

“PROPERTY IS (STILL) THEFT!”
FROM THE MARX-PROUDHON DEBATE
TO THE GLOBAL PLUNDER OF THE COMMONS

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*Let him that stole steal no more
(Ephesians 4:28)*

Abstract: Generally speaking, in our philosophical tradition it is usual to conceive the issue of property and theft in terms of a rigid opposition. Whether a right of nature (Locke) or an institution established by the Sovereign's sword (Hobbes), private property constitutes the safest defence against thieves, robbers and outlaws. The owner, legitimately guaranteed in the enjoyment of his properties, has to be protected (or, if necessary, to protect himself) from the extra-legal violence of theft. Nevertheless, there is at least another story to be told, another trace (if not actually a tradition) to be reconstructed, rescued from the oblivion in which our mainstream history of philosophy seems to have banished it: that is, the idea that property and theft, far from being polar opposites, are on the contrary two faces of a same coin.

In the following, we'll try to focus our attention on a single episode of this alternative line of thought, in order to clarify its present implications and its possible political relevance in the terms of an opposition against global capital's new dynamics. We are referring to the controversy that, in a certain sense, sanctioned the passage from the “utopian” to the “scientific” form of socialism: the Proudhon-Marx debate on property and theft.

I. PROUDHON: PROPERTY IS THEFT

«M. Proudhon has the misfortune of being singularly misunderstood in Europe. In France he has the right to be a bad economist, because he passes for a good German philosopher. In Germany he has the right to be a bad philosopher, because he passes for one of the greatest of the French economists. We, as both German and economist at the same time, wish to protest against this double error»¹. Neither an economist nor a philosopher, Marx defines Proudhon in the Preface to his *Poverty of Philosophy*, the work that decided the break with the French utopist. Nevertheless, the figure of Pierre-Joseph Proudhon exerted a remarkable influence over the radical thinking of the first half of his century, giving birth to that libertarian tradition which will contend with Marxism for the leading role within the Labour Movement. In *The Holy Family*, Marx himself

¹ Marx, K. *The Poverty of Philosophy*, New York: Cosimo. 2008: 29.

(together with Engels) praised Proudhon's work on property as the "scientific manifesto" of the French proletariat. Even in his letter to Schweitzer (written in 1865 on the occasion of Proudhon's death), Marx exalted «the provocative defiance...the withering criticism, the bitter irony»² which in his opinion characterize Proudhon's first book, *Qu'est-ce que la propriété?* However, the same can't be said about his later works, whose style is affected by «the clumsy repugnant show of erudition of the self-taught, whose natural pride in his original reasoning has already been broken and who now, as a *parvenu* of science, feels it necessary to give himself airs with what he neither is nor has». Inasmuch as «in a strictly scientific history of political economy the book would hardly be worth mentioning»³. Actually, if we read Proudhon's pages we can't avoid to share Marx's pitiless assessment: in his writings a naïve faith in science and progress interweaves with an inclination to mysticism and appeals to Providence, sometimes his argument proceeds sustained only by a rough dialectic, and often he resorts to unconvincing mathematical and "metaphysical" demonstrations. This being said, we have to recognize a certain difference of worth: so, if it is true that the late *Philosophie de la misère* is pompous and badly structured, it is also true that his most renowned work – *Qu'est-ce que la propriété?*, first published in 1840 – offers some interesting cues, which we will try briefly to underline.

It is well known the way in which Proudhon answers the question that gives the title to the book: property is theft. It is not our purpose to follow the author in all his demonstrations. But it is noteworthy how he adds to these arguments the idea of an universal right to subsistence, from which he infers that some goods, essential to human life, can't be appropriated in private hands; indeed, they have to remain the common property of all humanity:

A man forbidden to travel the highways, from resting in the fields, from taking shelter in caves, from lighting a fire, from picking wild berries, from

² Marx, K. (1942) *Letter to Schweitzer (January 24, 1865)*. *Selected Correspondence 1846-1895*, Marx K. and Engels F. New York: International Publishers. 1942: 170.

³ *Ibid*, 170.

gathering herbs and boiling them in a bit of baked clay – such a man would not be able to live. Thus the earth, like water, air, and light, is an object of prime necessity which each may use freely, as long as the rights of others are not infringed⁴.

The idea of a sort of “right to life” seems here to arise, becoming again a key point in the claim to the commons. Now, the idea of an imprescriptible right in the fruits of collective labour underlies also the Proudhonian theory of wage (highly contested by Marx). The identification of property with theft is based on this assumption: «Here is my proposition: *The labourer retains, even after receiving his wages, a natural right of property in the thing which he has produced*»⁵. It’s true: the employer pays each labourer his wage, that is «the cost required to maintain and to recompense the labourer». He owns the means of production that the proletariat lacks, being hence able to force him to turn to the owner in the hope of a job offer. However, the owner only pays with his money the labour of each *single* labourer: the surplus, the excess of value coming from collective labour (which is quantitatively as well as qualitatively different from the simple sum of the individual efforts of each labourer). This is what the owner appropriates for nothing. It is over this surplus value that, as a result of their common efforts, the labourers (although together, not individually) can legitimately claim a “natural property right”, given that no single payment could make equitable any exchange of labour for wage – unless it is not a complete distribution of the product between all the producers: «for when you have paid all the individual forces, you have still not paid the collective force. Consequently, there always remains a right of collective property which you have not acquired and which you enjoy unjustly»⁶. The owner – both the owner of the means of production and the owner of land: Proudhon makes no distinction between the capitalist and the rentier – unlawfully misappropriates the fruits of labourers’

⁴ Proudhon, P.-J. *What is Property?*, Cambridge: Cambridge University Press. 1994. 72.

⁵ *Ibid*, 88.

⁶ *Ibid*, 93.

social cooperation: upon this robbery (although legalized by civil law) he builds his fortune and accumulates his capital. In conclusion: «all capital, whether material or mental, is the result of collective labour and so is collective property»⁷. That is why the exclusive appropriation of what should be in common is an unlawful act and a robbery.

The owner does nothing but provide the land or the means of production that he owns – or, better, which he has misappropriated – and that the not-owners lack; apart from that, he remains outside of the production cycle, without bringing any active contribution, and nevertheless he demands to get possession of the results of collective labour: «The proprietor, producing neither by himself nor by his instrument and receiving products in return for nothing, is either a parasite or a thief» (Proudhon, 1994: 128). Once again, profit and rent are assimilated: «Increase receives different names according to the things which produce it: farm-rent for lands, house-rent for houses and furniture, rent for life-investments, interest for money, benefice, gain, profit [...] for exchanges»⁸. Rent and profit are used as synonyms in the course of the exposition, and the owner – insofar he remains in a position that is external to production – is opposed indifferently to the industrial worker as well as to the agricultural farmer. He remains «foreigner to society, but like the vulture watching his prey, he keeps ready to pounce on and devour it»⁹.

That is, briefly, how Proudhon answers the question *What is property?* Before proceeding, we will now take into account Marx's criticisms of these thesis, focusing in particular on two of the many points which he confronts (especially in his *Poverty of Philosophy*). In the remaining of this paragraph, we will immediately come to the first objection (formulated in economic terms), while we will see the second one (which is a logic one) only at the end of the next paragraph.

⁷ *Ibid*, 114.

⁸ *Ibid*, 119.

⁹ *Ibid*, 140.

Among other errors committed by Proudhon, in Marx’s view one of the most serious is his confusion between capitalists and rentiers, profit and rent, which is due above all to his tendency to hypostatize the categories of political economy in timeless abstractions: «To pretend to give a definition of property as of an independent relation, a separate category, an abstract and eternal idea, can only be an illusion of metaphysics or of jurisprudence. M. Proudhon, while professing to speak of property in general, deals only with property in land, the rent of land»¹⁰.

*As a matter of fact, the role of the industrial capitalist is almost diametrically opposed to that of the rentier: while the former is directly involved in the relation of production (in which he constantly reinvests his profits in order to develop productive forces), the latter stands outside that relation and limits himself to appropriate part of the surplus produced by social labour at large. Proudhon is wrong in imagining that production takes place between only two groups of actors, that is owners on one side and labourers on the other: «But, far from making of the exploiter of the soil, of the farmer, a simple labourer, and “dragging from the peasant the excess of the product which he cannot be prevented from regarding as his own,” rent sets before the landed proprietor, the industrial capitalist, instead of the slave, the serf, the tributary, the wage-worker»¹¹. Wage, rent and profit: these are in Marx’s opinion the three modern means of income distribution. The same excess of value, coming from social cooperation, can be produced only *within* capitalist relations, since the industrial capital constitutes its very condition of possibility (and not merely its “parasite”). Proudhon’s mistake is to hold that this surplus of wealth could be realized without having existed its necessary historical requirements.*

If we ignore the reality of historical development of the means of production, we fall into Proudhon’s mistake of thinking that surplus production is an universal necessity of all human societies, while it actually requires conditions

¹⁰ Marx, *supra*, note 1, 168.

¹¹ *Ibid*, 173.

which are different from time to time: «In the midst of our Western European society, where the worker can only purchase the right to work for his own existence by performing surplus labour for others, it is very easy to imagine that it is an inherent quality of human labour to furnish a surplus product»¹² (Marx, 1982: 650), while actually «both the historically developed productive forces of labour in society, and its naturally conditioned productive forces, appear as productive forces of the capital into which that labour is incorporated»¹³ . Furthermore, even once this surplus has been achieved, labourers can't claim any common right to it. Proudhon, who makes no distinction between "labour" and "labour-power", comes to be naïve in confounding labour-value (that is, the value of commodities measured by the quantity of labour embodied in them) with the value *of* labour (or, better, the value of labour-power, that is the wage paid to the labourer): «Thus, according to him, a certain quantity of labour embodied in a product equals in value the remuneration of the worker, that is to say, the value of labour»¹⁴. If instead we differentiate these two separate aspects, we will realize that the capitalist, once he have paid the value of the particular commodity sold by the labourer (his labour-power), has no more duties to fulfill towards him – and, in the same way, the labourer doesn't have any right on the surplus product that he will create while working for the capitalist: «It is not labour which directly confronts the possessor of money on the commodity-market, but rather the worker. What the worker is selling is his labour-power. As soon as his labour actually begins, it has already ceased to belong to him; it can therefore no longer be sold by him. Labour is the substance, and the immanent measure of value, but it has no value itself»¹⁵. The point is that the modern sphere of exchange (which is also the sphere of the bourgeois right), where the stipulation of the contract between capitalist and worker takes place, is regulated by the rule of equivalent

¹² Marx, K. *Capital: A critique of Political Economy*. Volume One, London: Penguin. 1982. 650.

¹³ *Ibid*, 651.

¹⁴ Marx, *supra*, note 1, 59.

¹⁵ Marx, *supra*, note 12, 677.

exchange, and this rule is substantially fulfilled also by the exchange of labour-power for wage. In order to reveal the mystery of surplus-value creation, we need to leave the sphere of circulation and enter that of production: it is here, in the «secret laboratory of production», that the capitalist’s exploitation of the worker occurs. The capitalist doesn’t realize his profit in the moment of the sale, cheating the labourer out of his just pay. The “mercantilist” stage of *profit upon alienation* is overcome by the capitalist mode of production, where the “equitable” criterion of equivalent exchange is met. It is no more a matter of theft, but one of exploitation¹⁶.

II. MARX, THEFT AND THE COMMONS

Nevertheless, Marx himself dealt with the issue of theft at least in two different circumstances, that are respectively situated at the beginning and at the end of his theoretical production: the articles on wood theft published in the “*Rheinische Zeitung*” in 1842 (which however we won’t take into account here), and, in quite a different sense, Part VIII of *Capital* Volume I, devoted to “the so-called primitive accumulation”.

In the latter, Marx analyzes those *enclosures* phenomena which were so relevant in the transition to Modernity. While confronting himself with “primitive accumulation” (a term he ironically borrowed from the language of political economists), he actually meant to demonstrate the historical conditions of the rise of the capitalist mode of production. Part VIII, meaningfully placed at the end of the first book (after Marx has already exposed the main “real abstractions” that characterize the capital’s movement), has the task of breaking the “never-ending circle” against which the exposition seems to have run up. As a consequence, Marx decides to resort to *history*: in particular, the history of the enclosure movement.

¹⁶ Roncaglia, A. *The Wealth of Ideas: A History of Economic Thought*, Cambridge: Cambridge University Press. 2005. 251-256.

So, he goes on with comparing the so-called primitive accumulation to the original sin in theology: «The legend of theological original sin tells us certainly how man came to be condemned to eat his bread by the sweat of his brow; but the history of economic original sin reveals to us that there are people to whom this is by no means essential»¹⁷. Beyond sarcasm, Marx seems here to recognize the narrative core of the modern theories of property: they tell us the story of the industrious and clever man who has lawfully accumulated big wealth through hard and legitimate work, while the lazy and vicious one has wasted his substances to the point of reducing himself to that condition of poverty in which we find him still today. Marx's intent is precisely to provide an alternative narrative of the processes which led up to the formation of capitalist relations, challenging the childish and "idyllic" version told by bourgeois economists. In other words, he aims at highlighting «the whole series of thefts, outrages and popular misery that accompanied the forcible expropriation of the people, from the last third of the fifteenth to the end of the eighteenth century [...]»¹⁸. When we state that: «[...] capital is not a thing, but a social relation between persons which is mediated through things»¹⁹, any serious attempt to reconstruct the origins of capitalism will then entail to understand how the "*Charaktermasken*" which constitute the two sides of that relation have come to light. On the one hand, the owner of money and means of production, who wishes to buy other people's labour-power in order to increase the sum of values he possesses. On the other hand, the free labourer, the seller of his own labour-power – who is "free" in the double sense that he is not under any obligation to work (as it was the case of slaves and bondsmen in ancient or feudal societies) and he is free from (i.e., unencumbered by) any means of production and subsistence. The very meaning of the passage to Modernity seems to rest on this ambiguity:

¹⁷ Marx, *supra*, note 12, 873.

¹⁸ *Ibid*, 889.

¹⁹ *Ibid*, 932.

Hence the historical movement which changes the producers into wage-labourers appears, on the one hand, as their emancipation from serfdom and from the fetters of the guilds, and it is this aspect of the movement which alone exists for our bourgeois historians. But, on the other hand, these newly freed men became sellers of themselves only after they had been robbed of all their own means of production, and all the guarantees of existence afforded by the old feudal arrangements. And this history, the history of their expropriation, is written in the annals of mankind in letters of blood and fire²⁰.

What Marx calls here “the guarantees of existence” ensured by feudal social structures were, in effect, those provided by the communitarian fabric and the traditional rights to the commons, which gave the villagers something to live off. Then, in order to turn them into proletarians, free to sell their labour-power and at the same time forced to do so, it was necessary to remove this sort of “right to life”, granted by pre-modern and pre-capitalist forms of social organization. This was, in a wider sense, the role of enclosures: they replaced local communitarian bonds with formal equality among *individuals*, but in doing so they exposed the potential labour force to the blackmail of starvation. The economic structure of capitalism arises from the ruins of feudal society: primitive accumulation is therefore characterized by an ambivalent temporal statute, suspended between Modernity and pre-modernity, insomuch as it constitutes «the prehistoric stage of capital». The violence of the enclosures is hence the “lever” of this transition.

This violence achieves two results. First, the commons enter the capitalist market; or, better, the commons *constitutes* (once expropriated by force) the capitalist market. The common means of subsistence and production, which had remained for centuries freely available to villagers, have now become *commodities*. The same happens to the means of production, since they are converted into constant capital. Even the second result of the enclosures

²⁰ *Ibid*, 875.

movement consists in a commodification process; except that this time we are dealing with a very particular kind of commodity: labour²¹. The expropriation of the agricultural population from common lands created what Marx suggestively calls “a class of outlawed proletarians”. It is this mass of “outlaws” that comes to constitute the core of the forthcoming labour market (even though we don’t have to forget the huge role played by slavery in the colonies). Thousands of men and women, who have been dispossessed of what used to be the commons, now had to depend on commodities as a source of livelihood; and in order to get them, they had to sell the only thing they actually possessed – i.e., their labour-power.

In order to turn itself in a “labour army”, the heterogeneous and various mass of this “free proletariat” should be subjected to a rigorous process of discipline (the discipline of “abstract labour”). Hence, the bloody legislation carried out against vagrancy between the fifteenth and sixteenth century: «Thus were the agricultural folk first forcibly expropriated from the soil, driven from their homes, turned into vagabonds, and then whipped, branded and tortured by grotesquely terroristic laws into accepting the discipline necessary for the system of wage-labour»²². This use of an “extra-economic force” is a symptom of the prevailing of the *formal* mode of subsumption of labour to capital; in fact, once the capitalist relation has changed the previous conditions of production (instead of merely appropriating these conditions in the same form as it found them), once it has established its “natural and unquestionable laws”, once *real* subsumption has become the dominant mode of exploitation of labour-power, the capitalist no longer needs to use direct violence to subject labourers to his rules: indeed, the very existence of an overabundance of labour becomes functional to the system of production. But until then, he must find a way to bring the “banned” proletariat under his control: laws against vagrancy and the artificial reduction of wages are

²¹ In a similar way, Polanyi defined labour as “a fictitious commodity”. See Polanyi, K. *The Great Transformation: The Political and Economic Origins of Our Time*, Boston: Beacon Press. 2001.

²² Marx, *supra*, note 12, 899.

the first solutions of capitalism. Except that, in order to implement them, it must turn to State power once again. Here we can see even more clearly the connivance between State and market in this “prehistory” of capitalist modernity: “the concentrated violence” of public power takes the place of the widespread violence of the new private owners. Without the intervention of the State, the internal market of means of subsistence and of production (as well as the labour market) would hardly be constituted, at least at the same speed. But what is even more interesting for our topic, is that both the State and the Market were born together from the looting and destruction of the Common: indeed, the separation of communities from the commons forms their very condition of possibility.

But there is still a point worth considering. In describing the phenomenon of primitive accumulation of value, Marx does not resort to the category of *exploitation* (which would be instead the “normal” mode of extraction of surplus value under conditions of real subsumption). Rather, in these pages of Part VIII, we can find a sort of *predatory model* of capitalist valorization. Here there is no exchange of equivalents, the accumulation of wealth neither follows any equitable criteria (though formal), nor, at least in a first period, remains within the field of the Law: the expropriation of common lands – that is, the creation of the modern form of property (property of land as well as property of capital) – is a real *theft*. This word, along with its semantic equivalents (looting, robbery, plunder, etc.), occurs very often in the text. Thus, for example, the *Bills for inclosures of the commons* are defined as «the Parliamentary form of the robbery»²³. But even more interesting for us, is that the plunder perpetrated by the enclosures primarily affects the commons: the landlords’ (private) property was increased thanks to «the systematic theft of communal property»²⁴ and, in fact, the enclosures are «the most shameless violation of the “sacred rights of property”»²⁵. Obviously, this “predatory model” is much more evident in the case of colonial expansion (to

²³ *Ibid*, 885.

²⁴ *Ibid*, 886.

²⁵ *Ibid*, 889.

which Marx devotes the whole final chapter of Volume I, as well as several passages in the same Part VIII): «The colonies provided a market for the budding manufactures, and a vast increase in accumulation which was guaranteed by the mother country's monopoly of the market. The treasures captured outside Europe by undisguised looting, enslavement and murder flowed back to the mother-country and were turned into capital there»²⁶. Besides, “looting” and “robbery” are not restricted only to things: they also concern human beings. Thus, colonial order and slave trade are based on a «system of stealing men» performed by «man-stealers»²⁷; similarly, the owner of the enterprise, who bought child labour directly from *workhouses*, is called “child-stealer”, guilty of “child-stealing”²⁸. In short, the idea of a theft perpetrated against the rural (and indigenous) populations runs through the whole Marxian analysis of the so-called primitive accumulation. The reason seems clear: the point is that in this case the valorization of the value doesn't take place inside the production cycle, but outside it, and by virtue of an «extra-economic force». The “surplus” appropriated by the capitalist (or proto-capitalist), is not the result of a process in which capital is one of the main factors of production, as happens in conditions of real subsumption: capitalist expropriation has nothing to do here with *commodities* (at least in the precise meaning of items specifically made for the market) but rather with goods which had hitherto been considered *extra commercium* – namely, land, human beings, agricultural raw materials and so on. In this prehistoric scenario, the concept of exploitation (in the technical sense of extraction of surplus value) become almost useless: the primitive accumulation of value has more the appearance of a *theft*.

It is now useful to consider Marx's other objection to Proudhon, which we mentioned above. He formulates it in his 1865 letter to Schweitzer: «The most that can be got out of this is that the bourgeois juristic conceptions of “robbery” apply equally well to the “honest” gains of the bourgeois himself. On the other

²⁶ *Ibid*, 918

²⁷ *Ibid*, 916.

²⁸ *Ibid*, 922.

hand, since theft as a violent violation of property *presupposes the existence of property*, Proudhon entangled himself in all sorts of fantasies, obscure even to himself, about *true bourgeois property*»²⁹. In other words, Marx argues that we can't condemn property as a theft, since theft *implies* property.

Is this objection well-grounded? If so, we have to recognize that it can also be directed against Marx's analysis of primitive accumulation. In fact, if we stigmatize the enclosures movement as a robbery, does not this robbery presuppose property? However, what is at stake here is a matter of (historical) perspective. When we use the categories of property and theft, we must pay attention to not turn them in a sort of timeless and immutable abstractions. Absolute private property is not the only kind of property to which people have resorted in the course of history. There are several alternative property regimes which we have to remember in order to complicate our picture: for example, we have to remember *the commons*. So, maybe we can well affirm with Proudhon (and also with Marx) that “property is theft”, but only provided that we give back both these terms to their historical dimension. The theft committed by the enclosures is not a violation of the bourgeois (modern) property right, but rather of the customary rights on the Commons. This may explain why peasants banned by force from common lands seemed to perceive this usurpation not only as a *de facto* violence, but also as a true plunder perpetrated against their “sacred rights of property” (as we will try to illustrate in the next paragraph). Marx himself shows to be well aware of this point³⁰. He explicitly situates primitive accumulation in the transition from «communal property – which is entirely distinct from the state property [...]»³¹ to «the rights of modern private property»³²; so that Marx, quoting Hodgskin, can define this transition as «a complete change in the right of

²⁹ Marx, *supra*, note 2, 171.

³⁰ The same awareness does not seem to be present in Proudhon. However, we must not forget that his condemnation of “theft” rests on an alleged natural right in the commons and in the fruits of collective labour.

³¹ Marx, *supra*, note 12, 885.

³² *Ibid*, 884.

property». Thus, the normative background against which he can issue his condemnation of early capitalism's robbery is clear: without having to resort to any bourgeois criminal code, he can simply refer to those "customary rights of the poor" which he had already highlighted in his 1842 articles on wood theft³³.

III. AN ALTERNATIVE NARRATIVE: THEFT OF THE COMMONS

Before proceeding, we will try here to show how the dispossessed themselves experienced the process of primitive accumulation as a real plunder of the commons. In a certain sense, we can say that the idea of (private) property as a theft predates the renowned Proudhon's formulations. At Locke's time, a similar insight was carried on by Levellers, who tried in this way to substantiate their egalitarian claims. For example, in an anonymous pamphlet against "Tyranipocrit Discovered" (dated 14th of August 1649), we can read: «Mighty men shall bee mightily punished, for the sinnes of Rulers, are double and intolerable sinnes: For wilt thou steale, that commandest another that he shall not steale?»³⁴.

What we would like to argue is that even in the few traces left by expropriated people we can find an alternative narrative of the processes which gave rise to modernity: a story told by the chorus itself of the defeated. We can find here the awareness of having been robbed of something that previously belonged to them, as well as the consciousness of being now persecuted by a law that instead protects the rich thieves of the commons. At the beginning of his article on *The Second Enclosure Movement*, James Boyle quotes an eighteenth-century anonymous poem, which most likely comes from the context of English resistances against fences³⁵:

³³ Marx, K. "Proceedings of the Sixth Rhine Assembly. Debates on the Law on Thefts of Wood" *Collected Works* Marx K. & F. Engels, New York: International Publisher, 1. 1975. 224-263.

³⁴ Anon. "Tyranipocrit Discovered" *British Pamphleteers. Volume one: from the Sixteenth Century to the French Revolution* Orwell G. & R. Reynolds Eds. London: Wingate, 1. 1948. 96.

³⁵ Boyle, J. "The Second Enclosure Movement and the Construction of the Public Domain" *Law and Contemporary Problems*, 66 (2003): 33.

The law locks up the man or woman
Who steals the goose from off the common
But leaves the greater villain loose
Who steals the common from off the goose.
The law demands that we atone
When we take things we do not own
But leaves the lords and ladies fine
Who take things that are yours and mine.
The poor and wretched don't escape
If they conspire the law to break;
This must be so but they endure
Those who conspire to make the law.
The law locks up the man or woman
Who steals the goose from off the common
And geese will still a common lack
Till they go and steal it back.

A similar conception of the relationship between theft and the Law can be found in the sermons which Thomas Müntzer, one of the leaders of 1525 Peasants' War, addressed to men and women who used to gather to listen to him³⁶. In the same vein, the tenth of the Twelve Articles drafted by the Swabian peasants in 1525 runs as follows: «In the tenth place, we are aggrieved by the appropriation by individuals of meadows and fields which at one time belonged to a community. These we will take again into our own hands»³⁷.

Why stressing this alternative narrative? Think about the various *jacqueries* which inflamed Europe until at least the eighteenth century. The point

³⁶ Müntzer, Th. “Highly Provoked Defense and Answer to the Spiritless, Soft-Living Flesh at Wittenberg, Who Has Most Lamentably Befouled Pitiably Christianity in a Perverted Way by His Theft of Holy Scripture.” (ed.) *Revelation and Revolution: Basic Writings of Thomas Müntzer*, Baylor M.G. Ed. Bethlehem (PA): Lehigh University Press. 1993. 139-154.

³⁷ Engels, F. *The Peasant War in Germany*, New York: International Publishers. 2000.

is that economic reasons are not sufficient to explain these riots: it was not only objective necessity that drew peasants to rise up against the enclosures, but also a whole narrative background through which they could read their own experience and give sense to it. Their purpose was not only to obtain bread (even though they obviously needed it too), but, in a certain sense, to put back on its hinges a world that violence and injury had placed off-axis. Their primary need was to restore legality, seeking the return of ill-gotten gains³⁸. The particular sense of justice coupled with this “narrative of the poor”, doesn’t consist in a merely nihilistic desire for disorder: on the contrary, it claims for a re-establishment of customary rights in the commons, for the restoration of those different forms of social organization crushed by the Private/Public couple in the transition to Modernity. However, if this attempt to reconstruct the voice of the vanquished was to be limited to the longing for an impossible return to the past, it would only be of little (or, what is worse, antiquarian) interest.

IV. IS PROPERTY STILL THEFT?

Nevertheless, the present scenario of global capital flows seems to tell us the contrary: in the age of the crisis of real subsumption, of the becoming rent of profit, of the transition to cognitive capitalism³⁹, that “predatory model” which we have spoken about, appears to come back in many forms. As a matter of fact, a similar insight seems to be quite widespread in contemporary critical thought. Talking about bio-patents, which make possible the misappropriation of communities’ traditional knowledge and its compulsory insertion in the process of valorization, Vandana Shiva speaks of *biopiracy*⁴⁰. And, just to mention a recent

³⁸ Lombardini, S. *Rivolte contadine in Europa (secoli XVI-XVIII)*, Turin: Loescher. 1983.

³⁹ For all these concepts see in particular Vercellone, C. *Capitalismo cognitivo: Conoscenza e finanza nell’epoca postfordista*, Rome: Manifestolibri. 2006.

⁴⁰ «Violence and plunder as instruments of wealth creation do not just belong to the history of colonisation, which began 500 years ago with the early invasions; they are essential to the colonisation of nature and of our bodies through the new technologies. *As before, those who are exploited become the criminals, those who exploit require protection.* The North must be protected from the South so that it can continue its uninterrupted theft of the Third World’s genetic

example of this trend, in their *Plunder* Ugo Mattei and Laura Nader present a wide selection of the activities of extortion and looting perpetrated around the world by global capital with the complicity of international economic organizations (IMF, World Bank, etc.), thanks to the ideological support provided by the myth of the Rule of Law⁴¹. Then, in this paragraph we will try to illustrate some of the structural reasons of this “return to the future” (namely, the apparent reactivation of that “extra-economic force” which characterized the stage of primitive accumulation of capital), basing our analysis on the researches carried out by the so-called post-workerists⁴². In particular, we shall mostly lean on an article by Carlo Vercellone, published in the collective volume *Lessico Marxiano*⁴³.

As we have seen, Marx’s criticism of Proudhon referred to a large extent to the essential distinction between rent and profit: in the capitalist mode of production, profit would be the “rule”, while rent would be only the “exception”. Now, in the historical transition from Fordism to cognitive capitalism, «the very frontiers between rent and profit begin to disintegrate»⁴⁴. The relationship between rule and exception begins to complicate; rent is no more a marginal

diversity» Shiva, V. *Biopiracy. The plunder of nature and knowledge*, Cambridge: South End Press.1997. 55-56. Emphasis added.

⁴¹ «The general story we seek to convey in this book also concerns the contemporary period and the appropriation by dominant powers of resources and ideas belonging to other peoples, sometimes justified using notions of civilization, development, modernization, democracy and the rule of law» Mattei U. & L. Nader *Plunder: When the Rule of Law is Illegal*, Malden: Blackwell Publishing. 2008. 1.

⁴² We are referring especially to the works of Antonio Negri, Christian Marazzi, Paolo Virno, Andrea Fumagalli, Carlo Vercellone and (outside Italy) those of André Gorz and Yann Moulier-Boutang – just to mention a few names. For a first introduction to post-workerist theories of cognitive capitalism (or bio-capitalism) and immaterial production, see Marazzi, Ch. *Il posto dei calzini: La svolta linguistica dell’economia e i suoi effetti nella politica*, Bellinzona: Edizioni Casagrande. 1994; Vercellone, *supra*, note 39; Gorz, A. *L’immateriale: Conoscenza, valore e capitale*, Turin: Bollati Boringhieri. 2003. 24-27. Fumagalli, A. *Bioeconomia e capitalismo cognitivo: Verso un nuovo paradigma di accumulazione*, Rome: Carocci. 2007.

⁴³ Vercellone, C. “Trinità del capitale” *Lessico marxiano*, Mezzadra S. & A. Negri, A. Illuminati, Rome: Manifestolibri. 2008. 184. An English translation by A. Bove can be found at this address: http://www.generation-online.org/c/fc_rent2.htm.

⁴⁴ *Ibid*, 184.

remnant of a pre-capitalist era, but rather it «represents not only the starting point but also the becoming of contemporary capitalism»⁴⁵. Starting point: because the formation of modern ground rent coincides with those processes of enclosures and theft of the commons, which we have seen to be at the heart of primitive accumulation. Becoming: because when knowledge becomes the main factor of production and the law of labour-value enters into crisis (along with the phase of real subsumption), capital loses its key role in the management of production in the face of the increasing autonomization of labour cooperation. Vercellone proceeds then by defining the notion of rent, starting from three closely related aspects: first, «the genesis and essence» of capitalist rent characterize themselves «as the result of a process of expropriation of the social conditions of production and reproduction». Which brings us back to the topic of the commons: «Therefore, similarly to ground rent in the epoch of primitive accumulation, the different forms assumed by rent throughout the history of capitalism always tend to lead to the privatisation of the social conditions of production and the transformation of the common into fictitious commodities»⁴⁶. Second, rent is tied to the natural or artificial scarcity of the privatized resource: «Therefore the existence of rent is based upon monopolistic forms of property and positions of power that allow for the creation of scarcity and the imposition of higher prices that are justified by the cost of production and the result of institutional artefacts, as shown today by the policies of reinforcement of Intellectual Property Rights»⁴⁷. Finally, the third and last aspect is that capitalist rent (unlike feudal ground rent) has only a distributive function, since it no longer plays any role within the process of production. In summary, we arrive at the following definition: rent presents itself «as a right to the ownership of some material and immaterial

⁴⁵ *Ibid*, 183.

⁴⁶ *Ibid*, 186.

⁴⁷ *Ibid*, 186.

resource that grant a right to drawing value *from a position of exteriority in respect to production*»⁴⁸.

This leads to the two main differences traditionally acknowledged between rent and profit. First, capital (unlike rent) is deemed to play an essential and *internal* role within the production cycle, as the necessary condition for the organization of labour. This line of argument is therefore based on the distinction between “conceptual labour” (performed by the capitalist-manager) and “labour of banal execution” (performed by manual workers), and it allows to justify profit as the remuneration of capital productivity. Second, profit is considered to be continuously reinvested in the development of the productive forces and in the struggle against scarcity of goods (as opposed to rent which, by consuming without producing, artificially creates scarcity). However, the author continues, these differences are nothing but «the transient outcome of a period in capitalism, that is, that of industrial capitalism. [...] These distinctions become increasingly blurred in cognitive capitalism»⁴⁹ post-workerist theory of *general intellect*⁵⁰ is central here: in fact, when knowledge and immaterial labour become the main source of value creation, the difference between manual and intellectual work tends to get outdated. Control over labour can no longer be achieved through Taylorist methods of direct coercion, and needs therefore to take the more indirect route of the precarisation of the wage relation⁵¹. Furthermore, knowledge and immaterial labour in general are characterized by a mobility that exceeds the “normal” conditions of the valorization process – namely, they exceed both the factory walls and the measure of value in terms of labour time. The blurring of

⁴⁸ *Ibid*, 187.

⁴⁹ *Ibid*, 187.

⁵⁰ For a more comprehensive discussion of this issue, see Virno, P. “Notes on the General Intellect.” *Marxism beyond Marxism*, Makdisi S., Casarino C. & R. Carl Eds. London: Routledge. 1996. 265-272. ---. *A Grammar of the Multitude: For an Analysis of Contemporary Forms of Life*, Los Angeles/New York: Semiotext(e). 2004. Hardt M. & P. Virno, *Radical Thought in Italy: A Potential Politics*, Minneapolis: University of Minnesota Press. 1996.

⁵¹ Incidentally, here it seems to resurface a mechanism similar to that we saw at work in the processes of primitive accumulation, with the disciplining of the outlawed proletariat by forced reduction in wages.

spatial and temporal boundaries of labour implies that production is no more limited to the physical space of the Fordist farm nor to a clearly defined working time. In addition, while abstract labour (in the Marxian sense) used to provide a common quantifiable measure of the value of commodities, the same can't be said in the case of an element which is so heterogeneous as the so-called immaterial labour (comprehending capacities so various as affects, languages, knowledge and so on). As a consequence, the rule itself of equivalent exchange seems to fail, since it fails the very condition for the comparison⁵². Besides, in the case of knowledge, thanks mostly to virtualization processes that allow us to make it usable independently of any material substrate (such as the Fordist machine was), cost of production no longer coincides with cost of reproduction. Let's think to the designing of a new software: once the first unit has been realized, the cost of reproducing its copies tends to zero. This means that so-called immaterial goods are not subject to scarcity, since they can be reproduced in almost an infinite number by incurring negligible costs. The result is that, regardless of its use value, the exchange value of knowledge (potentially available in unlimited amounts) tends to zero. Consequently, if capital aims at putting into value this special commodity, it will have to artificially create scarcity⁵³.

Faced with these original challenges, contemporary capitalism responds with two different strategies: first, it gives birth to a new enclosure movement of common resources (forests, water, knowledge), so that it can claim for itself «a right to drawing value from a position of exteriority in respect to production»⁵⁴; patents, copyrights and access fees are the names of these new enclosures which allow capital to appropriate the results of immanent social production that it finds ready-made outside of itself and that it does not concur to create (except perhaps indirectly). Secondly, it tends to replace its function of production management (which becomes almost superfluous in the face of a cognitive labour force that is

⁵² Gorz, A. *supra*, note 42.

⁵³ Rullani, E. "Le capitalisme cognitif: du déjà vu?", *Multitudes*, 2 (2000): 87-94

⁵⁴ Vercellone, *supra*, note 43.

increasingly capable of organising itself autonomously from capital) with a position of command over markets, achieved by the constitution of monopolies as well as by imposing itself as an intermediary between labour and the markets: in other words, profit no longer derives from the sphere of production, but from that of exchange. To use Moulier-Boutang’s expression, cognitive capitalism operates through “predation of externalities”⁵⁵: it creates the conditions to appropriate for free the fruits of social cooperation, which is no longer confined within the borders of the factory and therefore no longer manageable by classical Fordist methods. In short, in cognitive capitalism profit loses the two features which distinguished it from rent: that is, its character of remuneration for an organizational activity internal to production, as well as its character of contribution to the growth of productive forces and to the struggle against scarcity.

If we come back now to Marx’s criticism of Proudhon, we can see some surprising consequences of this becoming-rent of profit. As we have said, this objection rested on two fundamental points: on the one hand, the distinction between capital and rent, depending on their relative location within or outside the production process; on the other, the idea that the valorization of the value does not take place in the sphere of exchange (as suggested by *profit upon alienation* theories), but in the sphere of production. At least, this happened in the normal conditions of the capitalist mode of production – i.e., “normal” as opposed to the “exceptional” ones of primitive accumulation and formal subsumption. The post-workerist hypothesis of a becoming-rent of profit maybe allows for a critique of this view: the boundaries which divided productive capital from the unproductive consumption of rent (and that Marx was right to point out against a less theoretically refined thesis) seem to blur or even disappear. The predatory model and the “extra-economic force” (which however have all along represented one of

⁵⁵ Moulier-Boutang, Y. “La revanche des externalités. Globalisation des économies, externalités, mobilité, transformation de l’économie et de l’intervention publique” *Futur Antérieur* (1996): 39-40 and, Moulier-Boutang, Y. “Éclats d’économie et bruits de lutte”, *Multitudes* 2 (2000): 5-14.

the stock options of capitalism) seem now to establish themselves at the expense of normal modalities of the valorization of the value (which were linked to the exploitation of surplus labour). Property rights and enclosures become (or return to be) the privileged form of the looting of the commons, from the water of Cochabamba⁵⁶, to Indonesian rainforests⁵⁷, to knowledge and practices daily produced within the fabric of social cooperation.

Faced with this situation, it would make little sense to invoke a sort of nostalgic return to old customary rights, maybe driven by an idealized vision of pre-modern communitarian institutions: rather, what this alternative narrative (which we have tried here to reconstruct) can teach us today, is the possibility of another way of relating to resources and managing human relations. It is about calling into question the apparent peaceful necessity of private (or public) property with relation to the commons. Finally, it is about making clear that without an alternative *nomos* to oppose to global projects of privatization, our complaints are likely to be circular or moralistic – but ineffective. What we need therefore is to invent a *new* normative background against which we can highlight all the lootings, robberies and predations of the World Market, and through which we can claim restitution of what has been wrongfully stolen. To conclude, we need a new constitutional process of our rights in the commons, and social struggles are maybe the only way to achieve this.

⁵⁶ Olivera O. & Lewis T. *Cochabamba! Water war in Bolivia*, Cambridge: South End Press. 2004.

⁵⁷ Tsing, A.L. *Friction: An Ethnography of Global Connection*, Princeton-Oxford: Princeton University Press. 2005.