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Property, freedom and money: Modern Capitalism reassessed

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Abstract
Large exchange markets, big money, interest-bearing credit, big landholdings, proletarian masses, imperial expansion and even 'capital' or 'salaried workers', are not in themselves specific, unique institutional features of Modern Capitalism. This article argues that the features that characterize Modern Capitalism are a massive emergence of 'free', monetized wage labour, a self-propelled rush to unbounded world expansion and the progressive conversion of expropriated and privatized land into a monetized commodity, as well as a radically new use of the ancestral social institutions of money and credit as an instrument for financing the production of commodities to obtain a surplus in the form of monetary profit, but also to generate expropriatory social debt relations. This article explains these dynamic historical forces and their importance for political philosophy and for legal and economic history and economics and sheds some light on the relationship between 'capitalism' and 'modernity'.

Keywords
freedom, Modern Capitalism, money, property

Not everyone accepts that 'capitalism' is a historical concept. Indeed, the Marxist critique of classical political economy drew attention to its a-historically biased view of the 'capitalist mode of production'. For bourgeois classical economists, this 'mode of

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production' was a systemically articulated order but not historical, a sort of natural order in the sense of 'natural' introduced by the French physiocrats in the latter half of the eighteenth century.

In order to understand (Modern) Capitalism, one must see it as part of (or a causal force in) a dynamic, real process. This means at least being able:

a) not only to identify and *statically* describe (some of) its characteristic variables of state;
b) not only to identify and *static-comparatively* describe the temporary variations of (some of) its variables of state;
c) but also to identify and describe (some of) the *dynamic causal* forces which explain these temporary variations.

Marx, Modern Capitalism and the irrelevance of philosophical *Weltgeschichte*

Marx was a fine historian of encyclopaedic knowledge (and, in particular, a great scholar of the history of legal and economic institutions). To research history and tell a (causal) story is to try to describe (and perhaps explain) unique trajectories or, in other words, doing precisely the opposite of the 'theory-building' characterizing the speculative *Weltgeschichte* philosophies which were based on more or less brilliant scientific – or literary – metaphors. Marx's occasional use of ontogenetic metaphors may reveal something of great interest about his *Bildung*, but it says absolutely nothing about his views on human history and especially his thoroughly historical understanding of the emergence and dynamics of Modern Capitalism.

The empirical researcher Marx has plenty to say about this in a letter to a Russian correspondent (November 1877):

> But that is not enough for my critic. He feels himself obliged to metamorphose my historical sketch of the genesis of capitalism in Western Europe into an historic-philosophic theory of the *marche générale* [general path] imposed by fate upon every people, whatever the historic circumstances in which it finds itself, in order that it may ultimately arrive at the form of economy which will ensure, together with the greatest expansion of the productive powers of social labour, the most complete development of man. But I beg his pardon. (He is both honouring and shaming me too much.) Let us take an example ...

The letter continues:

> In several parts of Capital I allude to the fate which overtook the plebeians of ancient Rome. They were originally free peasants, each cultivating his own piece of land on his own account. In the course of Roman history they were expropriated. The same movement, which divorced them from their means of production and subsistence, involved the formation not only of big landed property but also of big money capital. And so one fine morning there were to be found, on the one hand, free men, stripped of everything except their labour

> power, and, on the other, in order to exploit this labour, those who held all the acquired wealth in possession. What happened? The Roman proletarians became, not wage labourers but a mob of do-nothings more abject than the former 'poor whites' in the southern country of the United States, and alongside of them there developed a mode of production, which was not capitalist but dependent upon slavery. Thus events strikingly analogous but taking place in different historic surroundings led to totally different results ... one will never arrive [at an explanation] by the universal passport of a general historic-philosophical theory, the supreme virtue of which consists in being super-historical. (Marx, 1877)

One might say that Marx identifies here the (unique) historical origins of one of the elements of the basic dynamic forces of what we now call modern 'capitalism': the sudden, massive growth of wage labour as a consequence of a serious political defeat (accelerated in England since the late seventeenth century) after a long secular process of social struggles and mass resistance against enclosures and expropriations (privatization) of the commons in late medieval and 'modern' Western Europe.[1] Marx also speaks of ancient Roman parallels in the formation of big landed property and great fortunes (by expropriation and privatization of the *ager publicum*).

But what distinguishes the modern Western European evolution from that of ancient Rome is:

1. not only the massive emergence of money-wage labour, which is to say the progressive and increasingly generalized conversion of both *labour* (as in the traditional 'free' slave markets) and also 'free' *labour* power into a sort of commodity to be sold on a large scale in a very strange 'free market' (the so-called 'labour market'); but also
2. the progressive conversion of expropriated and privatized land (usually by political means of extreme violence) into a sort of monetized commodity, as well as:
3. a very special new use of the ancient social institutions of money and credit, namely, the conversion of money into a peculiar kind of commodity and the progressive integration and centralization of a credit and banking system, in contrast with the traditionally non-integrated and diffuse institution of usury; and
4. an inner dynamic of unlimited imperial expansionism: in contrast with Imperial Rome, modern 'capitalist' imperialism knows no *limes.*

Hence, what makes the result of the lengthy, secular process of enclosures, socio-political struggles and progressive proletarianization of peasants in modern Western Europe (historically) unique is not only the emergence of generalized wage labour, but also – among many other factors – a very different institutional configuration of big landed property and big money.

In the important Chapter 36 of *Capital III*, on the formation of the modern capitalist banking system, Marx returns to ancient, 'capitalist' Rome:

> The really important and characteristic domain of the usurer, however, is the function of money as a means of payment. Every payment of money, ground-rent, tribute, tax, etc. which becomes due on a certain date, carries with it the need to secure money for such a

> purpose. Hence from the days of ancient Rome to those of modern times, wholesale usury relies upon tax-collectors, fermiers généraux, receveurs généraux. Then, there develops with commerce and the generalization of commodity-production the separation, in time, of purchase and payment. The money has to be paid on a definite date. How this can lead to circumstances in which the money-capitalist and usurer, even nowadays, merge into one is shown by modern money crises. This same usury, however, becomes one of the principal means of further developing the necessity for money as a means of payment – by driving the producer ever more deeply into debt and destroying his usual means of payment, since the burden of interest alone makes his normal reproduction impossible. At this point, usury sprouts up out of money as a means of payment and extends this function of money as its very own domain. (Marx, 1894: Chapter 36: 613)

He also revisits ancient 'capitalist' Rome for comparisons in matters of big landed property:

> The same wars through which the Roman patricians ruined the plebeians by compelling them to serve as soldiers and which prevented them from reproducing their conditions of labour, and therefore made paupers of them (and pauperization, the crippling or loss of the prerequisites of reproduction is here the predominant form), these same wars filled the store-rooms and coffers of the patricians with looted copper, the money of that time. Instead of directly giving plebeians the necessary commodities, i.e. grain, horses, and cattle, they loaned them this copper for which they had no use themselves, and took advantage of this situation to exact enormous usurious interest, thereby turning the plebeians into their debtor slaves. (Marx, 1894: Chapter 36: 612)

Large exchange markets, big money, interest-bearing credit, large landholdings, proletarian masses, imperial expansion and even 'capital' or 'salaried workers', are not in themselves specific, unique institutional features of Modern Capitalism. The features that can be said to characterize Modern Capitalism are a massive emergence of 'free', monetized wage labour, a self-propelled rush to limitless world expansion and the progressive conversion of expropriated and privatized land into a sort of monetized commodity, and a radically new use and reorganization of the ancestral social institutions of money and credit as an instrument for financing the production of commodities to obtain a surplus in the form of monetary profit, but also to generate – *pari passu* – expropriatory social debt relations.

A brief exploration of these four key points and their importance for political philosophy (and, to a lesser extent, for legal and economic history and economics) should shed some light on the relationship between 'Capitalism' and 'Modernity'.

A short, useful way to illustrate some of the crucial aspects of this discussion is to compare Locke with the Salamanca School and consider their respective notions of political freedom, property and money, as well as the fact of their being subjects in two contemporaneous but quite different colonial empires.

The most important point is that (whatever the widespread twentieth-century misrepresentation of his thought) Locke – in opposition to Hobbes, for example – upheld the classical ('anti-capitalist' in our sense) notion of political freedom. This had been reformulated and revitalized in the sixteenth century by the Salamanca School which, in its moral and philosophical reaction to the *Conquista*, stressed the essential inalienability of human freedom (Acton, 1907).[2] Furthermore, like the Catholic philosophers of Salamanca, the Protestant Locke also championed, more than a century later, an explicitly anti-exclusive (and in this sense 'anti-capitalist') notion of property and private appropriation.[3] Yet unlike the Salamanca scholars, Locke had a very strange, naïve ('capitalist' in our sense) notion of money as an economic institution.

Political freedom

The modern idea of the inalienable nature of political freedom dates from classical Mediterranean thought and particularly from republican Roman civil law: voluntary contracts entailing slavery (between free citizens) were deemed null and void (though, of course, a black market of voluntary contractual slavery did exist) (Harper, 2011). The modern reaffirmation of this classical (ancient) conception of political freedom (of individuals and peoples as fully constituted political communities) is an essential part of the *ius*-philosophical indictment of the *Conquista y Destrucción de las Yndias* [Conquest and Destruction of the Indies], formulated in the decades prior to the 1570s in Spain by people like Francisco de Vitoria, Domingo de Soto and the great Bartolomé de las Casas. After the political defeat of the anti-colonial party and the victory of the *encomenderos* party (supporting the practice whereby the Spanish Crown granted colonial overseers a certain number of natives from whom to extract tribute and labour), an interesting philosophical conceptualization appeared in the last three decades of the century. With the great metaphysician Francisco de Suárez, a philosophical notion of human (political) freedom as an alienable asset was formulated in Europe for the first time: 'since man is the master of his freedom, it is possible to purchase or to alienate freedom' (Suárez, 1859). Suárez's conception was then taken up in the United Provinces (by Grotius), Germany (by Puffendorf) and England (by Hobbes). In radical contrast, Locke (and, later, Kant)[4] upheld the ancient, classical republican notion of human freedom as an *inalienable good.* As Kant famously put it: 'Nobody can dispose arbitrarily [nach Belieben] of himself, not to speak of other human beings, because he is, in his own person, responsible for Mankind' (Kant, 1966: 83).

The *politically free* (materially independent) person (*sui iuris*) does not depend on third parties in order to live, and is empowered to engage in all kinds of legal actions and dealings (signing contracts, suing and being sued, voting, choosing fiduciary representation, etc.). This empowerment cannot be alienated (purchased or donated). Classical republican Roman civil law strictly distinguishes, for example, between the *locatio conductio opera* (job contracts) of the independent artisan and the *locatio conductio operarum* (services contracts) of the wage-earning worker. This second kind of contract is not, strictly speaking, a contract between free (republican) citizens, because the salaried worker partially alienates his freedom, which (partially) makes of him an *alieni iuris*, as argued by Cicero in his *Offices* (Cicero, 1991: I, 42). This was no idiosyncratic interpretation of Roman republican civil law or Cicero. Some centuries earlier, in Athens, Aristotle had also described wage-earning labour as a kind of 'part-time slavery' (Aristotle, 1981; I, XIII, 1260B).

Property and freedom

To have some sort of 'property' (open access to common property, private property founded on personal labour, private personal property founded on the exploitation of alien labour, etc.) is the institutional basis of personal independence. That is what being 'free' means in the classical republican sense: one is not forced to 'seek the permission of third parties' (Marx, 1962a: 15) in order to exist socially. The precondition for republican citizenship was to be 'free' in this sense of material independence or self-sufficiency. Hence the notions of property and appropriation of goods, resources, assets or means of existence are intimately linked with the classical republican notion of political freedom.

Consistent with this classical republican notion of inalienable human freedom, Locke was rigorous when he formulated the normative basis of legitimate property and legitimate appropriation of goods and resources.

First, his famous proviso stipulates that private 'appropriation of any parcel of [common] land' must not cause prejudice to third parties and must leave 'still enough and as good' as there was before appropriation. Then again is his emphasis on the function of labour: the legitimate appropriation of an asset requires 'the mix' of personal labour in the final production of the appropriated asset. However, the crucial, primordial interest here is what might be called the 'non-perishing proviso': a normative anti-accumulation ('anti-capitalist' in our sense) clause which states, in effect, that nobody should be in a social position which allows accumulation of more goods and possessions than what can be used before spoiling:

> The same Law of Nature, that does by this means give us Property, does also bound that Property too. God has given us all things richly ... But how far has he given it us? To enjoy. As much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a property in. (Locke, 1988: V, 31)

Locke's conception of political freedom and property has no relation with the absurd, anachronistic interpretations, attributed to him in the twentieth century, whereby he is portrayed as an apologist for 'possessive individualism' (MacPherson, 1962), 'liberalism' (a neologism coined by the Spanish Cortes de Cádiz as late as 1812), unchecked capitalism, or even slavery and colonialism. Things are much more complex than that.

To begin with, Locke's general notion of inalienable human freedom (in contrast to Suárez, Grotius or Hobbes) is hardly compatible with wage labour or colonial domination. Moreover, his notion of 'property' has nothing in common with the present 'classical liberal view of private property', namely, a legally constituted instrument of exclusion, echoing Blackstone's (in)famous late-eighteenth-century formulation: 'the 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' (Blackstone, 1992, Book II, I).[5]

On the contrary, Locke's basic idea of private property can be summarized as follows: the property of any basic resource or asset (especially land) is public, and what we call 'private property' is in fact nothing but private appropriation of the resource in question as a public *fideicomissus* in a Principal/Agent relationship: the private owner (as well as the enfranchised common owner) is merely a trustee of public or sovereign property. The sovereign (the Monarch or the People) is the Principal (the 'trustor') and the proprietor is the Agent (the 'trustee') in the fiduciary social relationship called property.

It is important to observe that Locke was not very original – and admittedly not very clear – in his presentation of this 'fiduciary' understanding of property.[6] In fact, this view has deep roots in medieval juridical traditions – 'Roman' and 'Common Law' – of *ius communis* in Western Europe.

To begin with, Henry of Bracton (c. 1210–c. 1268) stated in his *De Legibus et Consuetudinibus Angliae* that the *ius publicum* of Roman law was also the law of England (Bracton, 1977; ii.33). Contrary to the nineteenth-century ideological fabrication that Roman law was merely private civil law after the Napoleonic Codes, Roman law had a robust doctrine of public law and public and common property, with at least five types of legal definition, protection and enforcement of public domain: (1) *res nullia* (goods and assets not yet appropriated by anybody); (2) *res communes* (resources open to all by their nature, such as air and sea); (3) *res publicae* (things belonging to the public and open to the public by political decision and operation of law); (4) *res universitatis* (property normally belonging to a public-municipal group in its corporate capacity, but in such a way that, under the authorization of the republican authority, both private and public heterogeneous groups could unite and cooperate – 'universities' (indeed, it is from this Roman legal framework that medieval and early modern universities sprang) – to own property in common, including lands or other income-producing property, a type of property that was non-exclusive but also bounded); and (5) finally, *res divini iuris*, things and goods not owned by any human being because they are politically classified as 'sacred' (for example, and in accordance with this old legal tradition, great ecological niches like the Amazon or the Antarctic, endangered species, or such artistic masterpieces as the Taj Mahal or Velázquez's *Las Meninas*) (Rose, 2003).

This ancient Roman and Lockean notion of property was very present, not only among the French Revolutionary Jacobins, but also – contrary to the naïve historical forgeries of Hannah Arendt (Arendt, 1981; 1959; 1965)[7] – in the basic template on property of the American Founding Fathers. Benjamin Franklin, for example, discussed the matter in clearly classical terms in a famous letter to Robert Morris, dated 25 December 1783:

> All the property that is necessary to a Man, for the Conservation of the Individual and the Propagation of the Species, is his natural Right, which none can justly deprive him of: But all Property superfluous to such purposes is the Property of the Publick, who, by their Laws, have created it, and who may therefore by other laws dispose of it, whenever the Welfare of the Publick shall demand such Disposition. He that does not like civil Society on these Terms, let him retire and live among Savages. He can have no right to the benefits of Society, who will not pay his Club towards the Support of it. (Smyth, 1905–7: 9, 138)[8]

This *prima facie* 'anti-capitalist' conception of property has, of course, had a non-negligible impact on the evolution of American legal regulation of property.[9] As for continental Europe, it is obvious that

> [t]he process of building a public domain separate from both private and state possession was pushed forward by the French Revolution, which proclaimed the sovereignty of the nation, supported by its power to dispose of public things. The Roman res publica was cited as the origin for this legal model, thus giving it a more legitimate and universal appearance. By the end of the century, almost all European law codes acknowledged the existence of a public domain that kept growing and included many objects formerly considered private. (Pravilova, 2012: 16)[10]

Indeed, the modern democratic-socialist legal conception of the 'social function' of property,[11] which so strongly influenced twentieth-century European and Latin American Constitutionalism (starting with the celebrated Article 27 of the revolutionary Mexican Constitution of 1917, which greatly influenced the first Soviet Constitution of 1918 and, in particular, the republican Constitutions of Weimar Germany (1918), Austria (1918) and Spain (1931)) (Domènech, 2013), was of Roman-Lockean descent. No wonder then, that most of the early-nineteenth-century English academicians who vituperated the legacy of the French Revolution (Bentham, for example)[12] tended to view Locke as a sort of proto-socialist and anti-capitalist scholar, while early socialist thinkers saw him and his republican *ius*-naturalism as an intellectual ally.[13]

It seems evident enough that Blackstone-style 'classical liberal property' – an absolutist, exclusive private domain and cornerstone of 'modern property rights' – is simply a myth, one that is certainly cherished and embraced nowadays among (neoclassical) economists and (mainstream) philosophers but plainly rejected by many serious lawyers and historians of law and property institutions.[14] Of course, the illusory academic ideology of absolute private property prevailing nowadays among economists and philosophers is not politically innocent. In some ways, it has a very precise, useful yet sometimes, perhaps, unintended real function (which partly explains why it has been embraced): talking about two largely independent realms of such fanciful entities as disembodied 'states' and 'Markets' makes it harder for people to justify regulations that they would in fact favour, and that would contribute to an efficient alternative use of legal resources reinforcing democratic fiduciary public ('anti-capitalist') controls of real property institutions.

Worse, the *asylum ignorantiae* which would seem to be the last bastion of neoclassical economists, mainstream political philosophers and *literati* of the most extremist brand of 'post-colonial studies' cultivated in humanities faculties around the world – true believers, all, in the reality of a prototypically 'Western' or 'Eurocentric' conception of liberal-absolutist private property – blinds them to the crude and crucial *political* fact of details (the devil's haunt). It was through the 'details' of Roman legal frameworks that the imperial conquest of territories and further colonial expropriation and privatization of land was accomplished in the sixteenth, seventeenth, eighteenth, nineteenth and twentieth centuries. To begin with, the lands of conquered and annexed territories were legally framed (by the Spanish or Portuguese, no less than by the English or French Kings) as *res nullia* (in the Roman *ius gentium* tradition of treating as such the bulk of enemy properties) and then appropriated as sovereign property of the Crown, only to be further distributed and privatized as royal local franchises (or even global commercial monopolies like the British and Dutch East Indian Companies, or the Spanish and French West Indian

Companies). Property was thus distributed and privatized, in a non-strictly 'capitalist' way, for example, among Spanish *conquistadores* and *encomenderos* (trustees or agents) authorized and variously enabled by the King to subject, as their private vassals, the numbers of indigenous people deemed necessary to establish and manage this kind of *ancien régime* fiefdom known as the *encomienda*. In the case of English colonialism, first (experimentally) in Ireland and then, and especially, in America, land was distributed and privatized, in a paradigmatically 'capitalist' way, to the benefit of metropolitan settlers or colons after an armed and often genocidal expulsion of native peoples from their ancestral lands. These colons became independent small farmers (and, thereafter, notably in the South, great 'modern' capitalist owners of plantations based on slave labour and export-oriented to world markets)[15] or entrepreneurs and independent commodity manufacturers who increasingly needed a disadvantaged labour force, which was conveniently supplied by successive migratory waves of workers and peasants who were dispossessed and pauperized by the successful development of modern European industrial capitalism.

Neutral or political money?

Some aspects of Locke's reflections on money are very closely linked with the above discussion on property and freedom and our understanding of the relationship between modernity and capitalism. In a crucial passage on money in the *Second Treatise*, Locke says: 'And indeed it was a foolish thing, as well as dishonest, to hoard up more than he could make use of' (1988: 46). That, observes Locke, would 'waste the common Stock'. But then came the use of money:

> [S]ome lasting thing that Men might keep without spoiling, and that by mutual consent Men would take in exchange for the truly useful, but perishable Supports of Life. This is certain, That in the beginning, before the desire of having more than Men needed, had altered the intrinsick value of things, which depends only on their usefulness to the Life of Man; or [Men] had agreed, that a little piece of yellow Metal, which would keep without wasting or decay, should be worth a great piece of Flesh, or a whole heap of Corn ... And 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. (Locke, 1988: V, 37, 48)[16]

To sum up: (1) the institution of money evolved spontaneously from barter or exchange of use values between economic agents; (2) what is socially accepted as money is nothing but another useful good, just one more asset; (3) money is, then, a politically neutral technology, simply chosen as a conventional means to facilitate exchange by its distinctive properties of durability and resistance to spoiling ('lasting thing that Men keep without spoiling'); and, finally, (4) in addition to being a politically neutral means of exchange, money is also a means of hoarding (accumulation of wealth). But this hoarding would be politically legitimate because it satisfies the normative clause of 'non-spoiling': hoarded money does not spoil, it does not generate social or economic waste depriving or excluding others from certain useful goods which, if accumulated, cannot be enjoyed because they spoil.

Locke's monetary views are particularly surprising if one considers that, in the Lockean barter market, the goods with use value are not produced with a view to their being exchanged in a normal commodity market. Rather, the exchange happens as a consequence of the (traditional) existence of an economic surplus that can be traded. Why then should anyone purchase more goods than can be used before they perish? Without established specialized markets, specialization would be absurd, especially specialization in non-durable goods. At best, everyone would specialize in the production of the most durable of goods, the 'little pieces of yellow metal'.

Nevertheless, the unintended and largely unrecognized consequences of this naïve view of money as a durable asset were (through the back door of its desired political neutrality) devastating for Locke's normative ideas concerning private appropriation, these being basically egalitarian and anti-accumulation ('anti-capitalist'). In practice, the fiduciary (social or public) nature of private landed property disappears as, once 'pieces of land' can be sold and purchased with money, they can be hoarded indefinitely as assets without violating the spoiling clause. The 'trustee' – or Agent – who (indirectly through money) can accumulate without limits and arbitrarily alienate 'pieces of land', can then cut every fiduciary tie with his supposed Principal or trustor. The seemingly innocent idea of money as a standard commodity leads to another, very different, notion of private property as an exclusive and excluding social institution thanks to the severing of ties of fiduciary control.

The absolutist monarch finally achieved a space of total discretionality by progressively breaking free from the fiduciary ties which traditionally bound him (as a 'trustee' in Locke's sense) to his free subjects,[17] thus becoming a 'bondsman' in revolt against his own Master, the People. Similarly, the modern private 'capitalist' owner was increasingly seen in radical republican-democratic thought (and recall here that Robespierre, after Rousseau, spoke of the 'tyrannical political economy' which he countered with a political programme of *économie politique populaire*) (Gauthier, 2014) and, later on, by nineteenth- and twentieth-century democratic republican socialists, as a sort of *esclave révolté* against his master, the working people (and here it is worth remembering that Marx conceived socialism as a process of 'expropriation of the expropriators').

Still other significant, if inadvertent, consequences follow from Locke's notion of money. With increased private accumulation of monetarily alienable 'pieces of land' (and the corresponding concentration of landed property), the number of people who were dispossessed and deprived of every form of direct access to the material means of existence necessarily burgeoned as well. Concentration of property (and of its corollary of dynamic economies of scale) normally results in devastating pressures on small private property based on one's own labour (small farmers, artisans, etc.). What these genuinely 'capitalist' dynamic forces and pressures bring about is something which, in some sense, is astonishing, namely the removal of vast spaces of production from free commodity exchange markets and the emergence of the modern authoritarian capitalist private enterprise, an institution endowed with ever-greater potential capacity to subdue its own 'domestic' or internal workers and – helped by economies of scale – to gain, moreover, external market power and become 'price-makers' (as opposed to free-market 'price-takers') by erecting barriers to ever-less 'free' commodity markets, thus becoming more and more politically constituted as plutocratic oligopolies. In this particular but crucial sense, what 'Modern Capitalism' entails is not more but less social space for free commodity exchange markets.[18]

Accordingly, an army of deprived or expropriated men and women will be subjected to (part-time) alienation of their legally inalienable freedom, forced to capitulate before tyrannical 'bosses' and 'captains of industry', and to become 'part-time slaves' (Aristotle), or waged workers subject to private owners. Private owners, with a high degree of political manoeuvrability and able to elude public control of the *fideicomissus* which they enjoy, can (through money-hoarding and the creation of credit) 'freely' accumulate land and the means to produce food and other alienable commodities. The transformation of land into a kind of alienable commodity then brings about the transformation of the labour power of the previously dispossessed men and women, and even children, into an alienable commodity as well.

These are very strange commodities indeed, inasmuch as nobody 'produces' labour power, land or money to be sold in a specialized market. This is Karl Polanyi's thesis: only *contra natura* – and with catastrophic social and ecological consequences – can Modern Capitalism seek to reduce land, money and labour to commodities; only *contra natura* (and also with catastrophic consequences) can one try to institutionalize such chimeras as self-regulatory 'real estate markets', 'money markets' or 'labour markets' (Polanyi, 2001). Neither Locke nor classical political economy, in sharp contrast to contemporary twentieth-century neoclassical economics, could even conceive the idea of a genuine 'labour market'. And, naturally, the classical political economists could not envisage the (neoliberal) idea of a permanent tendency of the 'labour market' to clear, because they thought Say's Law ('supply always will find its demand') applied only to commodities whose production is motivated by anticipated profits. Since the labour force, although a particular kind of 'commodity', cannot be thus pigeon-holed, Say's Law was not applicable. It was only with the neoclassical wage fund doctrine and, later, marginalist and general equilibrium neoclassical analysis that the 'law of markets' was generalized to include a 'labour market': with flexible prices and wages, and sufficient exchangeability between consumer goods and production factors, all markets, including the labour market, were understood as clearing. Hence the 'forces' of demand and supply were seen to establish the 'long-term tendency' (famously mocked by Keynes) towards a fantasized equilibrium with full employment of labour force and full utilization of plant and equipment.[19]

Money, modern capitalism and empires

The French Marxist historian Pierre Vilar was the first to call attention to the extraordinary intellectual acuity of the sixteenth- and seventeenth-century Spanish monetary theorists (even compared with such European celebrities as Jean Bodin), emphasizing in particular the superiority of writers such as Tomás Mercado or Martín de Azpilicueta. This excellence would seem quite natural, however, if one considers that Spain was the world's leading monetary power at the time (thanks, among others things, to American gold and silver) (Vilar, 1969).

No intellectually informed scholar could ignore the thoroughly political role the state played in money and credit creation in sixteenth- and seventeenth-century Spain. Nobody in the leading monetary power of the epoch (minting eight-real coins, better known as pieces of eight, the world currency and, in America, the *talero de plata*, from which the US dollar evolved) would have seriously endorsed the idea that money, as a unit of account, was a mere means of exchange, a standard – though distinctive in this function – commodity invested with normal use and exchange values, rather than a means to pay debts and for hoarding.

In other words, in imperial Spain, it was difficult to see money as an asset. Political and historical experience had presented money as a social institution created – as a unit of account – by the political sovereign and born of social relationships of debt: far from being an 'asset', money represented 'liability'. The *querella del vellón* (the 'billon' (alloy) trial over coins minted with a high base-metal content), which ended with the confinement by the Inquisition of the great political theorist Juan de Mariana (who, by contrast, had not been arrested after the publication of his magnificent legal defence of overthrowing the tyranny of the absolutist *princeps legibus solutus*), was about money as liability: debts, payments, taxes, etc. In his *Tratado y discurso sobre la moneda de vellón* [A Treatise on Billon Coinage], Mariana states: 'The truth is that too much vellón (billon) eradicates silver and sinks it, because the rents of the King are paid in silver while His Majesty pays juros [a sort of royal debt bond], servants and ministers with vellón' (Mariana, 1609: IX).

In the *querella del vellón*, the King of Spain was accused of levying taxes and other charges in one unit of account (silver coins) and paying his debts (public spending) in another unit of account, one which the King would not accept as tax revenue. The litigation had nothing to do with the intrinsic (use) value or material quality of the metals employed. Rather, it is as if the present Spanish government were to pay its private suppliers and civil servants with, for example, Argentine pesos – a currency without practical convertibility in Europe – but required them to pay taxes in dollars or euros.

It is well known that Marxist economic-theoretical ideas on money are quite complicated and sometimes apparently at odds. What seems to have been a philosophical obsession to proceed to a conceptual *Ableitung* of 'money-form' (*Geldform*) from 'commodity-form' (*Warenform*) brings Marx close to classical bourgeois political economy (particularly Smith, and more especially Ricardo, for whom money was politically neutral *à la* Locke, a veil over 'real' exchange relationships). However, Marx's vast knowledge and scholarship as an empirical researcher in economics, as an institutional historian and, last but not least, as a Romanist (he had been a student of Savigny!) also lead him towards the contemporary *Chartalist* understanding of money-in-general as a liability (an institution springing from debt-based social and political relationships), and of official money – publicly backed IOUs – as a political creature of sovereign power.[20]

Marx sagely observed two things. First, that the Catholic world (Spain), with its sense of hierarchy, was better placed to understand the nature of money as a thoroughly social and political institution, as well as – far from being a mere 'veil' – the outstanding economic 'reality' of monetary and credit systems. His explanation is diverting:

> The Catholic fact that gold and silver are contrasted with other profane commodities like the direct embodiment of social labour, which is to say the expression of abstract wealth, naturally offends the Protestant *point d'honneur* of bourgeois economy and, for a long time, fearing the prejudices of the monetary system, it lost its grasp of the phenomenon of money circulation. (Marx, 1857: 134)[21]

Furthermore, as a political-economy theorist, Marx also stressed the role of modern Western European absolutist states in their use of money and public debt in order to promote – politically – the (national and international) dynamics of modern capitalist accumulation:

> The public debt becomes one of the most powerful levers of primitive accumulation. As with the stroke of an enchanter's wand, it endows barren money with the power of breeding and thus turns it into capital, without the necessity of its exposing itself to the troubles and risks inseparable from its employment in industry or even in usury. The state creditors actually give nothing away, for the sum lent is transformed into public bonds, easily negotiable, which go on functioning in their hands just as so much hard cash would. But further, apart from the class of lazy annuitants thus created, and from the improvised wealth of the financiers, middlemen between the government and the nation – as also apart from the tax-farmers, merchants, private manufacturers, to whom a good part of every national loan renders the service of a capital fallen from heaven – the national debt has given rise to joint-stock companies, to dealings in negotiable effects of all kinds, and to agiotage, in a word, to stock-exchange gambling and the modern bankocracy. (Marx, 1962b: 782–3)

The reader may draw his or her own conclusions from the fact that this text referring to early modern capitalism also seems to offer a surprisingly acute portrait of more than one essential feature of the late capitalism of our times.

As stated above, the first two world empires of modern times – Catholic Spain and Protestant England – used similar military means and also similar legal frameworks to expand, conquer and appropriate, although with very different colonial policies and results. The Spaniards might have had a better theoretical grasp of the thoroughly political nature of money and its role in 'capitalist' accumulation, but only the English developed paradigmatically 'capitalist' colonial policies (including money-power policies of debt bondage). But there are other interesting differences too.

In Spain, military conquest, indigenous subjugation and land expropriation prompted the notable *ius*-philosophical response by Francisco de Vitoria (in the 1520s) and, later, Bartolomé de Las Casas, culminating in the famous *Controversia de Valladolid* (starting in 1540). Among the issues disputed were whether the Indians were to be treated as barbarians (not *veri homines*) and their properties as properties of the enemy, in the Roman tradition of *ius gentium* or, in other words *res nullia*.

Las Casas famously argued against Sepúlveda that: (1) the Indians were *veri homines* (and hence were naturally free, with natural inalienable rights as individuals). Furthermore, (2) that they had 'true policy', meaning that they lived under political constitutions (and therefore also had natural inalienable collective rights as peoples). Points (1) and (2) taken together imply that Indians could not be treated as an enemy and their properties could not come under the *ius gentium* category of *res nullia*. Therefore, the war of conquest was ‘unjust’, ‘unrightfully led’, and the appropriation of Indian lands was also illegal. Far from being ‘civilized’, it was a ‘barbarian’ act. Indeed, the great Las Casas was the first European to denounce ‘European barbarism’. Finally, there is the Salamanca School’s remarkable, original contribution to contemporary Public International Law (a notion originally formulated by Vitoria): (3) Las Casas sustained that not only individuals and peoples had natural inalienable rights, but that Humanity, as such and as a whole, also had natural inalienable rights. This means that, in contrast with Roman doctrine, *ius gentium* also belongs to the normative realm of natural right. The influential Kantian idea of the ‘responsibility’ of every human individual towards all Mankind has its roots in Salamanca, as does the now-prevailing international doctrine (after 1948) of ‘imprescriptible crimes against Humanity’.

As is reasonably well known, after a fleeting victory in which Pope Paul III declared the Indians *veri homines* in 1537, and the Spanish Emperor Charles V promulgated in 1542 the *Nuevas Leyes de Yndias* declaring the Indians free subjects of the Crown, and therefore not to be reduced to slavery or serfdom, Sepúlveda and the *encomenderos* party won the battle. The final defeat of Las Casas and his anti-colonialist party led to the unfortunately justified *légende noire* of Spanish imperialism. Yet, subsequently, the Vitoria–Las Casas doctrine had an enormous influence on the anti-colonialism of republican European Enlightenment (from Montaigne to Diderot, Mably and the encyclopaedist Chevalier de Jaucourt: *périssent les colonies plutôt qu’un principe*!) and, thereafter, the radically anti-colonialist foreign policy of the revolutionary Montagne-party of Robespierre and Abbé Grégoire (the ‘new Las Casas’, as a terrified Girondine bourgeois gentleman with major economic interests in overseas slave-worked plantations mocked). The Thermidorian defeat of this party paved the way for further military and economic expansion of the British Empire and the definitive consolidation of the crucial dynamic forces known as ‘Modern Capitalism’ as a world-embracing political reality.

As Richard Gott (2011: 273–4) has recently put it in his superb historical study of the British Empire:

> In fighting against the country that had written the Declaration of the Rights of Man, the British began the construction of an empire that would keep those rights off the agenda. Conceived in a decade of revolution, this expanded British Empire was counter-revolutionary from the start. Anything that smacked of Jacobinism – the French creed of revolution – was rooted out. The democratic greeting of ‘citizen’, from the French citoyen, was often taken up in colonial territories and used as a defiant anti-imperial expression. Its public use in British possessions as far apart as Ireland, South Africa, the West Indies and India was seen as a challenge to British hegemony.

This is ‘Capitalism’, a cluster of (partially well-understood) dynamic forces (and counter-forces) that have aggressively evolved to forge a unique historical trajectory. As for intellectual ‘Modernity’, the ‘moderns’ were Las Casas but so too was his enemy Sepúlveda; and Locke and his antagonist Hobbes; Paine and his enemy Burke; Robespierre and his deadly foes, the slaver bourgeois plantation owners of la Gironde; the revolutionary Kant and his disciple-enemy Genz (author with Metternich of the Vienna

Treatise in 1815); Marx and his adversary Guizot (the liberal monarchist minister who expelled him from Paris and, oddly enough, an originator of the formulation 'class struggle'); the revolutionary peasant Zapata and the oligarchic tyrant Porfirio Díaz; Rosa Luxemburg and her killer Noske; the executed Bukharin and his executioner Stalin; Gramsci and his jailer Mussolini; the victim Vanzetti and his victimizer and class enemy Henry Ford III; Hans Kelsen and his implacable opponent, the *Kronjurist* of Nazism, Carl Schmitt; the deep radical economist Joan Robinson and her academic adversary, later Nobel Prize winner, Paul Samuelson; the sober combatant Luther King and the academic superstar Hannah Arendt, enemy of the Civil Rights movement; and Lumumba certainly, but also his cruel murderers of the intelligence services of colonialist Belgium and imperialist USA. They were all 'modern'. Perhaps what we now pompously call 'Modernity' (including grandiloquent 'post-modernity') is but the Grand Theatre where, in the last four or five centuries, those forces and counter-forces have been and still are playing as stock characters – Brighella and Pantalone, needless to say, but also Harlequin, the *capitano*, the *servus stultus*, the *dottore*, the courtesan, the whore, the cunning slave, and so on – of a tremendous *Comedia dell'Arte*.

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Notes

1. In the tradition of the great French historian Marc Bloch (1968), the classic modern source of this view is Rodney Hilton (2003). More recently, and in the tradition of Hilton, is the important study of Peter Linebaugh (2009) on the Magna Carta, its true origins and protean historical consequences. These social and political struggles had found an intellectual echo in the development of revolutionary Natural Rights doctrine in Western Europe since the twelfth century. See Brian Tierney (2001) for a very insightful study (including a rare fine understanding of the Salamanca School's crucial contributions).
2. As late as the end of the nineteenth century, Lord Acton (1907) was still writing, as if it were common knowledge, that 'the greater part of the political ideas of Milton, Locke and Rousseau, may be found in the ponderous Latin of the Jesuits who were subjects to the Spanish Crown, Lessius, Molina, Mariana and Suárez'.
3. For an 'anti-capitalist' interpretation of Locke's theory of property, see James Tully (1980). For a very different, 'capitalist', interpretation, see Meiksins and Wood (1997). As we shall see, both were right, in a sense. For the final defeat of the 'popular' party in eighteenth-century England, see Thompson (1991).
4. Kant was clearer and more precise than Locke, presumably because he had a deeper knowledge of Roman law (he had lectured on Roman Law at the University of Königsberg). It is obvious that this perspective informs the real legal framework of modern public law protecting a hard core of constitutive or non-instrumental rights with anti-alienation and anti-accumulation clauses (as in the right to citizenship or to suffrage, or in stipulating the illicit nature of 'voluntary contracts' for slavery or consented murder). It is hard to understand the

frivolity with which recent mainstream political philosophy has played with the chimerical idea of a (supposedly Lockean) right to 'self-ownership', most notoriously, the self-styled neo-libertarian, Robert Nozick (1974) and, in his wake, the self-styled neo-Marxist, Gerald A. Cohen (1995).

5. William Blackstone's view was seen in the nineteenth century as the canonical formulation of liberal private property.
6. On this isomorphic structure of public-law modern property and conceptions of political freedom, see Domènech (2004). Kant was also clearer and more precise than Locke in this respect. On Kant, natural law and property, see Bertomeu (2010). On Kant and property in general, see Friedrich (2004).
7. In *On Revolution*, Hannah Arendt presents an image of the French Revolution as being politically engaged in interventionist 'social' policies in contrast with a merely 'political' American Revolution which steered clear of any 'social' involvement (Arendt, 1965). In 1959, this standpoint led her to criticize the incipient Civil Rights Movement (and Federal Government political activism supporting it) in her 'Reflections on Little Rock' (Arendt, 1959). Moreover, it had previously been the basis of her critique of the 1948 Universal Declaration of Human Rights in her (explicitly Burkean) defence of the 'one true human right', namely 'to have rights' (Arendt, 1981).
8. Thirty years later, Thomas Jefferson wrote in an equally famous letter (August 13, 1813) to Isaac McPherson: 'no individual has, of natural right, a separate property in an acre of land ... By a universal law, indeed, whatever, whether fixed or movable, belongs to all men equally and in common ... Stable ownership is the gift of social law' (Lipscomb and Bergh, 1905, vol. 13: 335).
9. See, for example, the illuminating study by William H. Simon (1991) on the legal influence, in the institutional evolution of the American Republic, of what he calls the 'social-republican property' conception (and the resulting myriad laws and statutes with anti-accumulation and anti-alienation, 'anti-capitalist', clauses, particularly in real-state property).
10. See also Rose (1986).
11. As described by the 'legal socialists' of the Weimar Republic (Kirchheimer, 1972; Neumann, 1978).
12. Bentham (1931: 1, 7–9) develops the idea that the world is optimally managed from a utilitarian standpoint when strictly divided among private exclusive owners. Unsurprisingly, for him, rights were 'nonsense', and human rights, 'nonsense upon stilts', while the French Declaration was the epitome of revolutionary 'Terror'. See Gauthier (2014).
13. For example, the Ricardian *ius*-naturalist (and radical anti-utilitarian) Thomas Hodgskin (1832), an early influence on Karl Marx.
14. Robert W. Gordon finds that 'such a lush flowering of absolute dominion talk in theoretical and political discourse' is striking when 'English legal doctrines should contain so very few plausible instances of absolute dominion rights' (Gordon, 1995: 95–6). The American legal theorist Laura Underkufler-Freund (1996) has repeatedly insisted that the idea of property nowadays revolves around absolutist conceptions, while real institution of property in the real world still entails – as it has always done – substantial regulatory limitations on the rights of owners.
15. See the impressive recent book by the Harvard historian, Walter Jonson (2013) on the slavery-based foundations of modern American capitalism in the first half of the nineteenth century.

16. So this Invention of Money gave them the opportunity to continue and enlarge them, see Locke (1988).
17. For the emergence of Western European absolutist monarchies in a process of severing traditional fiduciary ties (*princeps legibus solutus*), see Pennington (1993).
18. Many writers on 'modernity' and 'capitalism', in their quest for defining criteria of 'capitalism', cling to the amorphous, a-historical and a-institutional formula of the 'separation of state and market activity' (the so-called 'formation of the two realms'). As the historian and anthropologist Jack Goody has aptly observed, from the Bronze Age on, 'mercantile exchange, and indeed a merchant estate, [were] a feature of many early societies' (Goody, 2004: 15). One sees that things are wrongly simplified and confused when institutional and historically accurate concepts are supplanted by such amorphous and illusory notions as 'states' or 'Markets', which are totally disconnected from real dynamic causal forces.
19. For a devastating critique of the economic nonsense, and even the erroneous mathematical foundations of general equilibrium neoclassical analysis, see Ackerman and Nadal (2004).
20. On Chartalism from the point of view of modern monetary theory, see Tcherneva (2007). For a modern 'Chartalist' discussion of Locke's notion of money, see Bell et al. (2004).
21. Here, Marx observes the ambiguities in Locke while playing ironically with his simultaneously 'accepting' and 'rejecting'.

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