

# COMMONWEALTH

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Michael Hardt

Antonio Negri

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PART 1

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REPUBLIC (AND THE MULTITUDE  
OF THE POOR)

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I'm tired of the sun staying up in the sky. I can't wait until the syntax  
of the world comes undone.

—Italo Calvino, *The Castle of Crossed Destinies*

## 1.1

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# REPUBLIC OF PROPERTY

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The two grand favourites of the subjects, liberty and property (for which most men pretend to strive), are as contrary as fire to water, and cannot stand together.

—Robert Filmer, "Observations upon Aristotle's Politiques"

Thus, at its highest point the political constitution is the constitution of private property.

—Karl Marx, *Critique of Hegel's Philosophy of Right*

### On an Apocalyptic Tone Recently Adopted in Politics

A kind of apocalypticism reigns among the contemporary conceptions of power, with warnings of new imperialisms and new fascisms. Everything is explained by sovereign power and the state of exception, that is, the general suspension of rights and the emergence of a power that stands above the law. Indeed evidence of such a state of exception is easy to come by: the predominance of violence to resolve national and international conflicts not merely as last but as first resort; the widespread use of torture and even its legitimation; the indiscriminate killing of civilians in combat; the elision of international law; the suspension of domestic rights and protections; and the list goes on and on. This vision of the world resembles those medieval European renditions of hell: people burning in a river of fire, others being torn limb from limb, and in the center a great devil engorging their bodies whole. The problem with this picture is that its focus on transcendent authority and violence

eclipses and mystifies the really dominant forms of power that continue to rule over us today—power embodied in property and capital, power embedded in and fully supported by the law.

In popular discourse the apocalyptic vision sees everywhere the rise of new fascisms. Many refer to the U.S. government as fascist, most often citing Abu Ghraib, Guantanamo, Faluja, and the Patriot Act. Others call the Israeli government fascist by referring to the continuing occupations of Gaza and the West Bank, the use of assassinations and bulldozers as diplomacy, and the bombing of Lebanon. Still others use “islamofascism” to designate the theocratic governments and movements of the Muslim world. It is true, of course, that many simply use the term “fascism” in a general way to designate a political regime or movement they deplore such that it comes to mean simply “very bad.” But in all these cases when the term “fascist” is employed, the element it highlights is the authoritarian face of power, its rule by force; and what is eclipsed or mystified, instead, is the daily functioning of constitutional, legal processes and the constant pressure of profit and property. In effect, the bright flashes of a series of extreme events and cases blind many to the quotidian and enduring structures of power.<sup>1</sup>

The scholarly version of this apocalyptic discourse is characterized by an excessive focus on the concept of sovereignty. The sovereign is the one who rules over the exception, such authors affirm, and thus the sovereign stands both inside and outside the law. Modern power remains fundamentally theological, according to this view, not so much in the sense that divine notions of authority have been secularized, but rather in that sovereign power occupies a transcendent position, above society and outside its structures. In certain respects this intellectual trend represents a return to Thomas Hobbes and his great Leviathan that looms over the social terrain, but more fundamentally it replays the European debates of the 1930s, especially in Germany, with Carl Schmitt standing at its center. Just as in the popular discourses, here too economic and legal structures of power tend to be pushed back into the shadows, considered only secondary or, at most, instruments at the disposal of the sovereign power. Every modern form of power thus tends to be collapsed into

sovereignty or fascism, while the camp, the ultimate site of control both inside and outside the social order, becomes the paradigmatic topos of modern society.<sup>2</sup>

These apocalyptic visions—both the scholarly analyses of sovereign power and the popular accusations of fascism—close down political engagement with power. There are no forces of liberation inherent in such a power that, though now frustrated and blocked, could be set free. There is no hope of transforming such a power along a democratic course. It needs to be opposed, destroyed, and that is all. Indeed one theological aspect implicit in this conception of sovereignty is its Manichean division between extreme options: either we submit to this transcendent sovereignty or we oppose it in its entirety. It is worth remembering that when Left terrorist groups in the 1970s claimed that the state was fascist, this implied for them that armed struggle was the only political avenue available. Leftists today who talk of a new fascism generally follow the claim with moral outrage and resignation rather than calls for armed struggle, but the core logic is the same: there can be no political engagement with a sovereign fascist power; all it knows is violence.

The primary form of power that really confronts us today, however, is not so dramatic or demonic but rather earthly and mundane. We need to stop confusing politics with theology. The predominant contemporary form of sovereignty—if we still want to call it that—is completely embedded within and supported by legal systems and institutions of governance, a republican form characterized not only by the rule of law but also equally by the rule of property. Said differently, the political is not an autonomous domain but one completely immersed in economic and legal structures. There is nothing extraordinary or exceptional about this form of power. Its claim to naturalness, in fact its silent and invisible daily functioning, makes it extremely difficult to recognize, analyze, and challenge. Our first task, then, will be to bring to light the intimate relations between sovereignty, law, and capital.

We need for contemporary political thought an operation something like the one Euhemerus conducted for ancient Greek mythology in the fourth century BC. Euhemerus explained that all

of the myths of gods are really just stories of historical human actions that through retelling have been expanded, embellished, and cast up to the heavens. Similarly today the believers imagine a sovereign power that stands above us on the mountaintops, when in fact the dominant forms of power are entirely this-worldly. A new political Euhemerism might help people stop looking for sovereignty in the heavens and recognize the structures of power on earth.<sup>3</sup>

Once we strip away the theological pretenses and apocalyptic visions of contemporary theories of sovereignty, once we bring them down to the social terrain, we need to look more closely at how power functions in society today. In philosophical terms we can think of this shift in perspective as a move from *transcendent* analysis to *transcendental* critique. Immanuel Kant's "Copernican revolution" in philosophy puts an end to all the medieval attempts to anchor reason and understanding in transcendent essences and things in themselves. Philosophy must strive instead to reveal the transcendental structures immanent to thought and experience. "I call all cognition transcendental that is occupied not so much with objects but rather with our mode of cognition of objects insofar as this is to be possible *a priori*."<sup>4</sup> Kant's transcendental plane thus occupies a position not wholly in the immediate, immanent facts of experience but not wholly outside them either. This transcendental realm, he explains, is where the conditions of possibility of knowledge and experience reside.

Whereas Kant's transcendental critique is focused primarily on reason and knowledge, ours is aimed at power. Just as Kant sweeps away the preoccupations of medieval philosophy with transcendent essences and divine causes, so too must we get beyond theories of sovereignty based on rule over the exception, which is really a hold-over from old notions of the royal prerogatives of the monarch. We must focus instead on the transcendental plane of power, where law and capital are the primary forces. Such transcendental powers compel obedience not through the commandment of a sovereign or even primarily through force but rather by structuring the conditions of possibility of social life.

The intuition that law functions as a transcendental structure

led entire schools of juridical and constitutional thought, from Hans Kelsen to John Rawls, to develop Kantian formalism in legal theory.<sup>5</sup> Property, which is taken to be intrinsic to human thought and action, serves as the regulative idea of the constitutional state and the rule of law. This is not really a historical foundation but rather an ethical obligation, a constitutive form of the moral order. The concept of the individual is defined by not *being* but *having*; rather than to a “deep” metaphysical and transcendental unity, in other words, it refers to a “superficial” entity endowed with property or possessions, defined increasingly today in “patrimonial” terms as shareholder. In effect, through the concept of the individual, the transcendent figure of the legitimation of property is integrated into the transcendental formalism of legality. The exception, we might say, is included within the constitution.

Capital too functions as an impersonal form of domination that imposes laws of its own, economic laws that structure social life and make hierarchies and subordinations seem natural and necessary. The basic elements of capitalist society—the power of property concentrated in the hands of the few, the need for the majority to sell their labor-power to maintain themselves, the exclusion of large portions of the global population even from these circuits of exploitation, and so forth—all function as an a priori. It is even difficult to recognize this as violence because it is so normalized and its force is applied so impersonally. Capitalist control and exploitation rely primarily not on an external sovereign power but on invisible, internalized laws. And as financial mechanisms become ever more fully developed, capital’s determination of the conditions of possibility of social life become ever more extensive and complete. It is true, of course, that finance capital, since it is so abstract, seems distant from the lives of most people; but that very abstraction is what gives it the general power of an a priori, with increasingly universal reach, even when people do not recognize their involvement in finance markets—through personal and national debt, through financial instruments that operate on all kinds of production from soybeans to computers and through the manipulation of currency and interest rates.

Following the form of Kant's argument, then, our transcendental critique must show how capital and law intertwined together—what we call the republic of property—determine and dictate the conditions of possibility of social life in all its facets and phases. But ours is obviously an unfaithful, tendentious appropriation of Kant, which cuts diagonally across his work. We appropriate his critical perspective by recognizing that the formal structure of his epistemological schema corresponds to that of the power of property and law, but then, rather than affirming the transcendental realm, we seek to challenge it. Kant has no interest in overthrowing the rule of capital or its constitutional state. In fact Alfred Sohn-Rethel goes so far as to claim that Kant, particularly in the *Critique of Pure Reason*, strives “to prove the perfect normalcy of bourgeois society,” making its structures of power and property appear natural and necessary.<sup>6</sup>

But our quarrel here is not really with Kant. We merely want to use the tools he provides us to confront today's dominant powers. And we should highlight, finally, how the practical consequences of this transcendental critique of the republic of property overcome the powerlessness and bitter resignation that characterize the “transcendent” analyses of sovereignty and fascism. Our critique of capital, the republican constitution, and their intersection as transcendental forms of power does not imply either absolute rejection or, of course, acceptance and acquiescence. Instead our critique is an active process of resistance and transformation, setting free on a new footing the elements that point toward a democratic future, releasing, most significantly, the living labor that is closed within capital and the multitude that is corralled within its republic. Such a critique thus aims at not a return to the past or creation of a future ex nihilo but rather a process of metamorphosis, creating a new society within the shell of the old.

### Republican Rights of Property

The term “republicanism” has been used in the history of modern political thought to name a variety of different, competing, often

conflicting political tendencies. Thomas Jefferson, late in his life, reflecting on the early years of the American Revolution, remarks, “We imagined everything republican which was not monarchy.”<sup>7</sup> There was certainly an equal if not greater range of political positions designated by the term in the English and French revolutionary periods. But one specific definition of modern republicanism eventually won out over the others: a republicanism based on the rule of property and the inviolability of the rights of private property, which excludes or subordinates those without property. The propertyless are merely, according to Abbé Sieyès, “an immense crowd of *bi-ped instruments*, possessing only their miserably paid hands and an absorbed soul.”<sup>8</sup> There is no necessary or intrinsic link between the concept of republic and the rule of property, and indeed one could try to restore alternative or create new notions of republic that are not based on property. Our point is simply that the republic of property emerged historically as the dominant concept.<sup>9</sup>

The course of the three great bourgeois revolutions—the English, the American, and the French—demonstrates the emergence and consolidation of the republic of property. In each case the establishment of the constitutional order and the rule of law served to defend and legitimate private property. Later in this chapter we explore how the radically democratic processes of the English Revolution were blocked by the question of property: a “people of property” faced off against “a multitude of the poor.” Here, instead, we focus briefly on the role of property in the U.S. and French revolutions.

Just a decade after the Declaration of Independence affirms the constituent power of the American Revolution and projects a mechanism of self-government expressed through new, dynamic, and open political forms, the *Federalist* and the debates surrounding the drafting of the Constitution limit and contradict many of these original elements. The dominant lines in the constitutional debates aim to reintroduce and consolidate the sovereign structure of the state and absorb the constituent drive of the republic within the dynamic among constitutional powers. Whereas in the Declaration

constituent power is defined as fundamental, in the Constitution it is understood as something like a national patrimony that is the property and responsibility of the government, an element of constitutional sovereignty.

Constituent power is not stripped from constituted public law but, rather, blocked (and expelled from the practices of citizenship) by the relations of force that the Constitution is built on, most important the right to property. Behind every formal constitution, legal theorists explain, lies a “material” one, where by material constitution is understood the relations of force that ground, within a particular framework, the written constitution and define the orientations and limits that legislation, legal interpretation, and executive decision must respect.<sup>10</sup> The right to property, including originally the rights of slaveholders, is the essential index of this material constitution, which bathes in its light all other constitutional rights and liberties of U.S. citizens. “The Constitution,” writes Charles Beard in his classic analysis, “was essentially an economic document based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular majorities.”<sup>11</sup> Many scholars have contested Beard’s claim that the founders in drafting the Constitution were protecting their own individual economic interests and wealth, but what remains unchallenged and entirely convincing in his analysis is that the participants in the debate saw the Constitution as founded on economic interests and the rights of property. “The moment the idea is admitted into society that property is not as sacred as the laws of God,” writes John Adams, for example, “and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”<sup>12</sup> The sacred position of property in the Constitution is a central obstacle to the practice and development of constituent power.

One extreme but significant example of the effect of the right of property on the Constitution is the way it transforms the meaning of the right to bear arms. This right is affirmed in the seventeenth- and eighteenth-century Anglo-American tradition as the collective right to achieve and defend freedom, and it calls for the

constitution of popular armies or militias rather than standing armies, which are understood to be necessarily tyrannical.<sup>13</sup> In the United States this tradition has been almost entirely obliterated, and the Second Amendment has been given the opposite meaning: that each is the enemy of all; that each must be wary of those who want to steal her or his property. From the transformation of the right to bear arms in the defense of private property follows a general reversal of all the central constitutional concepts. Freedom itself, which many cast as characteristic of U.S. political thought, in contrast to the principles of justice, equality, and solidarity of the revolutionary French experience, is reduced to an apology for capitalist civilization. The centrality of the defense of property also accounts for the pessimistic conception of human nature, which is present but secondary in the revolutionary period and comes to the fore in the constitutional debates. "But what is government itself," James Madison writes, for example, "but the greatest of all reflections on human nature? If men were angels, no government would be necessary."<sup>14</sup> Freedom becomes the negative power of human existence, which serves as a bulwark against the descent of the innate conflicts of human nature into civil war. But at the bottom of this notion of natural conflict is the struggle over property. The armed individual is the only guarantor of that freedom. *Homo politicus* becomes nothing other than *Homo proprietarius*.

In the case of the French Revolution, the centrality of property rights develops in an extraordinarily dynamic and at times violent way. A simple look at the successive revolutionary French Constitutions (and, specifically, the Declarations of the Rights of Man and Citizen that serve as their prologues) from 1789 to 1793 and 1795 gives a first indication of how the development of constitutional thought is constantly governed by the demands of property. For example, the right to property is affirmed in almost identical terms in all three versions (in Article 2 of the 1789 and Article 1 of the 1793 and 1795 Constitutions), but whereas in 1789 and 1793 the right to property is linked with the right of "resistance to oppression," in 1795 it is related only to "security." As far as equality is

concerned, whereas in Article 6 of 1789 and Article 4 of 1793 it is defined as a basic right of each subject (and thus also applies to property), in Article 6 of 1795 the mandate of equality is subordinated to the rule of the majority of citizens or their representatives. Equality becomes increasingly formal, increasingly defined as a legal structure that protects wealth and strengthens the appropriative, possessive power of the individual (understood as property owner).

A more substantial and complex view of the centrality of property in the republic emerges when we focus on how the traditional conception of “real rights”—*jus reale*, the right over things—is rediscovered in the course of the French Revolution. These “real rights,” property rights in particular, are clearly no longer those of the ancien régime insofar as they no longer establish a static table of values and set of institutions that determine privilege and exclusion. In the French Revolution “real rights” emerge from a new ontological horizon that is defined by the productivity of labor. In France, however, as in all the bourgeois revolutions, these real rights have a paradoxical relation to emerging capitalist ideology. On the one hand, real rights are gradually given greater importance over the universal, abstract rights that seemed to have prominence in the heroic Jacobin phase. Private property at least points toward the human capacity to transform and appropriate nature. Article 5 of the 1795 Constitution, for example, reads, “Property is the right to enjoy and use one’s own goods, incomes, the fruit of one’s labor and industry.” As the revolution proceeds, however, there is a shift in the point of reference from the abstract terrain of the general will to the concrete one of the right and order of property.<sup>15</sup> On the other hand, real rights, which constitute the foundation of rents and incomes, are opposed to “dynamic rights,” which stem directly from labor, and although dynamic rights appear to predominate over real rights in the early revolutionary period, gradually real rights become hegemonic over the dynamic ones and end up being central. Landed property and slave property, in other words, which appear initially to have been subordinated as archaic conditions of production, cast aside in favor of the dynamic rights associated with capitalist ideol-

ogy, come back into play. Moreover, when the right to property becomes once again central within the constellation of new rights affirmed by the bourgeois revolutions, it no longer stands simply as a real right but becomes the paradigm for all the fundamental rights. Article 544 of the 1804 Code Civil, for example, gives a definition of property that characterizes notions still common today: "Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way contrary to law or regulations."<sup>16</sup> In the dominant line of European political thought from Locke to Hegel, the absolute rights of people to appropriate things becomes the basis and substantive end of the legally defined free individual.

The centrality of property in the republican constitution can be substantiated from a negative standpoint by looking at the Haitian Revolution and the extraordinary hostility to it. By liberating the slaves, of course, Haitian revolutionaries should be considered from the perspective of freedom more advanced than any of their counterparts in Europe or North America; but the vast majority of eighteenth- and nineteenth-century republicans not only did not embrace the Haitian Revolution but struggled as well to suppress it and contain its effects. For the subsequent two centuries in fact, historians have excluded Haiti from the great pantheon of modern republican revolutions to such an extent that even the memory of the revolutionary event has been silenced. The Haitian Revolution was an unthinkable event from the perspective of contemporary Europe and the United States, centrally, no doubt, because of deeply embedded ideologies and institutions of racial superiority, but we should also recognize that the Haitian Revolution was unthinkable because it violated the rule of property. A simple syllogism is at work here: the republic must protect private property; slaves are private property; therefore republicanism must oppose the freeing of the slaves. With the example of Haiti, in effect, the republican pretense to value freedom and equality directly conflicts with the rule of property—and property wins out. In this sense the exclusion of the Haitian Revolution from the canon of republicanism is powerful evidence

of the sacred status of property to the republic. It may be appropriate, in fact, that Haiti be excluded from the list of republican revolutions, not because the Haitian Revolution is somehow unworthy of the republican spirit but, on the contrary, because republicanism does not live up to the spirit of freedom and equality contained in the Haitian rebellion against slavery!<sup>17</sup>

The primacy of property is revealed in all modern colonial histories. Each time a European power brings new practices of government to its colonies in the name of reason, efficiency, and the rule of law, the primary “republican virtue” they establish is the rule of property. This is evident, for example, in the “Permanent Settlement” established in Bengal by British colonial authorities and administrators of the East India Company in the late eighteenth century to guarantee the security of property, especially landed property, and bolster the position of the Zamindar, the existing Bengali propertied class, thereby solidifying taxation and revenue. Ranajit Guha, in his analysis of the debates leading to the settlement, puzzles over the fact that such a quasi-feudal land settlement could have been authored by bourgeois Englishmen, some of whom were great admirers of the French Revolution. Guha assumes that European bourgeoisies compromise their republican ideals when ruling over conquered lands in order to find a social base for their powers, but in fact they are just establishing there the core principle of the bourgeois republics: the rule of property. The security and inviolability of property is so firmly fixed in the republican mentality that colonial authorities do not question the good of its dissemination.<sup>18</sup>

Finally, with the construction of the welfare state in the first half of the twentieth century, public property gains a more important role in the republican constitution. This transformation of the right to property, however, follows the capitalist transformation of the organization of labor, reflecting the increasing importance that public conditions begin to exert over the relations of production. Despite all the changes, the old dictum remains valid: *l'esprit des lois, c'est la propriété*. Evgeny Pashukanis, writing in the 1920s, anticipates

this development with extraordinary clarity. “It is most obvious,” Pashukanis claims,

that the logic of juridical concepts corresponds with the logic of the social relationship of commodity production, and that the history of the system of private law should be sought in these relationships and not in the dispensation of the authorities. On the contrary, the logical relationships of domination and subordination are only partially included in the system of juridical concepts. Therefore, the juridical concept of the state may never become a theory but will always appear as an ideological distortion of the facts.<sup>19</sup>

For Pashukanis, in effect, all law is private law, and public law is merely an ideological figure imagined by bourgeois legal theorists. What is central for our purposes here is that the concept of property and the defense of property remain the foundation of every modern political constitution. This is the sense in which the republic, from the great bourgeois revolutions to today, is a republic of property.

### *Sapere Aude!*

Kant is a prophet of the republic of property not so much directly in his political or economic views but indirectly in the form of power he discovers through his epistemological and philosophical inquiries. We propose to follow Kant’s method of transcendental critique, but in doing so we are decidedly deviant, unfaithful followers, reading his work against the grain. The political project we propose is not only (with Kant) an attack on transcendent sovereignty and (against Kant) a critique aimed to destabilize the transcendental power of the republic of property, but also and ultimately (beyond Kant) an affirmation of the immanent powers of social life, because this immanent scene is the terrain—the only possible terrain—on which democracy can be constructed.

Our affirmation of immanence is not based on any faith in the immediate or spontaneous capacities of society. The social plane of

immanence has to be organized politically. Our critical project is thus not simply a matter of refusing the mechanisms of power and wielding violence against them. Refusal, of course, is an important and powerful reaction to the imposition of domination, but it alone does not extend beyond the negative gesture. Violence can also be a crucial, necessary response, often as a kind of boomerang effect, redirecting the violence of domination that has been deposited in our bones to strike back at the power that originated it. But such violence too is merely reactive and creates nothing. We need to educate these spontaneous reactions, transforming refusal into resistance and violence into the use of force. The former in each case is an immediate response, whereas the latter results from a confrontation with reality and training of our political instincts and habits, our imaginations and desires. More important, too, resistance and the coordinated use of force extend beyond the negative reaction to power toward an organizational project to construct an alternative on the immanent plane of social life.

The need for invention and organization paradoxically brings us back to Kant, or, really, to a minor voice that runs throughout Kant's writings and presents an alternative to the command and authority of modern power. This alternative comes to the surface clearly, for example, in his brief and well-known text "An Answer to the Question: 'What is Enlightenment?'"<sup>20</sup> The key to emerging from the state of immaturity, the self-sustained state of dependency in which we rely on those in authority to speak and think for us, and establishing our ability and will to speak and think for ourselves, Kant begins, recalling Horace's injunction, is *sapere aude*, "dare to know." This notion of Enlightenment and its defining injunction, however, become terribly ambiguous in the course of Kant's essay. On the one hand, as he explains the kind of reasoning we should adopt, it becomes clear that it is not very daring at all: it compels us dutifully to fulfill our designated roles in society, to pay taxes, to be a soldier, a civil servant, and ultimately to obey the authority of the sovereign, Frederick II. This is the Kant whose life is so regularly ordered, they say, that you can set your watch by the time of his