in a competitive market over one in which some party has significant market power. Indeed, *while Nozick had much to say about the importance of exchange, he had nothing to say about the importance of competition* – which is arguably the more important institutional feature of capitalism". Joseph Heat, "On the Very Idea of a Just Wage" (2018) 11 *Erasmus Journal for Philosophy and Economics* 1, 9 (emphasis added).

<sup>31</sup> For Wertheimer, as we can see, exploitation involves some idea of an imbalance of power: the one that stems from a monopoly or a dominant market position. The problem is that he sees the imbalance only within the market and not in the market's structure.

<sup>32</sup> Wertheimer (n 2) 217. In addition, in page 233, Wertheimer insists that "in a competitive market, A does not have the space to transact with B at a different price, even if A would prefer to do so".

<sup>33</sup> *ibid* 218

<sup>34</sup> Richard Arneson "Exploitation and Outcome" (2013) 12 *Politics, Philosophy & Economics* 392, 402.

no longer perfectly competitive, and perhaps we have moral reason to do so"<sup>35</sup>. Arneson's point is that Wertheimer's characterization of perfect competition prices is incomplete to the extent that it lacks the typical stipulation that economists assume: the self-interested motives that agents have within the market. The idea that within the market agents act maximizing their benefits and profits is just an empirical assumption that economists make, says Arneson; an assumption that does not constrain agents' choices about how to behave in the market in such a way that no fairer transaction is possible<sup>36</sup>. To illustrate his point Arneson gives the example of a competitive market for housecleaning services in a border city, in which the background facts are that many people are born in poverty and lack access to good education and good jobs. As a comparatively lucky and wealthy person who nonetheless is not responsible for the background facts that set market prices, Arneson asks: "why is it morally acceptable to benefit from them by taking the price as given and paying just the going rate? Suppose my reservation price for the service is far above the market rate. What renders it morally acceptable, just and fair, for me to gain a lot of consumer surplus when I purchase housecleaning services?"<sup>37</sup>.

It is true that, as Arneson claims, perfect competitive markets do not prevent agents' choices from conforming to some *moral standard* instead of the *market standard*. It is also true that we might have moral reasons to act differently, according to some moral standard that, for example, disregards looking for utility maximization in the wake of satisfying everybody's need. If this is correct, *there can exist competitive markets and exploitation*.

Two kinds of arguments can be given in this *compatibilist line*. The first kind of argument contends that the standard for a fair transaction is not a competitive market price but something similar to a *just price*. In other words, a price that by considering the needs of the parties, provides another way to measure the value of the things that are exchanged. This is the understanding of some of the

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<sup>35</sup> *ibid*

<sup>36</sup> Richard Arneson "Exploitation by Alan Wertheimer" (2001) 110 *Mind* 888, 890.

<sup>37</sup> Arneson (n 34) 403.

accounts we will see in the next section. Even when they do not always explicitly use the term “just price”, these accounts are anchored by the idea that prices must consider the needs of the parties involved in the transaction<sup>38</sup>. This idea, indeed, is particularly fertile for explaining why sweatshop wages, or one might say wages that leave workers living in poverty, are exploitative even when they conform to competitive labour markets.

The second kind of argument that one can offer to contend that there can be competitive markets and exploitation is substantiated by the idea that no matter what price is paid, some exchanges remain exploitative. In other words, it is not that the price is either too low or it is not in line with the competitive market, but that the act of *exchanging is exploitative in itself*<sup>39</sup>. This idea can be applied to cases like prostitution, organ sales, commercial surrogacy, and also, to wage labour. In this regard, there are two things one can say. On the one hand, that there are some goods that cannot be traded; some goods cannot be commodified. This means that regardless the price paid, it would fail to benefit the exploited party authentically<sup>40</sup>. On the other hand, instead of saying that there are some goods that can *never* be traded, the point would be to say that in conditions of structural injustice, these special goods cannot be traded. The reason is that in conditions of structural injustice we cannot rely on the victim’s consent to know that she is selling her body voluntarily. What underlies this argument is the idea that the problem is not that somebody is in a position of power to set the price of a *particular* exchange, as Wertheimer claims, but rather the structural dependence that constitutes the market of these goods.

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<sup>38</sup> One important feature of the idea of just price is whether the things that are exchanged meet the genuine needs of the parties. See James Bernard Murphy “Equality in Exchange” (2002) 47 *The American Journal of Jurisprudence* 85.

<sup>39</sup> Robert Goodin, “Exploitation” (1997) 91 *The American Political Science Review* 733; Thomas Christiano, “What Is Wrongful Exploitation?”, in David Sobel, Peter Vallentyne, and Steven Wall (eds) *Oxford Studies in Political Philosophy*, Volume 1 (Oxford University Press 2015) 255; Robert Mayer, “What’s Wrong with Exploitation?” (2007) 24 *Journal of Applied Philosophy* 137.

<sup>40</sup> Mayer (n 39) 145.

### 3.3. Exploitation and the duties we owe to each other

To the extent that competitive market prices do not completely constrain agents' choices, one might say that morality requires that companies offer better wages than sweatshop wages. As we will see in this section, an important set of accounts go along this path by stressing the idea that we have *special duties* to others when they are *especially vulnerable or disadvantaged*<sup>41</sup>, and by engaging with them we are in a good position to help them. Importantly, these special duties are owed to others *regardless of the source of the vulnerability*. Unlike Steiner's account, here the cause of the disadvantage is irrelevant; unlike Wertheimer's account, vulnerabilities must be considered in the transaction, even if one is not responsible for their existence. For these accounts, not only must we avoid taking a special advantage within the market, as Wertheimer would say, but also must not take advantage of the background conditions that create others' vulnerabilities.

According to Robert Goodin, exploitation is the violation of the duty to protect the vulnerable and this duty arises from the dependency that one may have on some other<sup>42</sup>. There is exploitation when those who are in a particularly good position fail to help others in need. Narrowing Goodin's broad approach, Ruth Sample asserts that when we interact with vulnerable people we need to respect their inherent value, and we fail to do that when we: (1) take advantage of an injustice done to them; (2) neglect what is necessary for others' well-being or flourishing; (3) treat as a fungible object of market exchange an aspect of others that ought not to be commodified<sup>43</sup>. According to Sample, then, special duties do not arise from every vulnerability, as Goodin claims. Special duties arise when we interact with other people in a weak bargaining position because of a past injustice or whose basic needs are not met<sup>44</sup>. Likewise, with a Kantian approach and also concerned with the basic needs of others, Jeremy Snyder

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<sup>41</sup> In some sense, the idea of vulnerable people acknowledges the existence of an imbalance of power, which in turn triggers the opportunity to take an advantage of it.

<sup>42</sup> Robert Goodin *Protecting the Vulnerable: A Re-Analysis of our Social Responsibilities* (University of Chicago Press 1986).

<sup>43</sup> Ruth Sample, *Exploitation: What it is and Why it's Wrong* (Rowman and Littlefield 2003) 57.

<sup>44</sup> *ibid* 82ss.

argues that we have special duties to others in the case of vulnerabilities related to *unmet needs*<sup>45</sup>. Snyder explains how unmet basic needs bring about an imperfect duty of beneficence that turns into a specific duty once we enter into a relationship of use with a particular person who has well-being deficits. It is in virtue of this specific duty that, according to Snyder, "employers are required to cede as much of their benefit from the interaction to their employees as is reasonably possible toward the end of the employees achieving a decent minimum standard of living"<sup>46</sup>.

Similarly, according to Robert Mayer, exploitation is one species of wrongful gain whose specific wrongfulness consists in a failure of beneficence<sup>47</sup>. In general, the problem of exploitation is that exploiters do not sufficiently benefit others, judged from some standpoints of fairness<sup>48</sup>. Unlike Wertheimer, Mayer's standard of fairness is a "macro-fairness" standard, because it considers the structural injustice that disadvantages one of the parties that is involved in a transaction. According to Mayer, in order to calculate the fair price of a good or service we need to "imagine a counterfactual transaction in which the relevant disadvantage is removed"<sup>49</sup>. In that case, the just price would be "the price which a non-disadvantaged party would accept or pay"<sup>50</sup>. Mayer explains his standard with an example that nonetheless shows us that he is committed not to every disadvantage but to disadvantages that affect *individuals' basic needs*. The just price for 'fair trade' coffee, Mayer says "is not set by perfect competition but rather by some conception of a decent standard of living for agricultural labour. Advocates calculate what price buyers should pay to produce this

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<sup>45</sup> Jeremy Snyder "Needs Exploitation" (2008) 11 *Ethical Theory and Moral Practice* 389; Jeremy Snyder "Exploitation and Sweatshop Labor: Perspectives and Issues" (2010) 20 *Business Ethics Quarterly* 187. In a similar line, Chris Meyers "Moral Duty, Individual Responsibility, and Sweatshop Exploitation" (2007) 38 *Journal of Social Philosophy* 620.

<sup>46</sup> Snyder "Needs Exploitation" (n 45) 396.

<sup>47</sup> Mayer (n 39) 138.

<sup>48</sup> *ibid.*

<sup>49</sup> *ibid.* 145.

<sup>50</sup> *ibid.*

standard of living, and deviations from this fair price then count as relative or exploitative losses"<sup>51</sup>.

As we can see, what is beneath all these accounts is a *substantive* conceptualization of the unfairness that exploitative transactions involve: they are the outcome of our failure to fulfil the *special moral duties* we have towards others<sup>52</sup>. These accounts, I think, are partially correct. They are correct in the sense that they can provide an answer to cases like *Port of Caledonia* and *Rescue in the Desert*, and more importantly for this thesis, *sweatshop labour*. That is, they offer a helpful criterion to deal with the most urgent cases of exploitation. And by doing so, they provide strong moral reasons to enact legal rules that prevent exploitation by establishing for example, a “duty to rescue” or “minimum wages”.

Nevertheless, there are two problems with these accounts. The first problem is that the focus on needs of these accounts is too narrow. This can be seen in that unmet needs seem to be the ultimate criterion to determine when transactions are exploitative. To be sure, reliance on basic needs not only provides a certain standard that helps to explain why transactions acceptable to competitive markets still can be exploitative but also provides a criterion that can deal with the cases that strongly resonate in our intuitions about exploitation. The problem, however, is that exploitation is not limited to transactions in which needs are unmet. Otherwise, only people in need would be exploited. However, people can be exploited even when their basic needs are met if, for example, I take advantage of my monopoly power, *a la* Wertheimer. Unmet needs, then, seem to be a *sufficient* but not a *necessary* condition for exploitation.

The second problem is related to how these special duties fit into the context we live. Put differently, in an unjust world, these accounts call for morally demanding duties. One might say that these special duties, particularly in the

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<sup>51</sup> *ibid.*

<sup>52</sup> As we can see, in contrast to Wertheimer's account, these accounts claim that individuals have to consider the unjust background conditions of those to whom they relate.

case of wage labour, are opposed to the way capitalism requires individuals to act. To a large degree, capitalism's own reproduction, which demands both accumulation and profit maximization, requires that companies take advantage of individuals' vulnerabilities. Mayer seems to understand this when he distinguishes between "discretionary exploitation" and "structural exploitation"<sup>53</sup>. For Mayer, cases like *Port of Caledonia* and *Rescue in the Desert* are examples of "discretionary exploitation", or in other words, cases in which mutually beneficial and non-exploitative transactions are *possible*, yet exploiters still decide to exploit. Sweatshop labour, instead, is a typical case of "structural exploitation", Mayer says. This kind of exploitation is "structural", according to Mayer, because competitive pressure compels companies to offer low wages; otherwise they risk being eliminated from the market. Structural exploiters, Mayer claims, "are playing for advantage in a situation where others are too, unlike discretionary exploiters. As this competitive pressure grows, agents increasingly lose the discretion to set prices – at least if they wish to remain competitive"<sup>54</sup>. As we can see, this argument follows the same line as Wertheimer's idea that in competitive markets nobody has the power to transact at a different price, even when one would prefer to do so. So the argument goes, if the competitive market for low-skilled labour sets lower than living wages, capitalist owners cannot pay their workers more than that: they are compelled to pay workers precarious wages to avoid being left out of the market.

Mayer is right in regards to an important point. It is true that there can be structural exploitation, which is an instance of structural domination. When this is the case, individuals have no room to act in other ways: they are compelled to exploit others. In the next section, I will argue that wage labour is structurally exploitative: capitalist ownership is constituted through the structural exploitation of workers. I will contend that capitalist owners are bound to

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<sup>53</sup> Robert Mayer "Sweatshops, Exploitation and Moral Responsibility" (2007) 38 *Journal of Social Philosophy* 605.

<sup>54</sup> *ibid* 612.

exploit workers because the exchanges that occur within capitalist structures unfairly benefit owners at the expense of workers<sup>55</sup>.

Mayer's argument goes too fast, however, by contending that sweatshop labour is *always* a case of structural exploitation, that is, a case where employers have no other choice but to pay miserable wages. There are many big companies that could pay living wages to their employees but they prefer to maximize their profits by paying their vulnerable workers the lowest possible. In many cases, then, these companies can pay their workers better wages without suffering major disadvantages in competition.

According to Chris Meyers' account, companies exploit their workers when they *benefit disproportionately* from their labour and, although Meyers is not completely clear, it seems that, in his view, they benefit disproportionately from their workers' labour when they profit far more than the minimum necessary for the company's survival in the long run<sup>56</sup>. As Meyers explains, "the corporation's plan to maximize profit is not a blind force of nature; the company can choose not to maximize profit as long as the profit it can make is greater than the minimum profit necessary to survive"<sup>57</sup>. Paying living wages, in these cases, is not a burden that will lead these companies to bankruptcy and therefore, these cases cannot be understood as cases of structural exploitation but rather discretionary exploitation: some companies have leeway to act differently than paying sweatshop wages. To say that all sweatshop labour is the outcome of structural exploitation absolves companies too easily from their individual moral duties<sup>58</sup>.

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<sup>55</sup> Although this not Mayer's point, it is also true that to some extent these accounts put too much emphasis on moral duties, disregarding the fact that structures not only make people vulnerable to others but at the same time constrain the exploiter's behaviour.

<sup>56</sup> Meyers (n 3).

<sup>57</sup> *ibid* 329-330.

<sup>58</sup> However, as Mayer states, "though enterprises in a competitive market lack the freedom to set prices without fear of suffering a loss, they are not without choices. They have the choice to continue competing or to quit the business". Mayer (n 53) 612.

If exploitation depends on the fact that wages do not meet workers' needs, sweatshop labour is always a case either of discretionary or structural exploitation. Structural exploitation, however, can only be properly seen as a case of exploitation if one is willing to depart from the paradigm of individual moral responsibility and apply the concept of exploitation to assess the system/structure that compels owners to pay miserable wages to their workers. This kind of approach will guide my discussion in the next section.

#### **4. An account of wage labour exploitation**

As we saw in the preceding sections, today the notion of exploitation is not alien to non-Marxist traditions. According to the previous accounts, wage labour can be exploitative when workers' rights have been previously violated or when wages are lower than what the competitive markets sets or when people receive wages that fall below a decent minimum.

Moreover, by looking at these three non-Marxist accounts we have made some progress towards fortifying the claim that not only sweatshop labour but also wage labour *per se* is exploitative. We saw first that exploitation indicates a problem that lies in the transaction itself, regardless of whether a violation of property rights occurred prior to the transaction. Workers can be exploited, even if no violation of their property rights occurred in the past because the problem of exploitation arises from the relation between workers and capitalist owners. Secondly, we argued that competitive markets are compatible with exploitation. A competitive labour market, then, is compatible with the claim that sweatshop labour is exploitative. The reason is that market value (even when competitive) does not necessarily provide a standard that precludes exploitation, especially in the case of labour markets. Finally, we saw that sweatshop labour is not always the outcome of opportunistic exploiters, but rather a case of structural exploitation in which companies act compelled by market pressures. Additionally, I claimed that although unmet needs might be a sufficient condition, it should not be a necessary condition for exploitation: there can be exploitation even when needs are already met.

However, none of the previous accounts view wage labour as exploitative *per se*. The most important reason is that these accounts contend exploitation exists only if it is the outcome of opportunistic agents that can be held individually responsible. In the argument of this thesis, nevertheless, the idea that capitalist property gives to owners a power to exploit is not intended to blame capitalists, or to attribute them individual responsibility. It is not that capitalists are necessarily bad people; exploitation, at least in the structural case of wage labour, cannot be fully explained by arguing that the capitalists behave in immoral ways. As an instance of structural domination, structural exploitation is better understood as a critical concept that can help us to assess our social structures, to understand how they work and to see how they benefit capitalist at the expense of workers.

In the following sections, I want to go further than the accounts we already discussed. I want to claim that wage labour is structurally exploitative because it involves an unfair exchange between workers and capitalist owners. Exploitation here does not lie in the particular exchange between a worker and an employer; it is not an exchange in which the worker is not paid a living wage or is not paid enough. Exploitation, instead, lies in the structural relation between workers and capitalist owners. My point will be that capitalist owners' profits are not deserved: either workers create all the value, or workers produce that what has value. In any event, owners' profits do not stem from any productive activity that they perform. This means that we need to expand Meyers' insight about the disproportionate benefits that companies receive *vis a vis* workers: it is not only that capitalist owners disproportionately benefit from workers labour when they do not pay them living wages, but rather that there is no proportionality in the fact that they receive profits for doing no productive activity.

In the next section, I will explain Marx's account of exploitation, which relies on the *labour theory of value*. In section 4.2, we will see that we do not need the labour theory of value to argue, like Marx, that capitalist owners' profits are not

deserved, and therefore, that the relation between workers and capitalist owners is exploitative. In section 4.3, I will argue against what I call the “distributive sting”, claiming that the problem of exploitation lies in the relation between workers and capitalists, not in the fact that the distribution of means of production is unjust for reasons other than the exploitation that they engender. I conclude the chapter in section 4.4 by explaining why we do not need to claim that capitalist owners steal what belongs to workers in order to contend that the wage labour exchange is unfair. I will claim that the non-reciprocity of that exchange is what provides the normative underpinning of unfairness.

#### **4.1. Marx's Labour Theory of Value**

##### **4.1.1. Use value and exchange value**

According to the labour theory of value, *labour is the only source of value*. It is worth noting here that Marx's idea that labour is the source of value was not his *discovery*. Economists such as Adam Smith and David Ricardo raised this idea before Marx did<sup>59</sup>. As Ricardo said, "the value of a commodity, or the quantity of any other commodity for which it will exchange, depends on the relative quantity of labour which is necessary for its production, and not on the greater or less compensation which is paid for that labour"<sup>60</sup>.

In the very beginning, this idea that labour was the source of value was very useful for the bourgeoisie in its struggle with an aristocracy hostile to labour that legitimized itself as a class only because of their land ownership. However, once the bourgeoisie became the powerful class, they dropped the idea that labour was the only source of value. This came about because, if appropriated by workers, the idea's subversive character could become a powerful weapon against the bourgeoisie itself.

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<sup>59</sup> In a way, Marx takes further the project that previous political economists like Smith and Ricardo began: to understand the origins of wealth and to explain the price of commodities. That labour might give an account of both things was a well-known idea shared by British political economists since the middle of seventeenth century.

<sup>60</sup> David Ricardo, *The Principles of Political Economy and Taxation*. (Batoche Books, (2001) [1821]), 8.

Although Marx did not *discover* the idea, he made it both more cogent and coherent<sup>61</sup>. According to Marx's labour theory of value, every commodity is, in the first place, "an external object, a thing which through its qualities satisfies human needs of whatever kind"<sup>62</sup>. This utility is the *use value* of the commodity. But in capitalism commodities also have an *exchange value*. The exchange value of commodities, however, must be capable of being expressed in terms of something common to all:

If then we leave out of consideration the use value of commodities, they have only one common property left, that of *being products of labour*. If we make abstraction from its use value, we make abstraction at the same time from the material elements and shapes that make the product a use value ... Along with the useful qualities of the products themselves, we put out of sight both the useful character of the various kinds of labour embodied in them, and the concrete forms of that labour; there is nothing left but what is common to them all; all are reduced to one and the same sort of labour, *human labour in the abstract*<sup>63</sup>.

Because in capitalism commodities are produced for exchange in the market, we need to look at what makes them comparable. Their specific features must be disregarded, and therefore, the actions of concrete labour must be disregarded too. What remains is the action of labour in general, or in other words, the expenditure of human energy in the abstract, disregarding its specific characteristics<sup>64</sup>. The magnitude of the *exchange value* of a commodity, then, is determined by the *quantity of abstract labour* contained in it, which is measured by its duration. However, this quantity is itself limited by social conditions. The quantity of labour time is the socially necessary labour time "required to produce any use-value under the conditions of production normal for a given society and with the average degree of skill and intensity of labour prevalent in that society "<sup>65</sup>.

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<sup>61</sup> The labour theory of value is the central theory of Marx's mature work. Its best articulation can be found in *Capital*, Volume I.

<sup>62</sup> Karl Marx *Capital. A Critique of Political Economy*, Volume 1 (Penguin Books 1976) 125.

<sup>63</sup> *ibid* 128, emphasis added.

<sup>64</sup> Guglielmo Carchedi *Frontiers of Political Economy* (Verso 1991) 10.

<sup>65</sup> Marx (n 62) 29.

Labour, as we can see, creates not only *use value* but also creates *exchange value*. In the labour process, labour is materialized by transforming resources through the means of production, consequently creating new value. Note here that the means of production are also embodied labour. As Marx explains capital only has value as accumulated labour: means of production are the product of previous labour. In the labour process, means of production are commodities whose use value is transferred to the new commodities that they help to create<sup>66</sup>. By labouring, the value embedded in the means of production is both consumed and transferred into the new product.

Thus far, we have seen that labour creates value, which subsequently is exchanged in the market. Capitalist profits, then, must be a fraction of the value produced by labour. The question, now, is how do capitalists appropriate some of the value that labour creates?

#### **4.1.2. Surplus value and necessary labour**

To answer the aforementioned question, we first must understand that capitalists do not buy the outcomes of individuals' labour, but their *labour power*, that is, their *capacity to labour*. Because workers do not have access to means of production without the owners' consent, they need to submit to their conditions. The most salient condition is that capitalists do not buy the concrete goods or service that workers produce, but their labour power.

Workers sell their labour power (not the outcomes of their labour) in the labour market. Labour power, then, is like any other commodity that has both use and exchange value. The exchange value of labour power is determined, as in the case of every other commodity, by the labour time socially necessary for its own reproduction. As Marx explains,

the production of labour-power consists in his reproduction of himself or his maintenance. For his maintenance he requires a certain quantity of the means of subsistence. Therefore the labour-time necessary for the production of labour-power is the same as that necessary for the production of those means of subsistence; in other words, the value of

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<sup>66</sup> Marx (n 62) 492ss.

labour-power is the value of the means of subsistence necessary for the maintenance of its owner<sup>67</sup>.

It is important to stress that what we consider necessary for the labourer as well as her family is the "socially, not biologically, determined subsistence minimum"<sup>68</sup>. However, what makes labour power a peculiar commodity is its use value. The use value of labour power is consumed in the labour process, and its special feature is that it is a *source of more value than it has itself*<sup>69</sup>. That is, the exchange value of labour power is lower than the value the labour power creates in the labour process. Thus, the use value of labour power is constituted by its ability to create more exchange value than its own exchange value<sup>70</sup>. Notice here that when the capitalist' owner buys labour power in the labour market no law has been violated because "equivalent has been exchanged for equivalent"<sup>71</sup>. Through wages, the capitalist pays the exchange value of the labour power: exploitation, then, is compatible with a competitive labour market.

What the capitalist obtains, however, is a commodity whose use value consists in the *capacity* to labour in the labour process. Through its exercise, *labour power reproduces its own value and also creates more value*. The reason is that the labour process does not stop at the point where the new value created by the labour power is equal to its exchange value but goes further. Thus, imagine the worker needs for surviving, in a week, a series of commodities that represent twenty hours of labour. The worker, then, reproduces her own exchange value, that is, her wage, by labouring twenty hours per week. However, her working week is not twenty hours, but fifty hours. Once reaching the twenty hours of labour in which she creates the value of her wage, she continues creating value for thirty more hours. Hence, when the creation of value surpasses the point of labour power's own reproduction, the labour process becomes a process of creating

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<sup>67</sup> *ibid* 274.

<sup>68</sup> Carchedi (n 64) 11.

<sup>69</sup> Marx (n 62) 283ss.

<sup>70</sup> Carchedi (n 64) 12.

<sup>71</sup> Marx (n 62) 301.

*surplus value*. This surplus value is what the capitalist appropriates and constitutes her *profit*.

As we can see, the surplus value is produced by the exercise of labour power. The surplus value, therefore, is not obtained in the exchange process but in the production process. In other words, *surplus value does not occur by buying cheap and selling dear*<sup>72</sup>. Even though some capitalists can profit in this way, such profit would come at the expense of another capitalist's losses<sup>73</sup>. In that case, there would be no creation of new surplus value but only a redistribution of already existing value<sup>74</sup>.

Even though we saw that the wage-labour exchange is consonant with both law and market rules, it nonetheless conceals the fact that workers labour more than what is necessary for their own reproduction. Because the wage the worker receives is sufficient to sustain her for the entire working day, this creates the illusion that wage is the payment for the labour provided during the entire working day<sup>75</sup>. "The wage form thus extinguishes every trace of the division of the working day into necessary labour and surplus labour", Marx asserts. *Necessary labour*, then, is the labour in which workers produce what they need for their own reproduction. All work beyond that is *surplus labour*.

It is true that in every society individuals are compelled to do necessary labour, that is, to labour in order to satisfy their needs. This is why there will be always some necessary labour even under socialism and communism. In capitalism, however, individuals are *forced to do more than necessary labour*<sup>76</sup>. They are compelled, not by law's overt and direct coercion nor by particular individuals' use of violence. Workers' property-lessness is what compels them to submit to

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<sup>72</sup> Andrew Kliman *Reclaiming Marx's 'Capital': A Refutation of the Myth of Inconsistency* (Lexington Books 2007) 23.

<sup>73</sup> *ibid* 23.

<sup>74</sup> Carchedi (n 64) 11.

<sup>75</sup> *ibid* 12.

<sup>76</sup> Nancy Holmstron "Exploitation" (1977) 7 *Canadian Journal of Philosophy* 353. As Marx posits, "capital obtains this surplus-labour without an equivalent, and *in essence it always remains forced labour* – no matter how much it may seem to result from free contractual agreement". (Marx 1894 570).

capitalists owners' conditions; otherwise they would not obtain the subsistence means to satisfy their needs.

#### **4.1.3. Production of profits and production for profits**

Workers need to do more than necessary labour because capitalism's reproduction requires surplus value. Without the production of profit, they do not survive the competition, which only sustains those who are able to produce profits. However, in capitalism there is not only production *of* profit, but also production *for* profit<sup>77</sup>.

Production *for* profit is the aim of production. Capitalists neither want to produce for their own consumption nor do they want to provide consumers with useful things<sup>78</sup>. Capitalists produce goods and services only if they have an exchange value, that is, they only produce articles destined to be sold in the market. Thus, these articles and commodities are produced only because, through production and exchange, capitalists can obtain *surplus value*. In short, they are produced because the production process allows them to make others produce *surplus value*. Workers, then, labour not to produce material wealth to satisfy their needs; they perform *surplus labour* not as an end (to produce the means to satisfy their needs) but to produce *surplus value*.

#### **4.1.4. The labour theory of value in the dynamics of capitalism**

Exploitation does not only emerge from capitalism. Although Marx only develops a systematic and exhaustive account of capitalist exploitation, he also contends that exploitation is a feature of every past society:

Capital did not invent surplus labour. Wherever a part of society possesses the monopoly of the means of production, the worker, free or unfree, must add to the labour-time necessary for his own maintenance an extra quantity of labour-time in order to produce the means of subsistence for the owner of the means of production<sup>79</sup>.

Thus, every mode of production is based on exploitation, that is, on forced transfer of surplus labour from producers to non-producers. What

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<sup>77</sup> Carchedi (n 64) 42.

<sup>78</sup> *ibid* 8. As Carchedi says, capitalist production is a "*surplus value producing process*" (p. 8)

<sup>79</sup> Marx (n 62) 344.

distinguishes capitalism is that in this system exploitation *is not directly palpable*. On the one hand, individuals appear to be paid for their concrete labour, that is, for all the labouring activity they perform. On the other hand, profits seem to come either from the sphere of exchange, the capitalist entrepreneurial activity or from their means of production.

Another important difference between capitalism and other exploitative social formations is that in the latter societies surplus labour is *naturally limited* by the given set of wants of those who exploit<sup>80</sup>. In those societies, exploiters consume most of the surplus product derived from surplus labour. In capitalism, instead, the aim of production is not directly the satisfaction of exploiters' needs or wants, but to accumulate (as we saw, production *for profit* is the aim of production). For that reason, Marx asserts that unlike other exploitative societies, in capitalism there is a "*boundless thirst for surplus labour*" that "arises from the nature of the production itself"<sup>81</sup>.

Within capitalism, there seem to be no *internal limits* to exploitation. Limits to exploitation, one might say, have to come from an *external source*, as for example, the political sphere or workers' collective power.

#### **4.2. Exploitation without the labour theory of value**

Marx's labour theory of value, which is an *objective theory of value*, shows us that *only labour creates value*, and therefore, that *capitalists' profits are necessarily part of the value that labour creates*. This theory has been criticized<sup>82</sup> but also forcefully defended<sup>83</sup> and it is not the aim of this thesis to enter into this specific economic discussion<sup>84</sup>. The labour theory of value concerns the constitution of economic

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<sup>80</sup> *ibid* 345.

<sup>81</sup> *ibid*.

<sup>82</sup> Perhaps the most well-known critique of Marx's labour theory of value is in Piero Sraffa's *Production of Commodities By Means Of Commodities: Prelude to a critique of economic theory* (Cambridge University Press 1960).

<sup>83</sup> The labour theory of value is nowadays strongly defended by Andrew Kliman, Alan Freeman, Michael Roberts, among others Marxist scholars.

<sup>84</sup> Let me stress here that the purpose of the labour theory of value does not end with an analysis of exploitation. The labour theory of value also explains the *tendency of the rate of profit to fall*, and therefore, *capitalist crisis*, a very ambitious project in economics. As Alan Freeman contends, "if Marx's primary contribution was to explain exploitation, he would

value and price-formation, which, as we saw earlier, claims that value is determined by *socially necessary labour time*. But, regardless how economic value is constituted, and therefore, prices, here I will contend that it is possible to claim that capitalists unilaterally extract from workers the fruits of their labour, and that they do that by dint of their power over them. Gerald Cohen's works have made a very compelling case for this conclusion. Although at first Cohen suffered from what we will call a "distributive sting", his central claim about capitalist exploitation stands and can be maintained without it.

"The relationship between the labour theory of value and the concept of exploitation is one of mutual irrelevance", asserted Cohen, at the time probably the most famous Marxist in the Anglo-Saxon world, in a piece in 1979<sup>85</sup>. According to Cohen's account of exploitation, despite the labour theory of value errors, it is not needed to support the charge that labourers are exploited in capitalism. For Cohen contended in that piece that the real foundation of exploitation's charge was based on a much simpler idea, that he called the *Plain Argument*, according to which

- (1) The labourer is the only person who creates *the product, that which has value*.
- (2) The capitalist receives some of the value of the product.
- (3) The labourer receives less value than the value of what he creates, and
- (4) The capitalist receives some of the value of what the labourer creates, and
- (5) The labourer is exploited by the capitalist<sup>86</sup>.

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indeed be little more than a minor post-Ricardian. His violent opposition to orthodoxy is inextricably bound up with his account of capitalist crisis. The central notion in this account is that crisis is a product of capital itself". Alan Freeman and Andrew Kliman "Two Concepts of Value, Two Rates of Profit, Two Laws of Motion" (2000) 18 *Research in Political Economy* 243, 262.

<sup>85</sup> Gerald Cohen "The Labor Theory of Value and the Concept of Exploitation" (1979) 8 *Philosophy & Public Affairs* 338, 339.

<sup>86</sup> *ibid* 356.

As it stems from the *Plain Argument*, the crucial point about exploitation is that *workers create that which has value, not that they directly create value*. That is, only workers create the product that has value. For this reason, even if the value of products were determined by the extent to which people *desire* them (this is, by a subjective theory of value) it is still true that only labour produces that what has value, and that the capitalist appropriates a major part of this value<sup>87</sup>.

The point is that owners of capital, as *owners*, do not produce anything. Certainly, owners can perform productive activities, such as managerial activities. These activities, however, are performed by acting as producers not as owners of capital, and therefore, their reward is not constituted by profits. *Owning* means of production does not add any new value to the product. The famous English economist Joan Robinson explains that although labour is not the source of all value, capitalist ownership is not the source of *any* value. As Robinson asserts, "*owning* capital is not a productive activity"<sup>88</sup>. Capital owners usually claim that their profits are deserved because they contribute to production with their capital. However, it is capital that is required for production, not its ownership, Robinson claims. Ownership of capital, in itself, is not productive.

This idea, indeed, has become clearer, now that *companies* and not entrepreneurs are the main capitalist institutions. Owners are shareholders that neither own physical assets nor have control of the company; they only have a credit against the corporation. Unlike the former business unit, which was both owned and managed by the same individual or a small group of individuals, modern corporations gather the wealth of many individuals who now are merely the *investors* and have neither the control of the company nor its management<sup>89</sup>. Shareholders' ownership of this *passive property* visibilises the fact that they do not perform any discernible function. Shareholder have a right

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<sup>87</sup> *ibid* 357

<sup>88</sup> Joan Robinson, *An Essay on Marxian Economics* (St. Martin's Press 1966) 18.

<sup>89</sup> Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property* (The MacMillan Company 1933).

to profits just on account of this ownership and not because they do any productive activity related to their company. The idea, then, is that capitalist ownership does not produce value in itself: it makes possible production but does not create value alone. If I am the owner of some land and I lend it to another person in order to grow apples, the land itself does not produce the apples without someone performing the productive activity of cultivation. As owners, capitalists do not engage in the activity of production<sup>90</sup>.

Capitalist owners, however, might say that by investing or risking capital they perform a productive function. This is true, but it does not mean that they are producers. Owners make possible the productive process but they do not produce. Many other entities also facilitate the productive process. One example is the state, which protects and enforces private property. Those are conditions for production but not a productive activity. Owners might also say that they contribute to production by innovating, thus lowering the costs of production. However, what lowers such costs is the application of science and knowledge to industry, and owners do not perform that technical activity; they may risk capital by looking for efficient machines and procedures, but they do not engage in the activity of producing technical knowledge.

Now, it could be said that I underestimate the importance of facilitating production by absorbing risks and liabilities. One could argue that carrying risks and liabilities would merit some share of the fruits of production even when capitalists are not producers. The point of the *Plain Argument* I am developing here is not that only those who produce what has value deserve all that value. By contending that workers are the only ones who produce what it has value, the argument shows the importance of what workers do. Workers are not a cost of production, a cost that capitalist owners must pay for producing something that later they will sell in the market. Owners are not producers; at best, they “facilitate” production. Facilitating production perhaps

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<sup>90</sup> One might say that owning means of production forces the production of value. It is in this last sense that we could say that owning capital is "productive". It is productive as a social relation that makes individuals work by enforcing labour discipline.

should be rewarded, but not “rewarded” in the way capitalist property does. There is little or no relationship between income and the risks that the capitalist faces with her investment.

Certainly, the *Plain Argument* does not have the broad explanatory power of the labour theory of value: it does not explain prices, the idea of surplus value, the degree of exploitation and the thesis that the rate of surplus value equals the rate of exploitation. Nor does it provide an explanation of the source of the product's value. However, the argument shows that capitalists do not have the attribute of being producers; it is their ownership that allows them to appropriate the object produced by workers. Even if facilitating production deserves some reward, they do not deserve the advantages and attributions that capitalist property permits. These advantages and attributions are possible because the unequal distribution of means of production gives capitalist owners a power over workers that makes workers produce things that owners appropriate.

#### **4.3. The "distributive sting" of Cohen and Roemer**

According to Cohen, something was missing from his *Plain Argument*. He later explained that its conclusion (5) “the laborer is exploited by the capitalist” does not immediately follow from (1), (2), (3) and (4). Thus, he asserted that

I now think that the crucial lacuna [of my *Plain Argument*] is a statement about the distributive background against which the labour contract is concluded. Capitalists obtain some of the values of what workers produce because capitalists do and workers do not own means of production: that is why workers accept wage offers which generate profit for capitalists... *The question of exploitation therefore resolves itself into the question of the moral status of capitalist private property...* The crucial question, then, is: what is the moral status of private ownership of capital? That question is not only very important but also very difficult, *and I shall not pursue it further here*<sup>91</sup>.

Here Cohen reduces the problem (or the wrong) of exploitation to the question whether or not capitalist property is morally legitimate. Notice how for Cohen,

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<sup>91</sup> Gerald Cohen "More on Exploitation and the Labour Theory of Value" (1983) 26 *Inquiry* 309, 316-317, emphasis added.

in this article, the problem of exploitation does not rely on the particular relation that exploitation involves, but on the moral status of capitalist property. According to this argument, exploitation would only be illegitimate by virtue of the illegitimacy of capitalist property<sup>92</sup>. Regrettably, as we can see in the quoted paragraph, Cohen decides not to explain what makes capitalist property legitimate or illegitimate. Clearly, however, for Cohen its legitimacy does not stem from the exploitation that it causes, but from an independent reason or principle. In Cohen's view, the legitimacy of capitalist property would not be *internally related* to exploitation; exploitation, on the other hand, would only exist if it can be connected to some injustice related to capitalist property<sup>93</sup>.

In a similar path, John Roemer, another important analytical Marxist, asks in a very well-known piece "[S]hould Marxists Be Interested in Exploitation?". He answers the question negatively<sup>94</sup>. In Roemer's view, the concept is useful only as an index of inequality in the ownership of productive assets<sup>95</sup>. For that reason, "[w]hen exploitation is an injustice, it is not because it is exploitation as such, but because the distribution of labour expended and income received in an exploitative situation are consequences of an initial distribution of assets that is unjust. The injustice of an exploitative allocation *depends upon the injustice of the initial distribution*"<sup>96</sup>.

As we can see, for Roemer *exploitation is not necessarily unjust*. Exploitation is unjust only if the unequal assets' distribution is the outcome of an *unjust* distribution. Exploitation is not an interesting concept, Roemer claims, because

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<sup>92</sup> A similar idea can be found in Gerald Cohen, "Karl Marx, by Allen Wood" (1983) 92 *Mind* 440.

<sup>93</sup> It is much later that Cohen comes to argue explicitly otherwise, that capitalist property is unjust precisely *because of the unjust exploitation that it facilitates*, which is precisely the point I am trying to make here. Gerald Cohen, *Self-ownership, Freedom and Equality* (Cambridge University Press 1995) 195ss.

<sup>94</sup> John Roemer "Should Marxists be Interested in Exploitation?" (1985) 14 *Philosophy & Public Affairs* 30.

<sup>95</sup> *ibid* 52ss.

<sup>96</sup> John Roemer, *Free to Lose* (Harvard University Press 1988) 57, emphasis added. Later Roemer says "exploitation (in the technical sense) is not a concept of fundamental ethical interest. We view exploitation as a bad thing only when it is the consequence of an *unjust* unequal distribution in the means of production" (130).

it is *secondary* to the unjust initial distribution of means of production<sup>97</sup>. For this reason, *our interest should not be in exploitation but in the unequal distribution of capital assets*<sup>98</sup>. According to Roemer, the initial distribution of assets being equal, if capitalist accumulation involved no injustice, then, capitalist exploitation is just<sup>99</sup>.

Consider, as an example of just exploitation, the case of Adam and Karl, which Roemer discusses in many of his works. Roemer asks us to consider an economy with only two agents, Adam and Karl. They both begin with the same amount of capital, which also can be consumed. Adam works hard and builds up a large capital stock. But Karl consumes his capital stock. Therefore, Karl is forced to work for Adam because there is no other way for him to receive his consumption units. According to Roemer, "if Karl knew what the consequences of his leisure would be, and if his preferences were autonomously formed under conditions of equal opportunity, then I think we cannot call this outcome exploitative... The [Property Right] definition of exploitation renders the correct verdict in this example: there is no exploitation because Karl and Adam each began with the same capital endowment"<sup>100</sup>. Thus, for Roemer a *clean generated capitalism* is not unjustly exploitative. Put differently, if the unequal distribution of means of production arises without violating others' property rights but as the outcome of individuals' choices, then, exploitation is not unjust<sup>101</sup>.

As we can see from this section, both Cohen and Roemer suffer from what I call a "distributive sting": for each, exploitation has no *autonomous* normative

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<sup>97</sup> Alan Carling "Liberty, equality, community" (1988) 171 *New Left Review*, 97.

<sup>98</sup> This is why Roemer proposes what he calls the "property relations definition of exploitation".

<sup>99</sup> Roemer (n 94) 48-52; Roemer (n 96) 54ss. See also John Roemer, "What is Exploitation? Reply to Jeffrey Reiman" (1989) 18 *Philosophy & Public Affairs* 90, 92-93.

<sup>100</sup> *ibid* 94.

<sup>101</sup> For Marx exploitation's wrongness is not based on the idea that capitalist accumulation is the outcome of violence, fraud or force. Although in Marx's *Capital* there are some few chapters where Marx does assert that the methods of what he calls "primitive accumulation" were anything but idyllic, they are not relevant for Marx's account of exploitation. Indeed, Marx asserts that even though the unequal distribution of assets would have been the outcome of owners' labor, exploitation anyways would be "wrong" (see chapter 24 *Capital I*).

significance. Its normative significance, when it exists, *derives* from the illegitimacy of capitalist property, in the case of Cohen, and from an unjust unequal distribution of capital assets, in the case of Roemer. Because exploitation lacks any normative significance in itself, the judgment of the legitimacy of capitalist property cannot be based on the exploitation that it facilitates.

Cohen would also say later that we should be more concerned about developing a theory of equality rather than one of exploitation. It is for this reason that his last works focused on developing an account of distributive justice. According to Cohen's latter works, exploitation would not be a critical concept anymore. Something similar happens with Roemer's account of exploitation, which is based on the view that the Marxist concept of exploitation is not compelling as a theory of distributive justice. Indeed, recently Roemer has contended that "the ethics of socialism should be reformulated, from being characterized as the elimination of exploitation, to *the elimination of distributive injustice*"<sup>102</sup>. The idea that Marx's concept of exploitation must function as a theory of distributive justice and has to be assessed according to such standards has been affirmed also by Will Kymlicka. According to Kymlicka, the concept of exploitation ignores those who are worst off and, actually, preclude the actions needed to help them<sup>103</sup>. Exploitation, Kymlicka says, "is simply one of many forms of distributive injustice, not the paradigm of injustice. Unfortunately, Marxists remain prone to exaggerating the moral centrality of exploitation"<sup>104</sup>.

It is a mistake to think that through its conceptualization of exploitation, Marx's project sought to propose a theory of distributive justice or a kind of theory of justice. For Marx, exploitation is a critical concept because it aims to show that the way we reproduce our material conditions as human beings is not only

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<sup>102</sup> John Roemer "Socialism Revised" (2017) Discussion Paper 2089, <http://cowles.yale.edu/>, accessed on 17 of June 2019, 5, emphasis added.

<sup>103</sup> Will Kymlicka, *Contemporary Political Philosophy* (Oxford University Press 2002) 182.

<sup>104</sup> *ibid* 184.

controlled by a few, but also lacks any *reciprocity*, as we will see in the next section. Exploitation, thus, is a concept which unveils the flawed way we collectively reproduce our material conditions and our own existence. For that reason, clearly, something is lost if the critical concept of exploitation is replaced by a theory of distributive justice. In the normal liberal framework, a theory of distributive justice aims to justify some principle for the distribution either of resources or welfare. "Luck egalitarianism", the distributive theory of justice for which Cohen and Roemer argues, is concerned with the elimination of the "unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents"<sup>105</sup>. Yet it ignores any analysis of the dominating power that capitalist property gives to owners, and how this power leads to further and more unequal distributions.

#### **4.4. Wage labour exploitation and reciprocity**

How might we explain the following facts? (1) The labourer is the only person who creates the product, that which has value, (3) the labourer receives less than the full value of what he creates, and (4) the capitalist receives some of the value of what the labourer creates.

The immediate answer one is tempted to give would be that the exchange between workers and capitalist owners is unfair because owners appropriate a value that pertains to labourers. According to this view, the problem of exploitation is that the worker does not receive the full value to which she is entitled. Exploitation, then, would be like a theft because the capitalist would be stealing something that is the worker's *private property*. The problem with this answer is that it militates against need-based redistributions. It does not allow redistributive taxation or other redistributive measures because, according to this view, the state would be extracting worker's property.

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<sup>105</sup> Gerald Cohen *Rescuing Justice and Equality* (Harvard University Press 2008) 7.

However, there is no need to say that exploitation's injustice lies in the appropriation by capitalist owners of workers' ownership<sup>106</sup>. The second and most compelling answer that can be given to explain the unfairness of the exchange between workers and capitalists is based on its *lack of reciprocity*. Reciprocity requires that the benefits each one receives be proportional to each person's contribution<sup>107</sup>. The workers/capitalists exchange involves a non-reciprocal distribution of benefits and burdens because "capitalists gain benefits (profits) without making any labour contribution, whereas the labour burdens of workers are not compensated for in terms of benefits (wages)"<sup>108</sup>. Even if facilitating production deserves some reward, capitalist do not deserve the benefits and attributions that capitalist property gives to them. Such benefits and attributions break the reciprocity that must exist between exchanges.

Although the idea that exploitation involves a crude lack of reciprocity might not have the same normative force as the blunt notion that capitalist owners appropriate something that rightly belong to workers, it nonetheless conveys

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<sup>106</sup> The labour theory of value never claims that individuals are owners of the full product that they create with their labour, and for that reason, the problem of exploitation is not that individuals do not get back all the value that they produce. The labour theory of value is an *economic theory of value and prices* and not a *labour theory of property*, which is a *normative theory* that claims that individuals should have property in the outcomes of their labour. However, even more important to stress is that the labour theory of value was not used by Marx as a reason for claiming that workers should be the owners of all the value their labor create. We can see that by looking how Marx envisage both a socialist and a communist society in *Critique of the Gotha Programme*. There Marx states that the *contribution principle* and the *needs principle* are the principles of justice that shall be applied to socialist and communist society, respectively. In a first moment one might think that with the contribution principle Marx is claiming for something like a labour theory of property. This would be a mistake, however, because Marx asserts that in a socialist society, before the distribution of the "proceeds of labor" according to contribution, many deductions must be done. In addition to the deduction of some portion for the replacement of means of production and the expansion of production, there must be deduced a "portion which is destined for the satisfaction of common wants, such as schools, provision for the protection of the public health, etc" and also "funds for those unable to work". If Marx would have supported the idea that individuals are entitled to what they produce, then, in a socialist society they would be exploited as well because the deductions would prevent them from receiving all that they produce.

<sup>107</sup> Scott Arnold, *The Philosophy and Economics of Market Socialism* (Oxford University Press 1994) 57.

<sup>108</sup> Paul Warren "Self Ownership, Reciprocity and Exploitation, or Why Marxists Shouldn't be Afraid of Robert Nozick" (1994) 24 *Canadian Journal of Philosophy* 33, 35.

the two primary ideas that make the latter idea so intuitively appealing. On the one hand, it shows that capitalists' enrichment and workers' dispossession rely on non-reciprocal patterns of exchanges. Both inequality and poverty, as the common consequences of exploitation, do not need to rely on owners' "theft" because they can be explained by the lack of reciprocity in capitalist-workers interaction. The lack of reciprocity inherent to exploitation highlights the fundamental relation that exists between capitalist owners' wealth and the poverty of the many. Capitalism cannot claim to be a cooperative system of wealth creation because it necessarily implies that the high income of capitalist owners comes from the lower income of workers. On the other hand, the idea of non-reciprocity in exchanges expresses a similar sense of injustice. Like owners' "theft", the lack of reciprocity that exploitation involves can be described as a break in the equivalence of exchanges and interactions that are presupposed in a community of equals.

Even though under capitalism *anyone* can be a capitalist owner, *not everyone* can be. Capitalism's own reproduction demands the many to labour for the few. In other words, capitalism is not a system that over time will transform every person into an owner. The lack of reciprocity in the profits/wages exchange is at the core of the capitalist property.

## CHAPTER 7. THE POLITICAL POWER OF CAPITALIST PROPERTY

### 1. Introduction

In this final chapter of the thesis, I will unpack and defend a claim that appears to be widely believed by most citizens of most (perhaps all) Western democracies: capitalist owners have political power not only on account of their status as citizens but by force of the fact that they are capitalist owners. Nobody would deny, for example, that Jeff Bezos, the chairman of Amazon, has much more political power than a common citizen. But this apparent consensus is too sketchy to be adequately informative and, hence, it is necessary to unpack it and specify the ways in which capitalist owners possess and exercise such power. As I unpack the broad claim, it becomes apparent that the consensus is not as solid it might have looked at first sight. Pluralists, for instance, are not particularly fussed about the power of capitalist owners, as we will see below. An important function of this chapter is to defend the claim against the general gist of the argument put forward by pluralists. But that is, of course, not the end of it. Unpacking the claim will allow us to see that the capitalist owner's political power is a function of her being *a capitalist owner* and not on account of her greater talents or, indeed, any properties they might possess other than capital ownership.

Here I shall defend this point by explaining how the instrumental and structural power that capitalist property gives to owners is deployed. In this Chapter, however, capitalist property shall be understood in the broad sense I explained in Chapter 1, section 4.1.2. This is, not only as private property over means of production but also as the property people can have over many intangible and financial assets. In this sense, one might categorize some forms of personal wealth as capitalist property.

Here we will find that by employing resources such as wealth and cohesion, both capitalist owners finance campaigns, lobby and create opinion, aiming to influence political decisions that favour their own interests. This instrumental power, as we will see, enables them to enjoy much more political power than the common citizen, and even more political power than any other group. I defend this latter idea against the pluralist framework, which offers a complacent view about such power: capitalist owners are just one among many other interest groups that compete for influence in the political arena.

Then we will realize that capitalist owners also have a structural power, which arises from the structural position that they enjoy in the economy. In virtue of this position, they have the capacity to harm the economy by restraining investment or firing workers when governments seek to redistribute social wealth decreasing their profits. This capacity usually suffices to make politicians and governments dependent on capitalist owners in economic matters. Most worryingly is the magnitude this structural power has achieved today in comparison to the post-war era. Perhaps the most important reason for this increase is related to the capital mobility owners have gained since 1980, which facilitates the flight of capital investment across jurisdictions every time government policies threaten their accumulation of profits.

## **2. The democratic ideal and the growth of inequality**

### **2.1. The democratic ideal**

Why not a market of votes? Markets, today, have been increasingly imposed on many spheres of life, so it seems fair to ask, why not on votes? Why not create a vote market? That is, a market in which people could buy and sell votes for political elections.

One would correctly think that votes are the paradigmatic kind of thing that money cannot buy. The most obvious reason is that this would create a sort of “tyranny of the wealthy over the poor”<sup>1</sup>. The idea behind “one person, one

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<sup>1</sup> Alfred Archer, Bart Engelen, Viktor Ivankovic “Effective Vote Markets and the Tyranny of Wealth” (2019) 25 *Res Publica* 39.

vote” is that every political view represented by a vote has an equal weight in the political sphere. In other words, votes give individuals an equal political power to influence political decisions. A market of votes would seriously affect this arrangement: to the extent that “the rich have more purchasing power to buy votes and the poor have greater incentives to sell their votes, vote markets will lead to the rich yielding greater political power than the poor”<sup>2</sup>. A vote market would create great inequalities in political influence, and therefore, it would affect the *democratic ideal* of our societies.

In affirming that wealth and capitalist property give owners political power, the aim is to assess the operation of this democratic ideal in reality, and, more precisely, to show how the political power of wealthy and capitalist owners affects such an ideal, thus undermining the legitimacy of political authority. How, then, can we describe the democratic ideal?

An important part of the democratic ideal rests on the principle of *political equality*. According to this principle, individuals should have an equal opportunity and capacity to influence political decisions. Thus, following Joshua Cohen, political equality involves not only *equal* political participation rights (like right to vote, association and office holding) but also *equal opportunities for effective political influence*<sup>3</sup>. The principle of political equality, then, does not end in “one person, one vote”, but rather demands equal opportunities for influencing political decisions. The democratic ideal, as we can see, goes further than *formal* political equality, that is, further than an equal

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<sup>2</sup> *ibid* 40

<sup>3</sup> Joshua Cohen “Money, Politics and Political Equality” in Alex Byrne, Robert Stalnaker, and Ralph Wedgwood (eds) *Fact and Value: Essays on Ethics and Metaphysics for Judith Jarvis Thomson* (MIT Press 2001) 49. Importantly, according to Cohen political equality has *autonomous importance* rather than merely a *derivative importance*. This means that its relevance does not depend on the injustice of the causes that may lead to inequalities of political influence. Even if there is an unequal but (let us say) “just” distribution of resources, if this inequality leads to unequal opportunities in political influence, then, it affects the principle of political equality anyway. In other words, this principle does not aim to prevent unjust unequal opportunities to influence but unequal opportunities *per se*. The argument that some inequalities are deserved, and therefore, they are just inequalities has no relevance for political equality: even if they are just, they cannot have consequences in the political sphere.

attribution of political rights of participation. This means that the democratic ideal relies in something like *substantive* political equality.

The idea that the principle of political equality has a substantive dimension can be connected to Rawls' idea of the "*fair value* of political liberty". Although his first principle of justice demands equal basic liberties for each person, Rawls accepts the fact that those liberties may have unequal worth for each individual, which arise from inequalities in the capacity to exercise those liberties<sup>4</sup>. However, unlike what happens with other liberties, for Rawls, the unequal worth of political liberty is problematic. Political liberties must be treated in a special way. This is why political liberties need to be guaranteed by their *fair value*. According to Rawls "this guarantee means that the worth of the political liberties to all citizens, whatever their social or economic position, *must be approximately equal*, or at least *sufficiently equal* in the sense that everyone has a fair opportunity to hold public office and to *influence the outcome of political decisions*"<sup>5</sup>.

The principle of political equality, and therefore, the democratic ideal is affected when both unequal resources and social practices give individuals unequal opportunities for influencing and determining political decisions. This is problematic for its own sake because it means that individuals have an unequal power to influence political decisions with their political views. However, when political equality is affected, the most important consequence is that democracy risks failing to identify the common interest sought by political decisions.

As we will see in the next sections, wealth and capitalist property are particularly problematic in this regard. The asymmetry in private property distribution gives advantages to wealthy people and capitalist owners that

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<sup>4</sup> According to Rawls, "the inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally, is sometimes counted among the constraints definitive of liberty. I shall not, however, say this, but rather I shall think of these things as affecting the *worth* of liberty, the value to individuals of the rights that the first principle defines" John Rawls *Theory of Justice. Revised Edition* (The Belnap Press of Harvard University Press 1971 1999) 179.

<sup>5</sup> John Rawls *Political Liberalism* (Columbia University Press 1993) 327.

allow them to influence politics, over-representing their interests in the political sphere. When this happens, democracy is not operating as a system in which collective decisions advance the interests of all citizens, or, in other words, the common interest, but rather the interests of capitalist owners and the rich.

## **2.2. Democracy and inequality's growth**

In this light, the increasing inequality that most countries experienced in the last forty years is highly disturbing. As Thomas Piketty has shown with abundant data, inequality has returned to levels last seen at the beginning of the twentieth century<sup>6</sup>. This increasing inequality goes hand in hand with an important phenomenon that has been developing at the same time: *neoliberalism*.

Since the late 1970s, we have witnessed a *neoliberal* turn. Neoliberalism is an *ideology* that disdains all the policies of the Keynesian Welfare State, aligned with the Chicago School of political economy and the intellectual project of Hayek and Friedman, among others<sup>7</sup>. Neoliberalism's ideology promotes not only free markets and deregulation but also the expansion of markets to essential goods such as health's protection, social security, education and housing. But neoliberalism is also the way that capitalism has articulated itself since 1970, through systematic policies that, to a large extent, have disarticulated standard welfare state policies such as progressive taxation, powerful unions, public companies and robust social rights. Neoliberalism has

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<sup>6</sup> Thomas Piketty *The Capital in the Twenty-first Century* (The Belknap Press of Harvard University Press 2014) Unlike preceding economic theories according to which inequality can be expected to follow a "bell curve" as Kuznets (that is, it should first increase and then decrease over the course of economic development), Piketty claims that during 1910 and 2010 equality has follow a "U-shaped curve" not only in the US but also in Europe. This "U-shaped curve" starts with high inequality that then is followed by period of decreasing inequality, followed finally from the beginning of 1980 by a period of increasing inequality, again. According to Piketty this inequality is not going to be reversed, but will increase. The main thesis of Piketty's book is that from now on capital will tend to accumulate faster than the rate of growth of the economy.

<sup>7</sup> Wendy Brown *Edgework: Critical Essays on Knowledge and Politics* (Princeton University Press 2005) 37-38.

meant privatization, economic deregulation, lower taxation, weak social rights and labour regulations, and the dismantling of unions.

There is no doubt that the emergence of neoliberalism has enhanced the interests of capitalist owners and wealthy people<sup>8</sup>. Economic growth during this period did not translate into higher wages for most people<sup>9</sup>; mainly it augmented capitalist profits and salaries for people at the very top of the income distribution. Lower taxation and austerity policies have weakened social rights, increasing people's dependence on capitalist owners' wage offers. The deterioration that organized labour has experienced through the weakening of collective labour rights has had distributive effects in the economic sphere, as it expands the imbalance of power between workers and capitalist owners<sup>10</sup>: labour's share of national income has decreased since the early 1980s in most countries of the West<sup>11</sup>.

Also, as we will see later, to the extent that organized labour no longer exercises a countervailing power to capital owners in the political arena, it increases the political power of owners, making redistribution through social policies more difficult to achieve. From the late 1970s growing economic inequality has led to a growing imbalance of political power characterised by the rich and capitalist owners obtaining policies that benefit them, further entrenching neoliberalism. Martin Gilens and Jeffrey Page, for example, have claimed that the concept of

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<sup>8</sup> Importantly in this matter, Tørsløv, Wier and Zucman show that between 1985 and 2018, the global average of corporate tax rate has fallen by more than half, from 49% to 24%. Thomas R. Tørsløv, Ludvig S. Wier, Gabriel Zucman "The missing profits of Nations" (2018) Working Paper 24701, <http://www.nber.org/papers/w24701>, accessed 19 of June 2019, 1.

<sup>9</sup> Tali Kristal, "Good Times, Bad Times: Postwar Labor's Share of National Income in Capitalist Democracies" (2010) 75 *American Sociological Review* 729. As Kristal explains, growth of productivity has expanded total income, but in many countries, average real wages and employment are flat or falling.

<sup>10</sup> According to Branko Milanovic, the distribution of rents at the level of each enterprise, sector, and ultimately the whole economy depends on the relative bargaining power of capital and labor. Branko Milanovic *Global Inequality* (The Belknap Press of Harvard University Press 2016) 106.

<sup>11</sup> Kristal (n 9) 730.

*oligarchy* can be applied to the contemporary United States, at least regarding important economic matters<sup>12</sup>. Distrust

In this context, democracy as the institutional framework where capitalist owners' economic power can be restrained has lost much of its capacity to "domesticate" capitalism<sup>13</sup>. In the next sections, I explain with more detail the different ways in which the political power of capitalist owners is deployed. There we will see how some important changes that have occurred during the last forty years related to both the emergence of neoliberalism and globalization have made capitalist owners, arguably, more powerful than ever.

### **3. The instrumental power of capitalist property**

#### **3.1. The power of wealth and the instrumental power of capitalist property**

Instrumental power and structural power are the two kinds of political power capitalist owners have<sup>14</sup>. Capitalist owners have structural power by virtue of the privileged position that capitalist property enjoys in the economy. As we will see in Section 4, although capitalist owners may exert their structural power through threats, they do not need to. The *capacity* they have to harm the economy, for example, by restraining investment when a policy may reduce their profits, is usually enough to make politicians and governments dependent on capitalist owners. Unlike structural power, instrumental power demands that capitalist owners *deliberately act* by using the resources they possess to influence particular political decisions to favour their own interests. These actions involve campaign finance, lobby and the creation of opinion in social media, among others<sup>15</sup>.

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<sup>12</sup> Jeffrey A. Winters and Benjamin I, "Oligarchy in the United States? (2009) 7 *Perspectives on Politics* 731; Jeffrey Winters *Oligarchy* (Cambridge University Press 2011). Winters and Page identify that in the US the wealthy elite has a dominant voice in key aspects, such as international economic policy, monetary policy and tax policy.

<sup>13</sup> And perhaps this is one of the causes of people's disbelief in representative democracy.

<sup>14</sup> Tasha Fairfield, *Private Wealth and Public Revenue in Latin America* (Cambridge University Press 2015); Jacob Hacker and Paul Pierson "Business Power and Social Policy: Employers and the Formation of the American Welfare State" (2002) 30 *Politics and Society* 277.

<sup>15</sup> As we can see, these actions of instrumental power are not a constitutive part of capitalist owners' business. In other words, instrumental power is not internally related to capitalist' business but rather externally related.

In this section, I will explain how instrumental power gives capitalist owners an unequal opportunity to influence politics for their own interests, to the detriment of the common interests to which democracy aspires. It is safe to say that the instrumental power capitalist owners have is similar to the power that wealthy people have. Consequently, most of what I say in this section can be applied either to capitalist owners or to wealthy people in general.

*Wealth* is the most important resource that capitalist owners have to influence political decisions. Instead of wealth, many authors usually talk about the political power of money. However, it is not money *per se*, but its unequal distribution that creates large asymmetries in opportunity to influence policies. Capitalist owners usually have access to substantial economic resources (in other words, wealth) resulting from the profits their ownership yields. These profits, additionally, are not obtained to be consumed as happens with workers' incomes. Profits, rather, are accumulated for future investments.

Wealth gives capitalist owners (and wealthy people) economic resources to finance electoral campaigns and think tanks, to access mass media to spread their opinions and also makes their lobby much more effective. There are two important reasons for claiming that wealth is a crucial economic resource for influencing policies. On the one hand, expenditures in influence are related to the *marginal utility of money*. As Thomas Christiano explains, political support in general functions like a consumption good, and therefore, as a consumption good it is connected with the declining marginal utility of money<sup>16</sup>. While those with little money have weaker reasons to spend it to exert influence, wealthy people and capitalist owners (who as I said, aim to accumulate profits) have stronger reasons to spend their money on political influence. On the other hand, capitalist owners have reasons to spend part of their wealth in protecting it from policies that aim to redistribute it. Wealth carries with it not only interests in preserving and protecting that wealth but also an interest in increasing it<sup>17</sup>.

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<sup>16</sup> Thomas Christiano "Money in Politics" in David Estlund (ed) *The Oxford Handbook of Political Philosophy* (Oxford University Press 2012) 245.

<sup>17</sup> Winters and Page (2009) 732.

Certainly, non-wealthy workers also have reasons to influence politics in order to improve their conditions. The problem, however, is that workers have no wealth to spend on such activities. Unlike capitalist owners and wealthy people, workers have more urgent things to do with their money.

*Financing electoral campaigns* is a typical activity on which capitalist owners spend their wealth. How can the financing of campaigns be connected to political influence? Here it is important to note that the answer does not need to depend on an explicit exchange of money for political favours. The answer, instead, relies on two facts. Firstly, it is common that bigger spenders win<sup>18</sup>. Secondly, capitalist owners choose to finance those candidates who share their point of views, at least regarding economic policies<sup>19</sup>. This means the candidates that owners choose to finance are more likely to win electoral campaigns, acquiring positions of political authority. In a similar path, Joshua Cohen explains that to the extent that candidate success depends on funds, candidates' fundraising ability requires that they be especially attentive to the policies they will advocate in their campaigns<sup>20</sup>. So we can see that by financing campaigns capitalist owners exert influence in the political sphere: the candidates who they fund will, most likely, obtain positions of authority. This is why Cohen contends that campaign finance “provides channels of influence to wealthier citizens that are effectively unavailable to others who are equally motivated and equally able, but lack the resources”<sup>21</sup>.

It is worth noting here that to the extent campaign financing increasingly relies on private money, electoral campaigns tend to become more expensive<sup>22</sup>. This makes candidates more dependent on financiers, and particularly, on funders

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<sup>18</sup> According to the Centre of Responsible Politics, in the US candidates who spend the most win 8 of 10 seats in the Senate contests, and 9 of 10 seats in House races (See <https://www.opensecrets.org/elections-overview/did-money-win>).

<sup>19</sup> Christiano (n 16) 245.

<sup>20</sup> Cohen (n 3) 58.

<sup>21</sup> *ibid* 59.

<sup>22</sup> Based on data provided by the Centre for Responsive Politics (available at <https://www.opensecrets.org/bigpicture/index.php?cycle=2012>), Branko Milanovic shows that the cost of US congressional and presidential elections has steadily increased from 2000 (almost 4 billion dollars) to 2012 (6 billion dollars). Milanovic (n 10) 201.

like capitalist owners, who can donate great amounts of money. In these conditions, politicians certainly become captives of capitalist owners<sup>23</sup>.

Wealth also provides capitalist owners access to *mass media* to share their general or specific views about politics. Wealth, in this regard, is a vehicle that spreads owners' ideas and opinions. Workers or any other interest group that lacks wealth have less access to media for disseminating their ideas. By controlling or having access to media, capitalist owners can exert much greater influence creating opinion than any other sector<sup>24</sup>. This is certainly a more indirect way to exert influence, but on the other hand, its impact is both wider and deeper because it helps capitalist owners to shape public opinion with their views. This makes mass media a crucial resource for instrumental power<sup>25</sup>. This source of power is particularly important where there is a high concentration of media ownership, as for example in the UK, the US and Latin America<sup>26</sup>. *Who Owns the World's Media?: Media Concentration and Ownership around the World*, for example, reveals that in the case of UK the "concentration of media ownership is increasing as evidenced by the reduction of the number of companies in several traditional media sectors, such as print and broadcasting, and the growing number of media firms that are owned by the same parent company"<sup>27</sup>. It is also important to note that large business groups have

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<sup>23</sup> The case of *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), in which the U.S. Supreme Court overturned a ban on corporate spending in elections, arguing that spending money in elections was part of corporations' freedom of speech, represents an important landmark in the protection of capitalist owners' political power.

<sup>24</sup> Christiano (n 16) 247.

<sup>25</sup> Someone might challenge this argument by saying that social media like Facebook or Twitter have increased access to media. In this line, one might say that today almost everyone has the opportunity to express her political opinions and for that reason, wealth is unimportant in this matter. I have doubts whether the social media has made wealth irrelevant in dissemination of political views. Mass media still have a great importance in the formation of opinion. It is certainly difficult to assess the impact that social media have on democracy. Worthy of note, however, is that social media carry some risks that threaten democracy, to the extent that they allow misinformation and fake news, as the US 2016 presidential elections and the Brexit referendum show.

<sup>26</sup> Eli M. Noam and The International Media Concentration Collaboration, *Who Owns the World's Media?: Media Concentration and Ownership around the World* (Oxford University Press 2016); Tasha Fairfield (n 14) .

<sup>27</sup> Noam (2016) 425. Rupert Murdoch, militantly conservative, who owns *The Sun*, *The Times*, and *The Sunday Times* epitomizes well UK's press concentration. It is striking Murdoch's

diversified into media holdings<sup>28</sup>. Still more remarkable is the interest of large business companies in owning social media even when social media is not necessarily an important source of profits. This suggests that such diversification of business activity is perhaps mostly aimed to create opinion rather than profits<sup>29</sup>.

*Lobby* is the last and crucial activity in which economic resources makes a great deal of difference in political influence. This activity is perhaps one that most directly aims to influence specific policies. Lobby is certainly an activity that can be performed by the capitalist owners (or any other interest group). However, when performed by professional lobbyists, wealth becomes significant. According to Hacker and Pierson, most money capitalist owners spend on politics goes to lobbyists. As these authors explain, for powerful groups the centre of action is the arena where policies are decided<sup>30</sup>. Indeed, Hacker and Pierson contend that the dramatic rise in inequality that the US has experienced in the last 40 years, and particularly the fact that economic gains have been highly concentrated at the very top (1%, 0.1, and even 0.01), is largely due to the instrumental power of organized interests groups (business and wealthy people) that exert their influence mainly through lobbying<sup>31</sup>.

Business elites have other important resources besides wealth. As we will see in the last section of this chapter, both *technical expertise*<sup>32</sup> and *linkages with*

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impudence when he boasted through the headline "It's The Sun Wot Won It" in his newspaper *The Sun* that was his political power which determined the victory of the conservative John Major in 1992.

<sup>28</sup> Tasha Fairfield (n 14) 41.

<sup>29</sup> Consider for example the case of Silvio Berlusconi in Italy. Silvio Berlusconi, despite almost no connection with organized political parties used his massive media power –his Media set controls about 45 percent of national television along with important print media – to catapult himself into the Prime Minister n 1994 and then again in 2001. See Edwin Baker *Media Concentration and Democracy: Why Ownership Matters* (Cambridge University Press 2007) 18.

<sup>30</sup> Jacob Hacker and Paul Pierson "'Winner-Take-All Politics: Public Policy, Political Organization, and the Precipitous Rise of Top Incomes in the United States'" (2010) 38 *Politics & Society* 152.

<sup>31</sup> *ibid.*

<sup>32</sup> Business elites, for example, frequently participate in technical committees organized by governments for specific matters. Moreover, technical expertise leads these elites to take government appointments, which creates the *revolving door* problem: a systematic

*politicians*<sup>33</sup> are of great relevance not only in influencing particular policies but also in shaping the values, norms, and identities that constitute neoliberalism ideology. Important to understand here is the capitalist owners' resource that Tasha Fairfield calls *cohesion*. Capitalist owners, Fairfield explains, "have the capacity to form and sustain a united front and engage in collective action"<sup>34</sup>. The reason, the literature agrees, is that capitalist owners have *common economic interests*. They widely share certain ideas regarding taxation and labour markets, for example. These common economic interests create cohesion between them, which facilitates organized forms of action to protect those interests. Cohesion, certainly, is a resource that does not exclusively belong to capitalist owners. Identity groups, for example, also have well-formed interests, which allows them to pursue their goals together. Regrettably, this is less the case for workers anymore, as we will see in the next section. Neither is it the case for other disadvantaged people, who probably would support redistributive policies and business regulation.

It is safe to say that no other group can rival the material resources at the disposal of capitalist owners, at least in today's neoliberal age. In the absence of legal or social rules that limit such instrumental power, capitalist owners enjoy a disproportionate opportunity to influence political decisions. If the economic interest that capitalist share contrasts with the interests of workers and disadvantaged people, as is the case, it means that capitalist owners' interests prevail in the political arena. Capitalist owners, therefore, have a dominating power: through their power, they can make their views prevail *vis a vis* the views of less well-off people, who most likely strive for redistributive policies that, by decreasing capitalist profits, would improve their material conditions.

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circulation between state offices and important positions in the private sector. Martin Gilens and Benjamin I. Page "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens" (2014) 12 *Perspectives on Politics* 564, 567; Fairfield (n 14) 33ss.

<sup>33</sup> As they circulate in the same places, such as schools, universities, clubs, among others. Many times, they are also members of political parties. Stephen Wilks *The Political Power of the Business Corporation* (Edward Elgar 2013) 95ss.

<sup>34</sup> Fairfield (n 14) 38.

### 3.2. Countervailing power and the second dimension of power

We have seen that capitalist owners enjoy an instrumental power that is unparalleled to any other group. Pluralists such as Robert Dahl, however, argue that

business men, trade unions, politicians, consumers, farmers, voters and many other aggregates all have an impact on policy outcomes; that none of these aggregates is homogeneous for all purposes; that each of them is highly influential over some scopes but weak over many others; and that the power to reject undesired alternatives is more common than the power to dominate over outcomes directly<sup>35</sup>.

Pluralists' point, therefore, is that capitalist owners and wealthy people do not form a homogenous power elite in politics. Their view suggests that workers compete for political influence with others groups in roughly equal terms in the political sphere.

There are three things to say regarding pluralists' claims. In the first place, it is true that capitalist owners do not have political power in every political matter (for example, regarding abortion or gender issues). And even in economic matters, capitalist owners might conflict with each other in relation to some specific policies (for example, big supermarkets *vis a vis* suppliers). However, regarding main economic matters, as taxation and labour markets, they do share a common view that they can make prevail. This leads us to the second point.

To an important extent, pluralists' vision of politics rests on the idea that there are other groups that wield countervailing power. In economic matters, workers seem to be the paradigmatic group that may counteract capitalist owners' power: to improve their conditions, it is likely that workers need to "affect" in some way capitalist owners' profits. Workers used to have instrumental power to influence politics when they were organized and acted collectively. However, in most countries both unions and collective rights have

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<sup>35</sup> Robert Dahl, Mason Haire, Paul Lazarsfeld, *Social Science Research on Business: Product and Potential* (Columbia University Press 1959) 36.

weakened or have been dismantled by governments since the 1980s onwards<sup>36</sup>. Today, then, workers do not seem to have a substantive countervailing power. But even before this weakening, workers did not have power comparable to capitalist owners. The difference lies in the *logic of the collective action* of these two groups. Capitalist owners, on the one hand, do not need to organize to be clear about what their interests are and to know which policies affect them. In contrast, workers can have instrumental power but only when they organize. Workers need to organize in order to be able to act collectively; otherwise they have no power to counteract capitalist owners either in the workplace or in the political sphere.

The patterns of organization among workers and among capitalist owners are also different. Unlike capitalist owners who can easily organize themselves around their common interest of maximizing profits, worker organizations, such as unions, need to deal with the entire spectrum of workers' needs<sup>37</sup>. And, as Offe and Wiesenenthal explain, "there is no common denominator to which all these heterogeneous and often conflicting needs can be reduced so as to 'optimize' demands and tactics"<sup>38</sup>. Any workers' common demand can only be formulated through collective deliberation. In contrast, capitalist owners

do not have to take into consideration a comparative multitude of incommensurable needs. All the relevant questions can be reduced to the unequivocal standards of expected costs and returns, i.e., to the measuring rod of money. The optimization problem in respect to demands and techniques is thus much easier to resolve collectively; or,

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<sup>36</sup> In a revealing article, Baccaro and Howell show that "the tendency in Europe and elsewhere is clearly toward a generalized weakening of trade unions. On average, the (unweighted) unionization rate has decreased by 0.39 percentage points each year between 1974 and 2005". They base such conclusion in the analysis of the industrial relations of fifteen advanced capitalist countries, during 1974 and 2005. Lucio Baccaro and Chris Howell. 2011 "A Common Neoliberal Trajectory: The Transformation of Neoliberalism in Advanced Capitalism" (2011) 39 *Politics & Society* 521, 529.

<sup>37</sup> Claus Offe and Helmut Wiesenenthal "Two Logics of Collective Action" (18) 1 *Political Power and Social Theory* 67.

<sup>38</sup> *ibid* 75

more precisely, it does not have to be resolved *collectively* at all but often can be analyzed and decided upon by a staff of experts<sup>39</sup>.

Even as an organized group, workers must overcome many more difficulties to act collectively than capitalist owners.

Finally, in the third place, pluralists' claim can be seriously questioned at the *methodological level*. Pluralists, like Dahl, arrive at the conclusion that power is dispersed and no group has prominence in the political arena, by looking at what happens in the *decision-making process*. Pluralists identify and measure political power observing which interests prevail in a specific decision-making process. In other words, they observe which of the interests that were in conflict during the process prevails once the particular policy is finally adopted. As we saw in Chapter 5 (section X), this approach to the identification of power was importantly criticised for its limited character by Bachrach and Baratz, who show that political power also has another dimension or "face". Power, they contend, deploys itself not only overtly in the decision-making process, but also preventing some issues from reaching these processes. In other words, power may prevent some issues from getting into the political agenda.

The relevance of this second dimension of power should not be underestimated. Consider a spectrum of policy preferences, depicted along a left-right continuum. Imagine that A favours those policies grouped toward the left of the spectrum (A0, A1, A2), favouring those that are closer to the left-end (A0), while B favours those at the right (B0, B1, B2), also favouring those that are closer to the right-end (B0). Pluralists, Hacker and Pierson explain, look only at a narrow subset of these policies: only to those that are considered in the decision-making process (for example, B1 and B2)<sup>40</sup>. If at the end of the decision-making process the political decision is for B2 over B1, it would be a mistake to

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<sup>39</sup> *ibid.* Offe and Wiesenthal explain that the "main argument throughout this paper is that differences in the position of a group in the class structure (we consider here only the classes of labor and capital), not only lead to *differences in power* that the organizations can acquire, but also lead to *differences in the associational practices, or logics of collective action*, by which organizations of capital and labor try to improve their respective position vis-à-vis each other". (p. 76).

<sup>40</sup> Hacker and Pierson (n 14) 283-284.

conclude that A has more influence than B, even though her policy preferences (and their interests) prevailed in the conflict between policy B1 and B2. The reason is that other policies (A0, A1, A2) were not considered in the process of deciding or were not part of the political agenda. As Hacker and Pierson contend regarding the role of capitalist owners in the development of the welfare state in the US,

Much of the discussion has focused on political fights over particular pieces of state and national legislation. Who wrote the legislation, and who provided the expertise needed to formulate specific proposals? Who backed which bill or amendment? These are significant questions, but they necessarily draw attention to the particular choices made within a narrow range of options rather than to the matter of why only that particular subset was considered<sup>41</sup>.

The point, then, is that we cannot conclude that political power is dispersed among different groups only by focusing on which of them prevails in a decision-making process, because we will be missing something. That focus would cause us to ignore that political power can also be deployed *before* some issues reach the process of decision-making, by preventing them from being incorporated in the political agenda. If we look at this second dimension of power, one would conclude that although capitalist owners may lose in a particular policy conflict, they have an unparalleled political power to the extent that through both their instrumental and structural powers they can frequently set the political agenda in economic matters.

### **3.3. Institutional arrangements to insulate political sphere**

There are certainly some institutional arrangements that can limit capitalist owners' instrumental power. The most typical is restricting private financing of campaigns. Allowing some control on social media access (for example, forbidding ownership concentration) or providing funding to permit different political views to access mass media is also another measure that limits capitalist owners' power. Strengthening unions is another important step that would contribute to containing capitalist political power.

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<sup>41</sup> *ibid* 284.

Hence, the law can significantly constrain the instrumental power of capitalist owners, so as to ensure, for example, that wealth stops being a resource that at least in political campaigns entails an unequal opportunity for political influence. The question, however, is if these institutional arrangements are enough to *insulate politics* from the power of capitalist owners.

It is interesting to note here what John Rawls thinks is necessary for giving political liberties a *fair value*, honouring the principle of *political equality*. One might imagine that Rawls would say something to the effect that we should (strive to) insulate politics from the influences of underlying economic inequalities or, in other words, from the political influence of capitalist owners. It is striking to note that Rawls does not pursue that road. Rawls rejects any capitalist articulation of private property because even a welfare capitalist state “rejects the fair value of the political liberties, and... permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands”<sup>42</sup>. The political power that capitalist property confers to owners is the underlying reason for Rawls’ rejection of a capitalist state. This is why Rawls embraces a “property ownership democracy” as the regime able to implement the two principles of justice, and particularly, the fair value of political liberty<sup>43</sup>. In this regimen, according to Rawls, productive assets and wealth would be much more equally distributed.

Martin O’Neill, however, asserts that it is curious that Rawls “does not consider strategies whereby the political sphere can be insulated from the economic sphere”<sup>44</sup>. According to O’Neill, Rawls could have pursued policies that

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<sup>42</sup> John Rawls *Justice as Fairness. A restatement* (Harvard University Press 2001) 136–138.

<sup>43</sup> *ibid.* Rawls states that like “property ownership democracy”, a “liberal democratic socialism” is also a system able to realize the two principles of justice.

<sup>44</sup> Martin O’Neill *Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy*, in Martin O’Neill and Tad Williamson (eds) *Property Owning Democracy: Rawls and Beyond* (Willey-Blackwell 2012) 82.

prevent the conversion of economic power into political power, through campaign finance reform or the regulation of political speech<sup>45</sup>.

As I said above, Rawls diverges from O'Neill's suggestion and advocates a non-capitalist articulation of private property. This view, however, was not clear to Rawls in the beginning. In his *Theory of Justice* of 1971, Rawls does not explicitly reject capitalism<sup>46</sup>. In his explicit rejection of capitalism and the development of the basic features of the property regime he supports (i.e. a property ownership democracy), Rawls owes much to Richard Krouse and Michael McPherson. In their interpretation of Rawls' *Theory of Justice*, Krouse and McPherson made the implications of Rawls' views much clearer even to Rawls himself<sup>47</sup>.

According to Krouse and McPherson, after a *Theory of Justice* (1971) many authors contended that Rawls was offering a justification of an idealized *capitalist* welfare state. However, for Krouse and McPherson, those authors "underestimate the degree of equalization of property holdings" that Rawls sustains<sup>48</sup>. According to these authors, Rawls would seem to reject capitalism because of his commitment to both the fair value of political liberties and the difference principle.

In Krouse's and McPherson's view, Rawls has two options for giving political liberties a fair value, or in other words, for giving political liberties an approximate equal worth. The first option is insulating the state from the influences of underlying inequalities in economy and society, as we saw Martin

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<sup>45</sup> *ibid.*

<sup>46</sup> But neither embraces it. Two indications show that Rawls' theory of justice does not support capitalism. On the one hand, Rawls' first principle of justice does not protect economic freedom. The only freedom that can be related to economic activities is the right to freedom of occupation. On the other hand, as we saw in footnote 47 of Chapter 1, not every instantiation of private property is protected: Rawls clearly asserts that what is protected by the first principle of justice is the "right to hold and to have the exclusive use of *personal property*". Thus, for Rawls only *personal property* is a special and basic freedom that deserves the protection of the first principle. Private property over means of production is not a *basic liberty* and therefore, it is not protected by the first principle of justice.

<sup>47</sup> Richard Krouse and Michael McPherson, "Capitalism, 'Property-Owning Democracy,' and the Welfare State" in Amy Gutmann (ed) *Democracy and the Welfare State* (Princeton University Press, 1988).

<sup>48</sup> *ibid* 79.

O' Neill asserts. Krouse and McPherson contend, however, that this avenue is not appropriate for Rawls' aims. This is why they take issue with attributing to Rawls the view that a capitalist state could be rendered fully autonomous in regards to the underlying inequalities of income, wealth and power that a capitalist state would allow. Krouse and McPherson state, in fact, that not only Marxists but also mainstream authors contend that "capitalist economies impose significant structural constraints upon the range of policy options available to the liberal democratic state"<sup>49</sup>. Their point is that the political sphere cannot be insulated from the unequal distribution of private property.

However, a capitalist state is not only problematic on account of the fair value of political liberties but also in light of Rawls' difference principle. According to Krouse and McPherson, if applied in a capitalist system, the egalitarian potential of the difference principle would face powerful constraints<sup>50</sup>. Market exchanges generate unequal pre-tax distributions, and in a capitalist system, the redistribution through taxes and transfers that the difference principle demands would be severely constrained. The reason stems from what was stated earlier: inequalities in the distribution of private property over means of production would inevitably influence the outcome of political decisions, and therefore, the extent of redistributive policies. In other words, the political power that welfare capitalism gives to owners would hamper the possibility of significant redistributions.

There are two reasons, therefore, that might explain why Rawls does not follow the insulation path. On the one hand, it might be because in capitalist societies the political power of capitalist owners is so pervasive that a real insularity of politics from capitalist owners' *instrumental power* seems impossible. On the other hand, Rawls might be thinking here of the *structural power* of capitalist owners because even if politics could be insulated from the instrumental power of owners, their structural power remains in force. Rawls is not clear about this

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<sup>49</sup> *ibid* 87.

<sup>50</sup> *Ibid* 89-94.

matter, but he is clear that the inequality in productive assets that a capitalist state permits does not give political liberties an equal value.

#### **4. The structural power of capitalist property**

##### **4.1. The privileged position of capitalist property**

According to classic Marxists accounts, the state is completely reducible to capitalist class interests: the state is an instrument of the capitalist class, and therefore, has no autonomy. Gerald Cohen in *Karl Marx theory of history. A Defence*<sup>51</sup>, provides the Marxist orthodox view by contending that the superstructure is completely dependent on the economic structure (or base)<sup>52</sup>. The superstructure, which encompass all the non-economic institutions, particularly law and politics, is always articulated according to what the economic base requires. To be sure, this does not mean that superstructures are irrelevant. On the contrary, they stabilize production relations, which constitute the economic base. As Cohen asserts, “the superstructure has the character it does because, in virtue of that character, it confers stability on the production relations”<sup>53</sup>. Superstructure, then, is not irrelevant or incidental, but is nonetheless determined by the economic base.

In the same Marxist tradition, critics of this view contend that the superstructure is, to some extent, independent from the economic base<sup>54</sup>. In other words, the state enjoys *some* measure of *autonomy* from capitalist class: a *relative autonomy*. The idea of relative autonomy of the state assumes that

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<sup>51</sup> Cohen’s book is a restatement of Marx’s view of historic materialism as stated in the *Preface to A Contribution to the Critique of Political Economy*. In such famous *Preface*, Marx asserts that the economic base, which is the sum of relations of production “constitutes the economic structure of society, the real basis, on which rises a legal and political superstructure, and to which correspond definite forms of social consciousness. The mode of production of material life conditions the social, political and intellectual life process in general”. See *Preface to A Contribution to the Critique of Political Economy*.

<sup>52</sup> Gerald Cohen *Karl Marx theory of history. A Defence* (Princeton University Press 1978).

<sup>53</sup> *ibid* 249.

<sup>54</sup> Fred Block “Beyond relative autonomy: state manager as historical subjects”, in Ralph Miliband and John Saville (eds) *The Socialist Register* (Merlin Press 1980); Fred Block, “The Ruling Class Does Not Rule”, in *Revising State Theory. Essays in Politics and Post Industrialism* (Temple University Press 1987).

capitalists will respond effectively to the state's abuse of that autonomy<sup>55</sup>. The problem with this idea is that it seems to demand some sort of capitalist class-consciousness: the capitalist class must be capable of taking corrective measures against the state's abuse<sup>56</sup>. Fred Block argues, however, that there is no need to attribute class-consciousness to capitalists in order to contend that although the state is not an instrument of the capitalist class, its autonomy is only relative. The reason, according to Block, is that those who manage the state *depend on capitalists* for the maintenance of economic activity. This is true for two reasons, which he explains as follows:

First, the capacity of the state to finance itself through taxation or borrowing depends on the state of the economy. If economic activity is in decline, the state will have difficulty maintaining its revenues at an adequate level. Second, public support for a regime will decline sharply if the regime presides over a serious drop in the level of economic activity, with a parallel rise in unemployment and shortages of key goods. Such a drop in support increases the likelihood that the state managers will be removed from power one way or another<sup>57</sup>.

Later, Adam Przeworski and Michael Wallerstein, two well-known Marxists, would put a name to this idea: the "structural dependence of the state on capital"<sup>58</sup>. Przeworski and Wallerstein explain that society, and also the state, depend on the investment decisions of capitalists. Such decisions determine production, employment and consumption for all. Therefore, when the state aims to improve the material conditions of people it will find constraints "on the willingness of owners of capital to invest, *which in turn depends on the profitability of investment*"<sup>59</sup>: if improving the material conditions of people requires reduction of owners' profits, then, investments would also be reduced and consequently, employment and growth. According to Przeworski and

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<sup>55</sup> Block "The Ruling Class Does Not Rule" 53.

<sup>56</sup> *ibid*

<sup>57</sup> *ibid* 58.

<sup>58</sup> Adam Przeworski and Michael Wallerstein "Structural Dependence of the State on Capital" (1988) 82 *The American Political Science Review* 11. A similar idea is in Claus Offe "The Theory of the Capitalist State and the Problem of Policy Formation", in Leon Lindberg, Robert Alford, Colin Crouch and Claus Offe (eds) *Stress and Contradiction in Modern Capitalism* (Lexington Books D.C. Heat and Company 1975).

<sup>59</sup> Przeworski and Wallerstein (n 58) 12.

Wallerstein, “no government can simultaneously reduce profits and increase investment”<sup>60</sup>. As Przeworski and Wallerstein see it, governments face a *trade-off* between distribution and investment: “they can trade a more (or less) egalitarian distribution of income for less (or more) investment but they cannot alter the terms of this trade-off”<sup>61</sup>.

It is striking to note that non-Marxist traditions reach similar conclusions regarding the dependence of the state on capital. Charles Lindblom explains that jobs, production, growth and the economic security of everybody rest in the hands of “businessmen”<sup>62</sup>. Market systems, Lindblom says, give businessmen a sort of *public* function. This is why, government officials have to be careful with their decisions, particularly with tax and monetary policies, because of their effects on business activity. For government, businessmen appear not as representative of special interests but rather “as functionaries performing functions that government officials regard as indispensable”<sup>63</sup>. This is what Lindblom calls “the privileged position of business”<sup>64</sup>: because the management of the economy is in the hands of businessmen, governments must collaborate with them. Lindblom explains this same idea when he depicts *the market as a prison for politics*. For a broad category of economic affairs, Lindblom says, a market-oriented system *imprisons policy making*<sup>65</sup>.

Brian Barry, within the analytical philosophy tradition, affirms the same idea we have been describing in this section. According to Barry’s definition of power, “A has power over B if A can get B to do something B would otherwise not do in virtue of B’s *belief* that A could make him *worse off* if he does not do it”<sup>66</sup>. Given that definition, Barry argues that “those who own or control capital

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<sup>60</sup> *ibid* 13.

<sup>61</sup> *ibid* 13.

<sup>62</sup> Charles Lindblom *Politics and Markets: The World’s Political Economic Systems* (Basic Books 1977) Chapter 13 (170ss).

<sup>63</sup> *ibid* 175

<sup>64</sup> *Ibid*.

<sup>65</sup> Charles Lindblom “The Market as a Prison” (1982) 44 *Journal of Politics* 324.

<sup>66</sup> Brian Barry “Capitalists rule OK? Some Puzzles about Power” (2002) 1 *Politics, Philosophy & Economics* 155.

have *power over* government"<sup>67</sup> because: (1) their economic position allows them to affect the economy and therefore, to make life worse off for many citizens; (2) government officials who seek re-election will be in trouble at the next election if their policies cause citizens' lives to deteriorate.

Capitalist owners determine production and investment and both things have important consequences because they shape the possibilities of employment, consumption, and social expenditures. Owners have power, then, because their decisions have a big impact in the economic field and individuals' welfare depend directly and indirectly on the economy. Therefore, if governments aim to redistribute social wealth but such kind of policies would decrease owners' profits, and subsequently investment, then, pursuing objectives that imply redistribution puts governments in a situation of dependence on capitalist owners.

In this light, it is crucial to emphasize two important issues about owners' power over governments. First, owners do not need to organize themselves and act collectively to wield power: "capitalists have power over governments merely by acting as individual profit maximizing agents"<sup>68</sup>. Second, owners do not need to exert their power in order to achieve their goals. They can constrain government aims even if they do not use their power and even if they do not threaten governments with using it. All that owners need to have is the *capacity* to affect the economy. Barry, to some extent shares this view, as reflected in his conceptualization of power. As Barry explains it, there is *power over* if B has the *belief* that A could make her worse off if she does not do what A wants. Capitalist dominating power stems not only from the *exercise* of that power but also from politicians' *belief* that their economic decisions are capable of harming the economy.

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<sup>67</sup> *ibid* 156

<sup>68</sup> *ibid* 177.

## 4.2. The open space for politics

It is important to note that the government (eventual) policies which I refer to here are permitted by the law, as for example, those related to taxing wealth or capital income, regulation of employment and other kinds of regulations imposed on capital (such as environmental laws, antitrust laws, consumer laws). The issue in point, then, is not that governments are dependent on owners because they cannot affect owners' property rights; it is not about constitutional limits to democratic policies. Governments are dependent on capitalist owners because owners have power over governments. And, as we saw in the last section, owners may restrain governments' redistributive aims even without coordinating among themselves or threatening to use their power.

However, capitalist owners do not have the same amount of power in every context and they are not bound to act always in the same way when they face governments' eventual policies. This means that governmental action in economic matters is not always determined by capitalist owners. Some degree of space is open to the contingency of the political arena. Otherwise, it would not be possible to explain all the diversity in social policies that we can find in different places and moments. Lindblom's general claim that the market is a prison for policy-making, without any further qualification, cannot explain the different kinds of welfare states that exist within capitalist systems.

In this space open for politics, we can find threats and coordination by capitalist owners. Often capitalist owners threaten governments when governments seem prone to come up with policies that would decrease their profits: we often hear owners say that they will not make their planned investments if taxes rise; or they warn of having to fire workers if government raises the minimum wage. Note here that Barry's definition of power over is perfectly coherent with threats as a means to exert power over others: A has power over B if A can get B to do something B would otherwise not do in virtue of B's belief that A could make him *worse off* if he does not do it. Thus, capitalist owners threaten governments when they say that they will not pursue their investment' plans if

governments raise taxes, to the extent that such economic decision would make the economy and therefore the government *worse off*. Fearful of those threats, governments may retract from pursuing their redistributive aims<sup>69</sup>.

Capitalist owners can also coordinate to disinvest or even stop production. This can be called “capital strike”, a term that conveys the idea that owners can *coordinate* to *deliberately* harm the economy in response to some actual or eventual governmental policies. According to Fairfield, capital strikes are an exercise of instrumental power, to the extent that they involve capitalist owners’ *intentional actions*<sup>70</sup>. Culpepper, instead, considers capital strikes an instance of structural power insofar as such acts are possible for capitalist owners on account of their structural position in the economy. Culpepper, in fact, explains that capitalist owners frequently use their structural power *strategically* as a way to prevent or even change policies that they do not like<sup>71</sup>. With this insight, Culpepper does not see owners’ power only as a background condition that is given, but also “as an active resource employed by business in the political arena”<sup>72</sup>. According to Culpepper, many authors in the political science field have collapsed capitalists’ structural power into the category of a power that “works automatically through the anticipation of policymakers”<sup>73</sup>. However, the structural power of capitalist owners can also work “deliberately, with strategic intent”<sup>74</sup>.

Following this argument, Culpepper contends that bank bailouts after the 2008 crisis can only be explained by looking at how the banks of both the US and UK

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<sup>69</sup> What has to be noted is that capitalist owners are not acting in illegal ways when they threaten governments by saying that they will not invest or that they will have to fire workers. Capitalist owners have a *right* to make such decisions, precisely because they are owners: they can decide to invest in their country, elsewhere or nowhere, to produce or not produce, to close their factories if they want to fire laborers, and so on.

<sup>70</sup> Tasha Fairfield “Structural Power in Comparative Political Economy: Perspectives from Policy Formulation in Latin America” (2015) 17 *Business and Politics* 411, 423.

<sup>71</sup> Pepper Culpepper and Raphael Reinke “Structural Power and Bank Bailouts in the United Kingdom and the United States” (2014) 42 *Politics and Society* 427.

<sup>72</sup> *ibid* 430.

<sup>73</sup> *ibid*.

<sup>74</sup> *ibid*.

strategically utilised their structural power to challenge the bank regulations that governments planned to introduce. Although in both countries banks enjoy a huge instrumental power, US banks were not able to defy governmental regulation, while UK banks did to a much greater measure. According to Culpepper, the US government achieved a better deal with their banks than the UK government because US banks wielded less structural power than UK banks: US banks have less structural power because they rely on the US market for their revenues, whereas UK banks do not heavily depend on a given domestic market.

Thomas Christiano contends that capitalist owners' property rights give them a structural power that enables to undermine "the pursuit of the aims of the democratic society"<sup>75</sup>. In Christiano's view, capitalist owners are capable of undermining democratic aims by determining the conditions of feasibility of redistributive policies: for example, if governments aim to improve workers conditions by raising the minimum wage, capitalist owners' decision to fire workers will determine the extent such government aim will be achieved<sup>76</sup>. Christiano holds, correctly, that capitalist owners' power may undermine democracy. As he points out, if citizens vote for a government that promises to improve the material conditions of people through redistribution, capitalist owners' exercise of their property rights will affect these aims democratically chosen by citizens.

However, according to Christiano, capitalist owners have a moral duty, which is owed to society, to cooperate with the government in the pursuit of the aims that have been democratically chosen, even when this may imply some diminution of their profits<sup>77</sup>. Importantly, for Christiano, this means capitalist owners have at least some leeway to act, otherwise it would be useless to advocate for such a moral duty. In other words, if Christiano had thought that

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<sup>75</sup> Thomas Christiano "The Uneasy Relationship between Democracy and Capital" (2010) 27 *Social Philosophy & Policy* 195, 196.

<sup>76</sup> *ibid* 201-202.

<sup>77</sup> *ibid* 207.

owners are always compelled to act in a certain way, it would be therefore useless to impose on them a moral duty to act in a way they cannot. Christiano evidently assumes what we have already asserted above: that the structural power of capitalist owners does not necessarily preclude all agency. For Christiano, the fact that owners have some leeway to act in a way that does not affect the feasibility of redistributive policies, means that we can attribute them individual responsibility when they do not act in such way. Beyond the existence of this moral duty, it is important to show that both capitalist owners and governments have some space where they can act as agents; a space where their actions (and its consequent success or failure) are not determined in advance.

The point we are making, then, is that the idea that capitalist owners have structural power does not (necessarily) mean that they are compelled to act in a given way when they face eventual policies that would decrease their profits. Structural power does not necessarily mean automatic reactions on the part of capitalist owners. Many times capitalist owners have some leeway in their economic decisions regarding, for example, investment. But, although they have some margin, capitalist owners usually use their structural power to prevent or change policies that do not fulfil their expectations of profit maximization. Lindblom, indeed, is aware of this strategic use of power when he asserts that “business have commonly demanded of government more indulgences than are actually necessary to motivate their required performances”<sup>78</sup>. In this sense, I disagree with Przeworski’ and Wallerstein’ claim that governments face a *trade-off* between distribution and investment that works in a completely automatic way. This claim is overly dramatic<sup>79</sup>:

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<sup>78</sup> Lindblom (n 62) 177.

<sup>79</sup> It is striking that Przeworski and Wallerstein make a parallel between Chicago School’s view and theirs view about governments’ trade-off between redistribution and investment: “At this moment the reader may remark that this is the neoliberal theory as well. It is. The Chicago school argues that all transfers of income cause deadweight losses. The difference between the two theories is that neo- liberals are "pluralists"; that is, they are agnostic about the groups that have the power of inflicting the losses on the public by withdrawing their endowments. This difference should not obscure, however, the fact that both theories

capitalist owners are not always compelled to decrease their investments when they face redistributive policies that shrink their profits. Capitalist owners enjoy some latitude in their actions regarding social policies. That is, at least regarding some social policies, capitalist owners' structural position does not predetermine their actions. However, their structural position gives them strong bargaining power which they may strategically use.

Importantly, the aforementioned means that there is a margin of discretion for governments as well. Such acknowledgment on the part of governments is crucial if they want to introduce new social policies, to the extent that they can bargain with capitalist owners rather than assume that owners will necessarily react to the detriment of the economy. In this sense, it is difficult to ignore that consumer law, individual and collective labour rights, and universal social rights arose as the outcome of political battles in which capitalist owners lost.

Hence, if we imagine a continuum that moves piecemeal toward more radical social policies, we can find a space in that continuum where things are not settled in favour of capitalist owners, but rather remain open for governments to take the chance. It is there where the conflict between government and capitalist owners is liable to be decided in either way. Where in this continuum that space is located or how wide it is, are not factors that can be determined once and for all: they also depend on the amount of structural power that capitalist owners have at a certain moment, as we will see in the next section. One might say that the kind of policies that social democracy aims at, might be the kind that are possible within a state in which capitalist owners enjoy structural power. It is not difficult to observe, however, that even a social democracy cannot be taken for granted. The welfare state that the world once saw emerge is unstable today; as we have seen, it has been slowly debilitated by neoliberalism.

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understand in the same way the relation between income distribution and investment". Przeworski and Wallerstein (n 58) 13.

### 4.3. Variations in owners' structural power

As noted above, one crucial factor that importantly affects the space that remains open for political struggle is the amount of structural power that capitalist owners may enjoy in certain contexts and moments<sup>80</sup>. The amount of structural power of capitalist owners is *variable*, not constant at all times and places. There are contexts and structures that widen it or shrink it.

Hacker and Pierson explain that the US "welfare state" only could develop after the Great Depression, when the locus of policy-making shifted to the federal level<sup>81</sup>. According to Hacker and Pierson, before the Great Depression capitalist owners' enjoyed large structural power, which was given to them by the decentralized character of US federalism: fear of capital flight across states prevented state governments from introducing significant social policies. As these authors show, before 1929 no state was capable of passing old-age insurance, health insurance, or unemployment insurance<sup>82</sup>. However, once capital owners were stripped of a substantial part of their structural power through the centralization of policy-making, US social policies began to flourish. Hacker and Pierson provide abundant data that shows the important shift that occurred after the Great Depression regarding social legislation<sup>83</sup>.

In Europe, strong welfare states steadily grew after the first and second world wars and until the decade of the 1970s. One important aftermath of the two world wars was that capitalist owners lost a large amount of their structural (and also instrumental) power. This loss of power was due to both the economic depression that most European countries faced and the post war-reconstruction. As Block explains, in depressions, with economic activity already reduced, "the threat of a further loss of business confidence loses its urgency since the negative consequences are already present"<sup>84</sup>. During post-

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<sup>80</sup> As Culpepper explains, one important way structural power can be measured, albeit indirectly, is precisely by showing how variations in structural power lead to variation in political outcomes.

<sup>81</sup> Hacker and Pierson (n 14).

<sup>82</sup> *ibid* 293.

<sup>83</sup> *ibid*.

<sup>84</sup> Block "Beyond relative autonomy" 232.

war reconstruction, because there is so much to rebuild, the demand for investment (public and private) is so strong that it is difficult for capitalist owners to withhold investment<sup>85</sup>. Another important reason that explains the loss of capitalist owners' power during that historic moment is sociological: capitalist owners faced a working class strengthened by wars and with socialism as a real rival system that could emerge in the West if they were not cautious with their power<sup>86</sup>.

In addition to moments of economic depression, wars and post-war reconstruction, there are two important structural factors that shift the power balance between governments and capitalist owners. One, indeed the key element of capitalist owners' structural power, is capital mobility. As we saw, to a great extent, the Great Depression provided the US government the possibility to centralize social policy-making, thus lessening capitalist owners' structural power and enable the emergence of a type of welfare state. The other relevant factor is the countervailing force that organized workers can exert. Organized workers play an important role in countervailing capitalist structural (and instrumental) power: they are an important actor that pressures governments to pursue redistributive aims. Both factors may diminish the level of profits that capital owners can demand from society by virtue of their structural power.

Today, however, both in the US and Europe, capitalist owners once again enjoy great structural power. Unlike what occurred during most of the twentieth century, today it is easier to imagine the end of the world than the end of capitalism, as Fredric Jameson once said<sup>87</sup>: after the collapse of real socialism, there is no fear of a rival system capable of displacing capitalism. Moreover, as we stated above, organized labour has decreased in most states, among other things, due to policies that have hindered workers' collective rights. Further, a

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<sup>85</sup> *ibid* 232-233.

<sup>86</sup> Wolfgang Streeck, *Buying time. The Delayed Crisis of Democratic Capitalism* (Verso 2014) 24; Milanovic (n 10) 87.

<sup>87</sup> Fredric Jameson, "Future City" (2003) 21 *New Left Review*.

globalization mostly driven by the imperatives of free trade and open markets has given capitalist owners an enormous power over governments by making capital more mobile, facilitating its flight across jurisdictions<sup>88</sup>. Unlike mid-twentieth century, when capital mobility was reduced, globalization has augmented it, giving capitalist owners an easy exit from their jurisdictions every time governmental policies menace their accumulation of profits<sup>89</sup>.

Indeed, this mobility that capitalist owners have gained during the last forty years has created a sort of structural power for transnational and multinational corporations at the international level. States are induced to compete in a *race to the bottom* to attract capital owners' investments, not only by lowering capital income's taxation<sup>90</sup> or weakening labour rights, but also by pursuing macroeconomic policies that may be prejudicial on the long term<sup>91</sup>. Governments, to a lesser or greater extent, are today dependent on them for tax revenue, financing, and jobs<sup>92</sup>. The economic dependence of third world countries gives transnational and multinational corporations even greater political power: there they enjoy immense political power that keeps the standards of labour protection low. As James Tully (et al) has bluntly put it, transnational corporations "have become 'shadow sovereigns'"<sup>93</sup>.

To be sure, this structural power enlarged through capital mobility could be constrained if states coordinate their regulations of capital, which would mean

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<sup>88</sup> For a historical review of neoliberalism and its prescriptions for a world order, see Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press 2018).

<sup>89</sup> Financialization has also helped to make capital more mobile. In fact, financial capital today has the biggest structural power: it is not only mobile, but may also discipline governments by setting conditions for both loans to states and for purchasing their bonds.

<sup>90</sup> Tørsløv, Wier and Zucman estimate that close to 40% of multinational profits are shifted to tax havens globally each year, being the non-haven countries of the European Union the main losers from this shifting. Tørsløv, Wier and Zucman (2018) 3.

<sup>91</sup> Stephen R. Gill and David Law "Global Hegemony and the Structural Power of Capital" (1989) 33 *International Studies Quarterly* 475, 485.

<sup>92</sup> James Tully et al., "Editorial: introducing global integral constitutionalism" (2016) 5 *Global Constitutionalism* 1, 7.

<sup>93</sup> *ibid.* Transnational Corporations not only have this structural power, but also an important instrumental power that gives them an important influence on the institutions of global governance and the United Nations.

common regulations in matters as taxation, labour relations and environment, among others. It also could be constrained through global cooperation<sup>94</sup>. This is, for example, Piketty's main proposal for tackling the increasing capital accumulation: global cooperation to create a *progressive global tax on capital*<sup>95</sup>. It is telling that Piketty immediately acknowledges that his proposal is "a utopian idea" and, to some extent, it is true that his suggestion seems utopian, for the unlikelihood of it being realized. The existing global democratic deficit makes responses to capital flight difficult to achieve. Collective decisions at the state level are difficult to make when the issue involves setting limits to capital. If we follow Offe's and Wiesenthal's abovementioned argument, one might say that, as occurs with workers, states also encounter difficulties with collective action. Faced with this huge power, what today remains as a force that may counterbalance capitalist owners' power is popular mobilization for *specific demands*<sup>96</sup>: mobilization creates incentives for governments to disregard instrumental power, and risk or tolerate disinvestment<sup>97</sup>.

#### **4.4. Power or luck?**

Regarding the structural power of capitalist owners, an important question still lingers. What happens when, faced with certain social policy, capitalist owners find themselves *compelled* to act by disinvesting or firing workers? In that case, capitalist owners would not be acting as agents as they would not be able to act differently. Can we say that capitalist owners have *power over* governments when they are *compelled* to act in a determined way? The same question emerges on the side of governments. That is, would it be better to say, in those cases, that governments are not dependent on owners' power but rather that governments have to act within certain limits determined by structures?

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<sup>94</sup> Certainly, the other way is to recede from globalism in favour of protectionism and capital controls.

<sup>95</sup> Piketty (n 6) 515ss.

<sup>96</sup> Arguably, today only mobilization for specific demands reach the degree of cohesion to countervail the power of capital owners.

<sup>97</sup> Fairfield (n 14) 62-63; Fairfield (n 70) 428.

Unlike Barry, Christiano seems to think that we can attribute to owners a power over governments only to the extent that they can choose how to act: when policies leave them no room for action, Christiano seems to contend that *power over* or *domination* becomes meaningless. Previously, in Chapter 5 (section X), I contend something that differs from that opinion: the fact that structures determine someone's action does not make the language of power and domination inapplicable. Neither does it become useless.

However, here it might be convenient to consider Keith Dowding's contention that we have to distinguish between *power* and *luck*<sup>98</sup>. Thus, in Dowding's words, "Some groups of people are lucky: they get what they want from society without having to act. Some groups are systematically lucky: they get what they want without having to act because of the way society is structured"<sup>99</sup>. According to Dowding, capitalist owners are lucky, not powerful. They are lucky because they do not need to use their power for governments to do what they want: "capitalist are just lucky that what it is in the interests of the government is also, by and large, in their interests as well", Dowding claims<sup>100</sup>. However, capitalist owners are not merely lucky but *systematically lucky* "because of the function they systematically perform in the economy"<sup>101</sup>.

There are three things to say in relation to Dowding's proposal. Firstly, there is no congruence between the interests of (left wing) governments and capitalist owners. If we attribute to capitalist owners an interest for the most advantageous combination of immediate profit and long-term security, it seems clear that such interest conflict both with the interests of most people and also with governments that stand up for the interests of their citizens<sup>102</sup>. It is not, then, that governments cooperate with capitalist owners: capitalist owners'

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<sup>98</sup> Keith Dowding *Power* (Open University Press and Minnesota University Press 1996); Keith Dowding "Resources, Power and Systematic Luck: A Response to Barry" (2003) 2 *Politics, Philosophy and Economics* 305.

<sup>99</sup> Dowding *Power* 71.

<sup>100</sup> *ibid* 74.

<sup>101</sup> *ibid*.

<sup>102</sup> Brian Barry "Capitalists rule. OK? A commentary on Keith Dowding" (2003) 2 *Politics, Philosophy and Economics* 323, 329-330.

structural power constrains governments' freedom to improve the material conditions of people.

Secondly, even if one might accept that capitalist owners are systematically lucky within a capitalist system, the fact that such roles as owners continue to exist is not an accident: owners' persistent enrichment results from the continuing reproduction of their unequal power<sup>103</sup>. And that reproduction does not come about out of luck. Moreover, as we saw in the previous section, it is important to bear in mind that capitalist owners can enjoy different amounts of power depending on the given moment and place. This shows that the degree of structural power is shaped by institutional arrangements that did not arise randomly, but rather as a consequence of political choices<sup>104</sup>.

Finally, one might ask (as we did in Chapter 5), why should we conceptualize power narrowly to the exclusion of cases in which capitalist owners are compelled to act in a particular way (i.e., disinvesting)? One reason might be to discount capitalist owners' responsibility. Christiano is right to contend that although we should attribute a moral duty to owners when they have some latitude to act, there is no moral duty and therefore, no responsibility on their part, in all cases in which they do not have the freedom to decide how to act. Certainly, in such cases there is no individual responsibility either for capitalist owners or for governments. However, the question is why we should view power as a concept that only includes cases in which individual responsibility is involved. As we said in Chapter 5 (section x), power over and domination are not concepts that necessarily are predicated upon interactions that presuppose freedom of choice. The reason is that even when capitalist owners' structural power compels them to act a certain way we can say that there exists certain collective responsibility that permits owners to count on this structural power that constrains governments' actions. By saying that owners are systematically lucky when governments constrain themselves from pursuing radical social

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<sup>103</sup> Steven Lukes and Ladawn Haglund "Power and Luck" (2005) 46 *European Journal of Sociology* 45, 49-50.

<sup>104</sup> *ibid* 50.

policies, Dowding depoliticizes inequality. In this sense, one might say that governmental constraints are not imposed by “the economy”, as if “the economy” were an entity guided by natural forces. Streeck's insight comes to mind in this situation: the idea of “economy as mechanism” has replaced the idea of “capital as class”, thus technifying a space previously reserved for power and interests<sup>105</sup>.

### **5. Neoliberalism, hegemony and the third dimension of power**

As we saw in section 2.2, we live in a neoliberal age. In this final section, I wish to briefly explore the idea that neoliberalism's *hegemony* is the result of the deployment of power in its *third dimension*.

Why have governments (voted by people) been able to impose neoliberal policies, which benefit capital far more than people/workers? As I said before, globalization has given capital owners a greater structural power. Arguably, both the increasing risk of capital flight as well as the competition for multinational and transnational investment have induced governments to ease constraints imposed on capital (for example, deregulating, lowering taxes, weakening collective labour rights). However, it is difficult to explain the emergence and consolidation of a neoliberal articulation of our capitalist economies only as a consequence of this greater structural power of owners. We may find a complementary answer by revisiting Lukes' idea of the third dimension of power that we saw in Chapter 5.

The idea here is that the power of capitalist owners not only is deployed in overt conflicts but it also used “to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things”<sup>106</sup>. According to Lukes, the extraordinary dissemination of neoliberal ideas across the world may be a “mega-instance of ‘hegemony’”, which adequate understanding

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<sup>105</sup> Streeck (n 86) 12-13.

<sup>106</sup> Steven Lukes, *Power. A Radical view*. (2nd Edition Palgrave Macmillan 2005) 10.

seems to require the third dimension of power<sup>107</sup>. As we saw above, neoliberalism is not just a series of policies but an ideology that has become hegemonic. My hypothesis here is that the neoliberal rationale has been incorporated in people's beliefs about politics and the economy. Capitalist owners' *instrumental power* has been deployed not only in the overt political struggle but also in making people agree with neoliberal values, even when such values do not conform to their true interests, but to the interests of capitalist owners. Through media access, technical expertise, and informal linkage with politicians, technocrats and schools of economic thought, owners shape values, norms, and identities.

The idea, then, is that capitalist owners have exerted their instrumental power by influencing people's ideas about the desirability of neoliberal policies. This power has made people conform to the view that growth benefits all and that growth is only possible when there are few regulations of capital and business. In the UK, for example, Thatcher's neoliberalism involved not just a policy change "but a conscious effort to change ideas and expectations about the appropriate role of government, the importance of private enterprise, and the virtues of markets"<sup>108</sup>. The aim was to convince people that "there is no alternative" to Thatcherism (i.e. neoliberalism) if they wanted growth and prosperity<sup>109</sup>. To a certain degree, the unavailability of alternative ideologies to neoliberalism causes people to ignore how the neoliberal articulation of capitalism harms their interests.

Another important way peoples' beliefs and interests may be shaped to comply with neoliberalism is by depicting individuals not as workers or citizens but merely as consumers. Neoliberalism promotes consumer lifestyles as synonymous with happiness and success. As consumers, individuals are pleased with the expansion of free markets, which offer goods they never thought would be available. But they ignore the fact that such expansion means,

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<sup>107</sup> *ibid* 9.

<sup>108</sup> Gill and Law (n 91) 481.

<sup>109</sup> *ibid*.

in many cases, that health, social security, and education, cease to be basic things to which everybody is entitled, but commodities that need to be acquired in the market. As consumers, individuals are pleased with unregulated finances, which allow a massive expansion of consumer credit. But they ignore that credit is mainly a substitute for wage rises and improved welfare benefits.

By rendering alternative ideologies invisible and therefore, defining the limits of what is possible, and by representing individuals mainly as consumers, peoples' interests and beliefs are shaped in such a way that they do not see that, as workers they have lost, to a large extent, the social and collective rights that they struggled to obtain. As consumers they have become unaware of their subordinate position *vis a vis* capital, allowing capitalist owners and wealthy people to enjoy the benefits of neoliberalism without disruption.

Neoliberalism has proven to be enduring. After the economic crisis of 2008, there has been no widespread reconsideration of neoliberalism, at least not at the policy level. This is striking, given that economic crises are breaking points for major changes in dominant economic paradigms<sup>110</sup>. Moreover, the response to that crisis has been austerity, which requires a kind of policy similar to those pursued by neoliberalism. Arguably, neoliberalism's endurance, may be explained by its hegemony, which to a great extent is a function of capitalist power.

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<sup>110</sup> Graham Wilson and Wyn Grant, *The Consequences of the Global Financial Crisis* (Oxford University Press 2012) 6ss.



## CONCLUSION

Private property is usually justified by looking at its active side, on the basis of the freedom that it gives to owners. The first part of this thesis demonstrates that private property constrains the freedom of non-owners. This is why the libertarian defence of unlimited property rights is difficult to sustain. The idea that unlimited property rights bring the greatest overall freedom only can find support if one ignores all the limits that private property imposes (c.2).

Then, by examining paradigmatic liberal justifications of private property (provided by Kant and Locke), I aim to show that they are led to consider in their own justifications the potential implications of the accumulation that private property permits for the non-owner's unfreedom. That is, the fact that in a private property system some may have opportunity neither to become an owner nor to satisfy their needs with the existing resources. In the interpretation of Kant's justification that I favour, property is internally connected to redistribution: private property is rightful only under the condition that the restrictions on freedom that it imposes do not make some dependent on owners for their survival (c.3). Something similar happens with both justifications that can be found in Locke's account of property. In the egalitarian justification that Locke seems to provide, appropriations are legitimate only if they leave "enough and as good" resources for others' appropriation. In his justification of inequality, on the other hand, Locke acknowledges that he must provide a common good argument: an argument that justifies the unequal distribution of private property not by showing how private property protects the interests of the owners, but rather the interests of everyone (c.4).

In my view, there is something interesting in these attempts to justify private property put forward by Kant and Locke. To a certain extent, they in fact realize that the accumulation that private property allows may have deep implications in a private property system, and they try to resolve them. However, their

attempts fall short. One reason for this can be traced to their dismissal of the dominating power that private property may have in some of its articulations.

The second part of the thesis brings into the fore the dominating power that private property generates in its capitalist articulation. The fact that capitalist property bestows a dominating power to owners is nonetheless difficult to show from a liberal point of view. Within the liberal tradition, Pettit has put forward the most developed account of domination, but his approach is able to identify domination only when it is overt, direct and to a large extent, reducible to coercion. As a result, his account cannot identify exploitation and other types of private domination as an instance of domination (c.5). This is why, in the second part of the thesis I go further than liberal theories with the aim to demonstrate how social structures lead to exploitation of those who sell their labour for wages. My point here is not only that a capitalist owner may be in a position of power to take advantage of a vulnerable worker in a particular exchange, but rather that exploitation is a function of the structural dependence that constitutes the labour exchange (c.6). The concept of exploitation helps us to see both poverty and great inequalities on relational grounds and it highlights the fundamental relation that exists between capitalist owners' wealth and the poverty of the many.

In the final chapter of the thesis, I unpack the widely accepted idea that capitalist owners have political power merely due to the fact that they are owners. There I explain how both the *instrumental* and the *structural* power that capitalist property gives to owners unfold and how globalization and neoliberalism have enhanced them (c.7). Owners' political power not only perpetuates capitalism but, most worryingly, also weakens the institutional framework that democracy offers to restrain their economic power in pursuit of the common interest. This should warn us that it is no longer possible to think (and theorize) about democracy without considering capital as a fundamental actor that will fight to retain and even enhance its dominant position.

From the point of view of a justification of private property, one might say that the fact that capitalist property is the source of a dominating power provides a *pro-tanto* reason to limit the kind of articulation of private property that may be justified. Not only for the wrongs it causes, but also because it tends to *jeopardize the very possibility that everyone be able to enjoy private property*. In a certain way, capitalist property undermines the very same individual interests that private property seeks to serve (autonomy, privacy, and identity, for example).

However, as I said above, in this thesis I do not attempt to argue about the precise moral weight that these considerations should have once they are counterbalanced with common good-based arguments. But, in the case that the reasons provided in favour of capitalist property were strong enough to outweigh my *pro-tanto* reason, the dominating power that I have showed capitalist property gives to owners still can play an important role. In this context, it provides a reason to limit the worst and most detrimental forms of power of capitalist property. Here I am thinking about the economic and political power that capitalist property displays in its *neoliberal* articulation, which undermines labour rights and social rights while also influencing economic policies in the interests of the wealthiest members of society.

To conclude, I would like to refer to Hannah Arendt's insightful ideas about private property because they significantly convey what I just have affirmed. In *The Human Condition* Arendt suggests that the important distinction between *property* and *wealth* has been lost. Today these concepts are practically indistinguishable, but they must be separated because "wealth and property, far from being the same, are of an *entirely different nature*"<sup>1</sup>.

Although all civilizations have rested upon the sacredness of private property, before modernity wealth had never been sacred. Private property was sacred because it was necessary for being human: "to have no private place of one's

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<sup>1</sup> Hannah Arendt, *The Human Condition* (University of Chicago Press 1958) 61, emphasis added.

own (like a slave) meant to be no longer human”<sup>2</sup>. Private property gives to persons a private place to be, a place in the world that protects them from publicity. Of different and historically later origin is the significance of private wealth. Wealth’s ownership became important, but not “because its owner was engaged in accumulating it but, on the contrary, because it assured with reasonable certainty that its owner would not have to engage in providing for himself the means of use and consumption and was free for public activity”<sup>3</sup>. Thus, private property was sacred because it was *per se* important for being human; wealth was important, but only to the extent that it provided the independence that was necessary for public life: wealth had an instrumental value<sup>4</sup>.

In modern ages, Arendt contends, wealth has become sacred: it is desired for its own sake and not because it provides independence. Instead of claiming access to the public realm because of their wealth, owners demand protection from it to accumulate more wealth<sup>5</sup>. Its advocates, however, cannot justify the ownership of wealth by appealing to the same grounds as private property (i.e. the protection of individual liberties), for, as Arendt bluntly states, “the enormous and still proceeding accumulation of wealth in modern society, has never shown much consideration for private property but has sacrificed it whenever it came into conflict with the accumulation of wealth”<sup>6</sup>.

Hence, it is not only that private property has both a different justification and legitimacy than wealth, but also that in modernity *wealth has come to oppose private property*: “individual appropriation of wealth will in the long run respect private property no more than socialization of the accumulation process”<sup>7</sup>. In a “jobholding society”, Arendt says, the individuals liberties that private

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<sup>2</sup> *ibid* 64.

<sup>3</sup> *ibid* 64-65.

<sup>4</sup> For Arendt, to choose to enlarge property of wealth instead of using it for leading a political life meant that the owner was choosing to sacrifice her freedom and “became voluntarily what the slave was against his own will, a servant of necessity”. *Ibid* 64.

<sup>5</sup> *ibid* 64.

<sup>6</sup> *ibid* 66-67.

<sup>7</sup> *ibid* 67.

property seeks to protect “are safe only as long as they are guaranteed by the state, and even now they are constantly threatened, not by the state, but by society, which distributes the jobs and determines the share of individual appropriation”<sup>8</sup>.

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<sup>8</sup> *ibid* 67-68.



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