

Property, Propriety and Democracy

MARK DEVENNEY

Faculty of Arts, University of Brighton, United Kingdom

ABSTRACT The redefinition of rights of equality and liberty by radical and deliberative democrats during the last decades of the 20th century resulted in the denial that a consideration of property is integral to political philosophy. Theorizing property as intrinsically political demands a return to Marx but on terms he may not have recognized. I outline a politics of property in this paper contending that there can be no universal justification for any regime of property. Property is by definition the institution of a wrong. The articulation of something as property establishes a border, determining what can be owned, how far ownership extends, where it is limited, as well as terms of use and terms of abuse. It establishes a set of property relations, and defines a vocabulary of the proper. Here sovereign state power is enlisted to enforce relations of property beneficial to some, but not all. A challenge to any political regime must of necessity put in to question both the forms of proper behaviour, and the regime of property. These are intrinsically related to each other. I conclude by arguing that democracy is always improper. Property, in all of its forms entails enclosure. Enclosure requires the drawing and the maintenance of boundaries of exclusion and inclusion. The sovereign determination of the proper, as well as of the exception to the proper defines trespass. Trespass is a form of democratic enactment when, and if, it destabilises enclosure.

Introduction

Writing in the mid-1980s, Gerry Cohen challenged Locke's liberal presumption of a property in the self which legitimates expropriation of resources external to the self. Cohen's arguments assume, counter-intuitively, that the world is jointly owned. The division of the world into mine and thine is thus subject to the potential veto of any co-owner. Challenging Nozick's arguments in *Anarchy, State and Utopia* Cohen writes that "a union of self ownership and unequal distribution of worldly resources leads to indefinitely great inequality of private property in external goods and, hence, to inequality of condition, on any view of what equality of condition is" (Cohen, 1995, p. 69).

Twenty-five years later property is rarely considered as an intrinsically political matter for political philosophers. This article assumes, with Cohen, that property is of the essence of politics. It defends a politics of impropriety, and of the improper, contending that regimes of property are the axes around which inequality is maintained. However, I reject both the liberal account of property in the self

Correspondence Address: Mark Devenney, Faculty of Arts, University of Brighton, Brighton BN2 0JY, United Kingdom. Tel.: +44 (0) 1273 600900; Email: m.devenney@brighton.ac.uk

ultimately derived from Locke and Cohen's Marxist defence of original joint ownership of the world. Instead, I develop an account of property as a contingent political intervention which articulates something as property in the very act of appropriating it. In insisting that all property claims are contingent, as opposed to natural, this argument politicizes all attempts to limit access to worlds recast as property. In doing so, I also explore the failure of post-Marxist and deliberative theorists to engage with the politics of property. Thus, in retrieving a political tradition which rejects the naturalization of property, whether communal or individual, I delineate a radical political theory which rejects any Marxist essentialism, while nevertheless insisting that a properly *political* theory must contend with the politics of property.

What is Proper to Politics? Three Exemplars

Let me begin with three moments in the history of democratic politics and thought:

Solon

Plutarch's *Lives* records that in 594BC Solon determined that all the debts of Athenian citizens should be forgiven, and that debt using one's own body as security would henceforth be illegal. As Plutarch writes: "...the first thing which he settled was that what debts remained should be forgiven, and no man, for the future should engage the body of his debtor for security" REF. Solon abolished the mortgage system for Athenian citizens, causing, as Plutarch again notes, much anxiety among the wealthy. It is thus perhaps unsurprising that Aristotle later characterized democracy, with barely concealed dismay, as "...when the indigent, and not the men of property, rule" (Aristotle *Politics*, Book 3). While Solon's reforms preceded the development of Athenian democracy, he established a crucial link between freedom and property, explicitly contending that debt should never be taken out using the body as a guarantee, and that mortgages enslaved the poor ensuring the appropriation of resources crucial to the living of life.

Locke and Rousseau

In "Of Property", the key chapter in Locke's 17th century defence of liberal democracy, *Two Treatises on Government*, he contends that every individual is an inalienable property, in themselves. The right to life, Locke contends, is God-given. Because this is an unalienable right no man can assent to become a slave. However, given their self-ownership, men can sell their labour. Crucially, then, Locke attributes natural rights to all men in a state of nature, natural rights which are accorded to us by God, and which serve to distinguish men from the beasts, over whom men collectively exercise proprietary rights:

...it is evident, that though the things of nature are given in common, yet man, by being master of himself, and proprietor of his own person, and the actions or labour of it, had still in himself the great foundation of property; and that, which made up the great part of what he applied to the support or comfort of his being, when invention and arts had

improved the conveniences of life, was perfectly his own, and did not belong in common to others. (Locke, II. S.5)

The central claim here is that the free individual (man) has property in himself, thus establishing a crucial nexus linking property and liberty. As Balibar has argued, Locke does not treat property merely as the enumeration of things, but instead develops a thesis of “legitimate appropriation... . In this sense, to speak of a property in one’s person or in oneself is not exactly to issue a contradictory proposition, pushing persons in to the order of things; it rather tries to designate the ultimate point where *propriety* meets with property, where “to be” rejoins with “to have”” (Balibar, 2002, p. 303). Locke may thus be said to develop a liberal political theory founded upon an ontology of being. To be free, one might argue, is to have property over oneself. Once property in self is alienated from the self, one is no longer free, and thus no longer a self. It is in this way that the mixing of individual labour with the external world renders private that which is originally given as common. In his initial formulations of property, Locke limits what can be owned, arguing that no man should own so much that there is insufficient for others, and that that which is owned should not spoil. Money however, removes these limitations:

. . . . before the desire of having more than one needed had altered the intrinsic value of things, which depends only on their usefulness to the life of man; or 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; though men had a right to appropriate by their labour, each one of himself, as much of the things of nature, as he could use; yet this could not be much, nor to the prejudice of others, where the same plenty was left to those who would use the same industry. (Locke, II. 5. 37)

The introduction of money engenders economic inequality, but does so on terms which allow men to assent to this inequality, through the exchange of a durable measure of exchange—money.

Locke, then, justifies the existence of private property on the basis of his view that each individual has property in themselves. Property in self is an expression of the natural right to life and liberty, given to all men, by God. But God is of course problematic. In the absence of any proof of God’s existence Locke cannot justify this idea of property in the self, or indeed the property we have in the external world. He is left with a sovereign fiat, secured only through belief. Thus he is left in a position close to that of Rousseau, who begins his *Discourse on the Origin of Inequality* thus:

The first man who, having enclosed a piece of ground, bethought himself of saying *This is mine*, and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars and murders, from how many horrors and misfortunes might not anyone have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows, “Beware of listening to this impostor; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.” (Rousseau, 1754)

In this text Rousseau contends that inequality, generated as a consequence of the enclosure of the world, is social, not natural. For Rousseau the very existence of

property depends upon finding people “simple enough to believe.” This phrase is no mistake: property requires unquestioned belief if it is to be sustained. Thus Rousseau ascribes the origin of property to innocent belief and an original act of enclosure which that belief permits.

Marx

Marx extends Rousseau’s argument. He contends that the existence of private property, and of private ownership and control of the means of production, forces those who *legally* own nothing but their labour into selling it as a commodity. Note only two key moments in this analysis: those who own property do not have to work; those who own no property have their labour *legally redefined* as a property which can then be sold in return for a wage. Enclosure both rearticulates land as private property and forces those who hold traditional claims over land to sell their labour as property. Rather than analyzing property in terms of a primitive ontology which presupposes ownership over the self, then, Marx understands property in relation to the articulated totality that is capital. If Locke derives property from an ontology of the individual, Marx views the individual as a derivation of a particular set of political conditions. He interprets the liberal individual as the ideological counterpart to the relations of property established in capitalist society. Private property, for Marx, is the means whereby labour is alienated both from itself and from what it produces and it is thus that he writes, “the theory of the Communists may be summed up in the single sentence: Abolition of Private Property” (Marx & Engels, 1985, p. 498).

These examples are in one sense all too familiar. But they serve as an initial indication of the central role played by debates about property in critical political work. Let me introduce my substantive argument by identifying four key elements in these debates.

First, *property has to be justified because there is no foundation or essence which justifies its existence a priori*. In the absence of God, Locke can justify private property only on the premise that an individual has property in himself. However, this rests merely on a belief. The maintenance of property, the definition of what is proper and improper, is political from the beginning precisely because justification has to be found. In this sense it is properly a concern of the demos. Second, there is an *intrinsic link between sovereign power and property*. Solon’s act is extraordinary because it violates the normal order of things. In most instances sovereign power guarantees the order of property, through both legal and violent means. There is no means whereby property, as a relation of exclusion, may be maintained, other than through the exercise of legal, and thus sovereign, power. Third, this *regime of property* delimits possible relations between humans. It is political not only in the sense that it is caught in an abyssal search for its own justification, but in the equally important sense that the claim to property requires the exclusion of some. Property relations structure social relations in a dynamic fashion, as they are always contested, and are inevitably a site of antagonistic struggles. Rancière’s distinction between the police and politics is useful here, and I shall contend that it is the police who maintain established legal bounds of property. Politics must therefore put these forms of policing into question. Fourth, because property has no foundation in nature, *politics is in part about the*

reactivation of the bounds of the proper. This reactivation may occur in three related dimensions, which are nonetheless relatively autonomous of each other. The bounds which maintain property as exclusive may be transgressed. This transgression refuses the division of worlds into mine and thine. Second, this violation is also a form of impropriety, an attack on the bounds of common sense: a particular order of property correlates with certain forms of behaviour, forms of behaviour which in being reiterated delineate the bounds of the sensible. Third, the violation of an established regime of property, or of the forms of propriety associated therewith, rearticulates subject relations. A dominant ordering of property categorizes some as legal owners, some as criminals, some as enforcers, others as creators. This distribution of possible subject positions is disturbed by acts which challenge the relation between property boundaries, the certain distribution of the sensible and subjective possibility.

Despite this lineage, property is rarely addressed in contemporary democratic theory. There are notable exceptions, mostly in the Marxist tradition (e.g. Gerry Cohen) but the “democratic common sense” after the Central and Eastern European revolutions of 1989 has tended to depoliticize property. In the next section I outline this common sense, before returning to a politics of property and the proper. In contrast to the radical democratic and deliberative positions, I contend that an analysis of property is intrinsic to the very definition of the political.

The Democratic Common Sense

In the past twenty years two innovative accounts of democracy have recast stale debates between liberals and Marxists about democracy. Deliberative accounts of democracy were inspired by Habermas’s *Between Facts and Norms* (1996) while radical democratic accounts were inspired by Laclau and Mouffes’ *Hegemony and Socialist Strategy* (1985). Authors working in one or other tradition insist upon fundamental differences between these approaches: but as visions of democracy, they share a common sense which occludes certain questions and privileges others. In particular, arguments concentrate on questions concerning democratic will-formation, a pluralisation of substantive conceptions of the good, insistence upon the complexity of modern societies and a rejection of Marxism.

Contingency

These accounts all affirm the contingency of all political claims we make. For post-Marxist theorists such as Laclau, contingency has ontological status: he insists on the “... impossibility of the a priori transcendental constitution of any positive content” (Laclau, 2000, p. 186). For deliberative democrats, contingency concerns all substantive claims about how to organize society, but there are certain quasi-transcendental preconditions for the thinking of democratic will-formation, most clearly formulated by Habermas in *Between Fact and Norms*. Despite disagreement about the universality of the quasi-transcendental conditions of communicative rationality,¹ the common sense asserts that no consensus is ever fixed, that democratic practices challenge established consensus and the best that democracies can achieve is a tenuous consensus, open to further challenges, within a set of rules more or less agreed. This represents an uneasy compromise between agonistic and

deliberative accounts. Deliberative democrats claim the universality of certain constitutive rights, which, they argue, guarantee the very possibility of deliberation. While post-Marxists contend that these basic rights are not sacrosanct, insisting that what rights mean is itself part of the agonistic struggle, and thus concerns substantive matters. For radical democrats such as Mouffe constitutional rights are the contingent outcome of political struggle which already delimit ways of being, and are thus not value neutral.

Nonetheless, *both* accounts privilege the possibility of putting into question rules of the democratic game which once seemed sacrosanct, while recognizing that certain constitutional and political arrangements are more suited to democratic politics than others. For both accounts substantive questions about how to live the good life admit only of contingent answers.²

Pluralism

Because all substantive versions of the good life are deemed contingent, authors in these traditions insist upon an irreducible pluralism, in some cases an axiomatic pluralism, against all forms of monism. This characterizes deliberative accounts, Spinozist versions of the multitude, as well as radical democratic accounts of hegemony. Pluralism entails that there is no common good, that any consensus about values is partial and ultimately that democracy should institutionalize this pluralism. Importantly, this pluralism extends to all aspects of organized political life, including for example property relations; and this immediately points to a crucial limitation of these accounts. While it is certainly the case that there are many different accounts of what a just system of property might be, the very existence of a particular regime of property requires that some are excluded and thus cannot participate on equal terms. This must mean that certain regimes of property are incompatible with democratic politics, and thus that there are restrictions on democratic pluralism. Radical democrats would simply respond that pluralism is axiomatic and ontological, and that while there are *no a priori* reasons for privileging one form of life over another, what in fact prevails is the outcome of hegemonic political struggles. In the realm of ontological purity this may well be the case: but any sort of radical democrat committed to pluralism must concur with the view that certain regimes of property are antagonistic to a radical democratic politics.³

Articulation

For deliberative and radical democratic theorists, politics does not address a pre-existing political will. Instead, it concerns the articulation of a will through argument, disagreement and sometimes antagonism. Deliberative accounts foreground the possibility of a consensus, premised upon an implicit idea(l) of reason, which underpins communicative interaction. Radical democrats point to the antagonistic nature of political interaction. Either way, politics concerns the formation of a will which does not pre-exist the process of agonistic deliberation. In part because these debates have been shaped by a concern over the status of communicative idealization, there has been less of a focus on the politics of property, production and reproduction. There are, though, elements of these

theories which lend themselves to this conclusion. Thus, issues such as abortion, or genetic intervention, are recast as matters to be argued about, but which cannot finally be resolved. The consequence is that less attention is devoted to the analysis of the ramifications of such interventions for the very constitution of political life. Deliberative democrats, to be crude, insist that what is of most concern is the ethical self-understanding of the species. At the moment when this ethical self-understanding is challenged by the rendering contingent of nature, either a quasi-religious invocation of nature is invoked or we are asked to speculate about how a future human made by us might feel, given that we exercised control over the production of their life. In contrast, radical democrats, having insisted upon the radical contingency of so called nature, do not even think through how to address the rendering contingent of the genetic code for life. Moreover, there is no recognition that the rendering contingent of our “underlying nature” has determinate rather than contingent consequences for the lives of those to come. What is never focused on is the regime of property which accompanies these technological developments.⁴

Reframing Democratic Subjectivity

Deliberative and radical democratic theorists contend that liberalism is wrong to essentialize the subject of rights, both in methodological terms and as the basis for a naturalization of human rights. Far from being pre-political, rights are always contested. This critique of liberalism is supported by the rejection of a Marxism which assumes the existence of political subjects whose interests precede those thematized in argument and antagonistic debate. In its most idealistic versions, the social whole represents itself to itself. Politics occurs under the constraint of unanimity, as in Rousseau’s account of the general will: the state is simply an administrative body implementing, without complication, decisions which emanate from the gathered citizenry (Ollman, 1977, p. 33). Instead of individual subjectivity, we are presented with the transparency of a macro-subject, society, which like a healthy body is in full control of all its functions, but which, unlike a human body, does not suffer the complications of illness, age and uncertainty. On these accounts, by contrast, the democratic subject is itself the contingent outcome of political struggles which put into question the claim that the subject is in possession of itself, and knows in advance its wants or needs.

Four key claims thus ground these accounts. Politics is contingent; the outcome of any political struggle is not determined in advance; a political will is articulated in the context of an irreducible pluralism; and the subject has no essential interest, ontologically prior to this articulation. But what happens to property, to the analysis of ownership and control over the means whereby we produce our collective lives? I ask this question, given that both accounts of democracy trace their roots back to the radical democratic tradition, a tradition which has insisted upon challenging the various forms of enclosure of our worlds.

This focus on pluralism and contingency does not of course foreclose the politicization of property relations. However, property is not viewed as *intrinsic to the very definition of the political*. Property is that which may be politicized, but it is not political in itself. Whereas for Locke, Rousseau or Marx, to think the political is to think relations of property, for late twenty-first century radical democratic theorists, this link is rendered contingent. The critique of Marxism undertaken by

both deliberative and radical democratic theorists thus results in the depoliticization of property.⁵ For many post-Marxists, the attempt to interrogate property-relations has the whiff of a Marxist essentialism. For deliberative democrats, influenced by Habermas, systemic issues require complex forms of decision-making which are not necessarily in keeping with arduous and demanding democratic practices. Habermas contends that economic inequalities are damaging to democracy: one of his earlier texts, *Legitimation Crisis*, analyzed how the welfare state offsets the damaging consequences of capital accumulation. However, a central contention of his *Between Facts and Norms* is that economic rights are derivative of the primary right to equal participation in deliberation. The text justifies the universality of certain basic rights—to liberty, status, legal protection and political autonomy—as preconditions for the formulation of a sovereign will. But he then writes:

... the rights listed thus far *imply* the following: 5. Basic rights to the provision of living conditions that are socially, technologically and ecologically safeguarded, insofar as the current circumstances make this necessary if citizens are to have equal opportunities to utilise the civil rights listed in (1) through (4) ... (Habermas 1996, p. 122).

The next sentence puts this radical gesture firmly in its place: “I limit my comments to the four absolutely justified categories of civil rights; the category of social and ecological rights, *which can be justified in relative terms* [emphasis added], I postpone to the final chapter” (Habermas 1996, p. 123).

In that final chapter Habermas argues that the development of a social welfare paradigm within law recognized that legal freedoms were meaningless when actual freedom could not be exercised as a consequence of real inequalities. The transformation of bourgeois law in Western Europe thus resulted in a series of entitlements such as pensions, welfare provision, and property. Both property law and contract law, were, he notes, restricted to compensate for asymmetries in economic power. However, the social welfare model engenders a welfare state paternalism which impairs the individual autonomy it is supposed to encourage. The mistake of the social and the liberal paradigms of law is, he contends, that both focus on the question of how to ensure private autonomy. Neither sees the relationship between private and public autonomy as necessary, and thus both underplay the legitimacy derived from the forms of communication through which alone autonomy is expressed (Habermas, 1996, pp. 402-409). Politics concerns processes of will-formation, rather than the conditions within which lives are produced and reproduced. It might be thought that a more recent generation of deliberative and radical democrats had begun to question these delimitations of politics. Two recent examples demonstrate that this is not the case.

Norval’s text, *Aversive Democracy*, aims to rescue an analytic/Wittgensteinian account of ordinary language, in order to rethink deliberative and post-Marxist accounts of democracy. She reconstructs the grammar of democracy, asking: how is it we become democratic subjects; how do claims emerge as political claims, as opposed to the ordinary activities of citizens; and, last, how might existing grammars be challenged? These concerns lead her to focus on the rhetorical practices, vocabularies and practical needs central to the ongoing re-enactments of

a democratic ethos. Her account of aversive democracy is admirably succinct and generous in its engagement with both deliberative and post-Marxist accounts.

For Norval democracy concerns how to institutionalize democratic practices and how to dislocate existing grammars insofar as they delimit the sayable and the doable, thus encouraging aspect changes. However, there is no discussion of the primary factor that delimits the sayable and the doable: property and the limitations that lack of access to property sustain. Her work, along with that of many others in this tradition, claims to engage with the practical needs and the demands that active citizens make, but fails to engage with the forms of delimitation which frame those practical demands in every actual society. Rather than democracy being seen as some ideal type against which existing democracies may be judged as failures, Norval's attention to the grammars and practices of citizens in the process of becoming democratic certainly avoids pie in the sky idealism. It is ironic then that it avoids also any engagement with the material "grammars" necessary to the thinking of any engaged democratic debate.

Guttmann and Thompson's text, *Why Deliberative Democracy?* defends a radicalized version of deliberative democracy. I am not interested in their answer to the question "why," but in their definition of democracy: "Most fundamentally deliberative democracy affirms the need to justify decisions made by citizens and their representatives ... reasons ... should be accepted by free and equal persons seeking fair terms of cooperation" (Guttman and Thompson, 2004, p. 2).

All decisions require justification. Justification entails giving reasons, although as I have noted in an exhaustive critique of deliberative democracy elsewhere, the giving of reasons is not exhaustive and is not independent of the operations of power (Devenney, 2009). Guttman and Thompson assert that reasons can only be accepted by those who are free and equal. But what does "free and equal" mean? It is nowhere specified other than as an ideal of a society where, freed from coercion, all citizens may present reasons without fear of violence. This move echoes a long tradition in political philosophy, a lineage which includes Hannah Arendt, John Stuart Mill's earlier texts and the various works inspired by Habermas and Rawls' account of the original position. On these accounts democracy concerns the formation of a political will through means that are fair to all. While democratic will-formation might entail making decisions about, for example, productive or reproductive relations, these are not considered as intrinsic to the definition of democratic living together. It is thus that Habermas characterizes equality rights as secondary, that Arendt laments the confusion between the public and private sphere, and that liberals, while concerned with a realm of free debate, are less bothered about whether or not that realm itself has other conditions which are prerequisites for its operation. The consequence is that, while property may be politicised, it is not deemed intrinsically political.

The authors might respond that theirs is an account of how democratic subjects act, of how claims are made and then contested, of how a consensus is forged between antagonists, who become agonists; that relations of inequality which are economic in origin can be thematized in such democratic practices and are not exempt from political interventions; and, moreover, that an established consensus is only ever contingent, especially in the context of a necessary pluralism. But the definition of deliberative democracy gives the lie to such claims: reasons can be accepted only by free and equal persons. The question which neither Guttman and

Thompson nor Norval address concerns what “free and equal” means, what fair terms of cooperation entail, what the conditions are under which all may contest existing grammars. The attempt to institutionalize deliberative debate as the underlying premise of democracy fails if the majority cannot participate on equal terms. The legal regulation of property establishes rules in which lives are unequally lived, and freedom is but an ideal for those with little or no access to property of their own.

The democratic common sense assumes that property relations are not intrinsic to democratic practices. This failure to relate democracy to those conditions which undermine the very possibility of engaging in democratic life renders their accounts failures on the very terms which they themselves specify. To put this point bluntly: equality does not stop with communication. Allowing everyone to speak, to vote or to contest established relations of power makes no difference if those relations are structured in such a manner that inequality limits who can participate, if relations of property also establish a regime of the sensible and thus of what is deemed improper and if it is already regarded as a form of impropriety to put into question the very existence of private property.

Rethinking the proper of democracy

The current consensus assumes that democracy cannot challenge established property relations. The neo-liberal worldview assumes the sanctity of a set of principles which require continued faith, despite their repeated failure. The state, in theory the bearer of sovereign democratic authority, maintains the borders that delimit land masses and imposes the laws that protect the various forms of property against trespass. However, it is not, even *in potentia*, the bearer of a democratic will. Its claim to serve the interests of all naturalizes and neutralizes relations of property, which demarcate the bounds of the demos. States secure the circulation of goods, protect private property and maintain the ever expanding balloon of financial capital. All governments insist that their primary imperative is to maintain economic stability, while preserving the current system for the ordering and distributing of life chances.

What distinguishes the present neo-liberal conjuncture, however, is that the market state itself participates in the market, commissioning and providing services in direct competition with the private sector. The state both secures the conditions for market competition and acts in the market it preserves. The liberal ideal of the state as a neutral arbiter, above the fray of contestation, no longer holds, if it ever did. This is not simply a reinvention of an argument first deployed by Poulantzas (1978), namely that fractions of capital compete for influence over state policy and lawmaking and that the autonomous state organizes the universal interest led by a dominant fraction of capital. Rather, the state itself acts as a fraction of capital, articulating its own interests within a market against the interests of others. Moreover, the state is not an actor with one single interest. States own property, have rights and interests in property and secure conditions under which property relations are maintained. The transformation of states during the past three decades has resulted in the breaking up of the distinction between private and public.

Resources once deemed public are either redirected to the private sector (as witnessed during the recent banking crises) or the state extends its own ownership of resources, especially through the varying forms of intellectual property rights. In many instances states pursue profit on terms no different from those of the private sector. The state as stakeholder does not act as an agent of the people it represents, but as a competitor in the market, offering contracts to other parts of the state in direct competition with private providers. This shifting terrain makes explicit the key relationship between sovereignty and property, as principles not so much in competition but rather as overlapping elements of an articulated property, state and capital complex. Democratic demands for the extension of the state, and for law to regulate the excesses of the market, no longer resonate. Such interventions are the acts of quasi public/private institutions whose interests cannot be made to correspond to the legitimation functions once performed by the welfare state.

Theorizing politics in terms of a sovereign demos capable of acting upon itself legitimates an ancient fiction, a fiction which clads the oligarchies of today with the cloak of democracy. The sovereign democratic state does not exist, if it ever did. This imaginary beckons us to act in a manner that is already impossible: recognizing that the link between sovereign power and democratic power is broken in part helps explain, for example, the deployment of ancient rules of sovereign exception during the past decade of the “war on terror”. Sovereign power is not democratic power. The improper politics I defend rejects the markers of certainty which inspired leftist politics for much of the twentieth century. The imaginary which sustains such fantasies should not foreclose all discussion of an other democracy, a democracy which works through what it might mean for a people to exercise power, even as these terms (“people” and “power”) demand conceptual reworking. In this light I now set out the terms of just such a reworking. I begin with five claims.

Democracy Presupposes an Axiom of Equality

No account of democracy makes sense if it requires that those deemed free and equal members of the polity participate on unequal terms. This entails that politics is collective and relational. The demand for equality is made by a collective living in unequal conditions. Inequality is naturalized through the invocation of nature, race, intelligence, class and property—or whichever contingent factor is best suited to maintaining a dominant constellation. If monarchical power is characterized by the strict delimitation of politics premised upon a natural inequality which is loudly proclaimed and practiced, then statist democracy reverses this premise, presuming an equality which it cannot practice. For this reason democratic equality must be thought at a distance from the state.

The Democratic Demand

The democratic demand is not that those excluded, marginalized or exploited are extended the same rights and obligations as dominant “races” and classes. It is not a demand for a restitution of an original state of equality. Rather it is a demand for a re-articulation of the body politic which transforms the conditions in which lives are lived, the terms on which subjects recognise each other and themselves. Such

demands cannot be recognized within the co-ordinates of the dominant order. For this reason democracy is from the first improper.

A Map of Inequality

This requires a map of inequality specifying the structural limits on equality. This real abstraction understands the political in relation to the articulated totality within which the production and reproduction of lives is organized. It maps the relations between political reason (deliberative practices in the public sphere so beautifully analyzed by Habermas); productive and reproductive relations (or discursive materiality, systematically analyzed in the Marxist tradition but then reduced to a metaphysical determinant of all human life); the distribution of violence and its legitimation to maintain this order (perhaps best analysed in Schmitt's account of the exception); the repressed that is expressed only symptomatically but which as the indirect representative of that order does not challenge it; and, last, the potential for a different order which cannot be recognized within an existing order. The abstraction presented is best understood as history rendered natural, an ordering which protects the continual violation of possible equality, and which recruits future possibility to inequality.

Democratic Politics is Antagonistic not Agonistic or Deliberative.

Democratic politics is *antagonistic* not agonistic or deliberative. This is the statement of an absolute condition of the political, not the assertion of a condition which it is the aim of political struggle to overcome. Democracy is not an existent order, but the processes through which such ordering is challenged, as much as it is the redefinition of the rules delimiting what is open to challenge. Laclau (1985) certainly theorized the political in these terms, but I would insist that antagonism always emerges from a particular constellation which articulates the elements outlined above into a regime of the proper and of property.

Impropriety

Democracy is as a consequence *improper*. What might this mean? I explore this further below but let me make some preliminary comments. Property, in all its forms, entails enclosure. Enclosure requires the drawing and the maintenance of boundaries of exclusion and inclusion. The sovereign determination of the proper, as well as of the exception to the proper, defines trespass. Trespass is a form of democratic enactment when, and if, it destabilizes enclosure. Who are the figures of the trespasser in contemporary politics? They are the immigrant, the squatter, the suicide bomber. These three figures stand in for different forms of refusal of enclosure. The first violates the sovereign delimitation of citizenship rights. The second violates the laws of property which structure the earth. The third transgresses the legal, political and actuarial controls exercised over bodies and instantiated in various forms of property law. Crucially, enclosure is not simply the putting up of fences around that which is ontologically prior to the enclosure. Enclosure defines space in the very act of enclosing. To posit the commons as an alternative is to miss the point (Hardt & Negri, 2000). This claim operates on the

same terrain, presuming that there are forms of the proper which have simply to be reclaimed. Instead, to engage in a politics of property is to redefine both ourselves and our world, requiring leaps of faith and of passion which redraw the bounds of the given.

Property Politics

Let me briefly summarize the argument thus far. The liberal democratic and Marxist problematics linked property, liberty and equality. The radical democratic and deliberative democratic nexus unties this knot. In one respect this makes perfect sense. Marx had already recognized that the rights to liberty and equality belie the inequality which the right to property, in a free market, institutionalizes. His all too quick dismissal of these rights to life, liberty and equality, however, ties them to individuals, thus taking the liberal democratic tradition at face value, without exploring other justifications for rights. *However*, the redefinition of rights of equality and liberty by radical and deliberative democrats resulted in the denial that a consideration of property is integral to the thinking of the political. The intrinsic link between the critique of property and radical democracy must be rescued. I propose that there are at least six elements to this critique.

First, we must dispense with any justification of property which draws on an anterior account of “human” nature. Rights are social and political. They entail relations with others, institutions which secure them, mechanisms for their enactment and disciplinary procedures to enforce them. In this sense property rights delimit the worlds in which we live. In so doing they secure certain ways of being. Because property rights cannot be derived from nature, or from God—or indeed from any other primordial essence—they must be considered as a particular way of articulating our being together. Property, as a bundle of rights, sediments certain social relations and institutionalizes practices which define and distribute rights of access to resources. Property, however, is not a right in the sense that freedom and equality, as empty signifiers, might be deemed rights. While equality and liberty may be laid claim to by those who do not have rights, property relations establish and maintain inequality. If democracy’s premise is an axiomatic equality, property relations are inherently undemocratic. They delimit differential forms of access to the means required for the reproduction of life.

Second, given that property is a social relation, it must be viewed as a politically articulated delimitation of our world. This is a shifting terrain. Until very recently, for example, it was not possible to have property in the genetic code of the human species. What is defined as property, and the rights of the proper thus attached to property, depends upon a politics of articulation, which is always antagonistic. In this regard property outlaws, thieves and the various forms of resistance against modern enclosure movements (squatters for example) all re-politicize property with a view to it being other than the exclusive property of the few.

Property is a key node in maintaining certain social relations. It is intrinsically political insofar as it by definition requires exclusivity of access and benefit. This entails, third, that the articulation of something as property establishes a border, determining what can be owned, how far ownership extends, where it is limited, as well as terms of its use and abuse. It establishes a set of property relations and

defines a vocabulary of the proper. This vocabulary of the proper is itself open to challenge. Today it is constrained within and by a set of global rules and practices which delimit the very definition and possible thinking of democracy.

Fourth, if property as social and political establishes limits to what is proper, then it requires laws and norms of trespass. The definition of certain actions as criminal establishes a violation of the use of resources “rightfully” limited to some; where bodies are entitled to be (which country, which property, which premises and the like); and what one is entitled to do with one’s own body during certain times. Here, sovereign state power is enlisted to enforce relations of property beneficial to some, but not all. This regime of property also delimits forms of *impropriety*. It establishes when it is improper to transgress not only territorial or legal boundaries, but also behavioural boundaries.

Fifth, while property legalizes exclusion, it always entails both recognition and violence. Recognition may be legally enforced but it relies upon the acceptance of established regimes of property. In certain cases the legal, the social and the violent are all central to the maintenance of property. Exclusivity requires violence and necessitates the exercise of force over and against others. In this sense property rights verge on rights to exercise violence.

Sixth, there are certain subjects of property. In capitalist societies rights of property are not first and foremost the rights of individuals: they are conferred upon individuals as persons, but more often are the exclusive privilege, secured by legal and violent fiat, of fictive persons, corporations, which are either private, public or a combination of the two. The subject of property is a legal subject, a subject whose rights are enforced by legal coda, by violence and always by exclusion. Property establishes rights of use and access, protected by law and violence, which delimit the proper. In light of this I conclude by sketching an improper politics.

Towards an improper politics

An improper politics begins with an account of the distribution and organization of property, as an articulated but contingent totality. This distribution of the proper establishes an order of property, as well as defining forms of propriety. Delimiting the proper, maintaining property and specifying propriety all point towards a politics of property. The forms of violation vary in each case, but all entail trespass,⁶ theft or violation of what is deemed proper to the self. I thus defend the claim that democracy is improper, and that intrinsic to the definition of democratic politics is both the improper and impropriety.

One of the less noted aspects of Rancière’s defence of democracy is the claim that impropriety is at its heart. “Democracy... is the product of an operation, at once inaugural and indefinitely renewed that aims to ward off an impropriety pertaining to the very principle of politics” (Rancière, 2007, p. 37).

For Rancière democracy is the very principle of politics. It is improper from the point of view of any established ordering of politics, or, to use his term, the police. Democracy cannot appeal to any natural principle to justify rule. Rather, it undermines all attempts at establishing foundational principles of natural government. It is premised upon the simple assumption that all are equal regardless

of qualification, of competence or of profession. Democracy thus “disjoins entitlements to govern” (Rancière, 2007, p. 39) and is founded on disagreement, rather than consensus. Up to this point Rancière’s account differs little from a broadly post-Marxist account, which recognizes that no established consensus is stable, and that a counter hegemony is always possible.

However, Rancière is not content to remain with this formal account of impropriety. He maintains that the unwritten rule which fashions critiques of democracy is the defence of wealth. Democracy means two things:

First, it meant the unavoidability of conflict, the war of the poor against the rich... . And so the forms of good, peaceful government are, in fact, a form of that war... . Secondly... the government of the poor doesn't mean...the government of the lower class; it means the government of those who are nothing—the government of those who have no title, no qualification for ruling. There are a number of powers, based on birth, knowledge, virtue, wealth, and there is the last form, the government based on nothing, nothing but the lack of basis, the lack of an entitlement or qualification for ruling. This means, properly, anarchy—the absence of any *arche*, meaning any principle leading from the essence of the common to the forms of the community. (Rancière, 2003, p. 11)

Rancière links the critique of wealth and power with the improper, that which has no place. The impropriety he defends pertains to thinking what is intrinsic to the demos, a thinking at odds with what is. This is not merely a weakened version of Marxism. The proletariat, for Marx, hold a privileged position in revolutionary struggle because they embody the very principle of capitalist society, as the becoming subject-object of history. The proletariat are the proper of democracy, because the only property they have is their labour. By contrast, the lumpenproletariat is deemed by Marx a class incapable of achieving class consciousness, a flotsam not engaged in production and thus marginal to any form of revolutionary struggle. As Marx and Engels write of the lumpen proletariat in *The Communist Manifesto*:

The “dangerous class,” the social scum, that passively rotting mass thrown off by the lowest layers of the old society, may, here and there, be swept into the movement by a proletarian revolution; its conditions of life, however, prepare it far more for the part of a bribed tool of reactionary intrigue. (Marx and Engels, 1985, p. 92)

Marx and Engels are wary of the people of no property, in part because they have no privileged knowledge of the dynamics of capitalist production. Rancière’s account is more radical than this. Democracy is an impropriety which disrupts consensus in attacking unequal wealth in all of its forms. This approach is in direct contrast with the deliberative democrat’s founding assumption, namely that there is a proper, a moment of perfect propriety, laid claim to in the very act of communicating. Yet the analysis of the relations between production and reproduction first developed by Marx demand a politics which is improper.

Where Rancière’s account fails to develop an analysis which ties together production, reproduction, property and dissensus, Marx insists upon a politics of property which disciplines dissensus in linking it to the actions of a privileged class, those who are able to sell their labour. Thus an improper politics must begin

with the regime of property dominant now. This regime is a structured totality, always contingent, which reifies certain behaviours, and delimits the forms of the proper. Dissensus begins with those who break the bounds of the proper, and is often located at the margins where those bounds are maintained. The delineation of a regime of property as a critical theoretical exercise both specifies its borders, and indicates the moments of trespass and transgression which suggest other ways of being, which fashion another world. Such an improper account of democratic theory is no longer Marxist in any strict sense, but it begins with the question bequeathed to us by Marx: the question of who owns and controls the means whereby we reproduce our lives, and how might we disrupt this account of the proper.

Notes

- ¹ I have written about this in chapter 4 of *Ethics and Politics in Contemporary Theory*.
- ² Connolly, 1995; Laclau, 1990; and Tonder and Thomassen, 2005 all provide good overviews of Radical democratic theories.
- ³ This all too brief discussion of pluralism hints at a theoretical problem which I have no intention of exploring here. Radical democrats are very quick to confuse the ontological premises of their arguments with either a quasi-empirical description of the world or normative prescriptions for the world. An ontology implicitly committed to the view that all is possible in all possible worlds should not, however, be confused with the limited ways in which this infinity may find itself presented in actual worlds. These arguments all too quickly become the sneering aside of the cynic who glibly notes that nothing is ultimately true anyway, deriding the passionate commitments of political subjects.
- ⁴ See for example Habermas, *The Future of Human Nature*.
- ⁵ See for this the discussion of class in the first two chapters of Laclau's *Hegemony and Socialist Strategy*. Laclau contends that the relations of production are not in themselves antagonistic, and because the definition of the political is that it is antagonistic, the relations of production are deemed but one area of possible politicization.
- ⁶ The Latin word "passus" means step. The origin of the word trespass, is to take a step into another's domain. However, there is another etymology for "passus," as the perfect past participle of "patior," meaning to suffer. This etymological uncertainty better captures what trespass in fact entails.

References

- Aristotle. (2000). *The Politics*. London: Penguin Classics.
- Balibar, E. (2002). Possessive individualism reversed: From Locke to Derrida. *Constellations*, 9(3), 299-317.
- Cohen, G. A. (1985). Nozick on appropriation. *New Left Review*, 150, 89-105.
- Cohen, G. A. (1995). *Self ownership, freedom, and equality*. Cambridge: Cambridge University Press.
- Connolly, W. (1995). *The ethos of pluralization*. Minneapolis, MN: University of Minnesota Press.
- Devenney, M. (2004). *Ethics and politics in contemporary theory*. London: Routledge.
- Devenney, M. (2009). The limits of communicative rationality and deliberative democracy. *Journal of Power*, 2(1), 137-154.
- Gutmann, A., & Thompson, D. (2004). *Why deliberative democracy*. Princeton, NJ: Princeton University Press.
- Habermas, J. (1996). *Between facts and norms*. Cambridge: Polity.
- Habermas, J. (2003). *The future of human nature*. Cambridge: Polity.
- Laclau, E. (2000). Identity and hegemony. In J. Butler, E. Laclau, & S. Zizek (Eds.), *Contingency, hegemony, universality* (pp. 44-89). London: Verso.
- Locke, J. (1988). *Two treatises on government*. Cambridge: Cambridge University Press.

- Marx, K., & Engels, F. (1985). *The communist manifesto*. London; Penguin Classics.
- Norval, A. (2007). *Aversive democracy*. Cambridge: Cambridge University Press.
- Nozick, R. (1975). *Anarchy, state, and utopia*. New York, NY: Basic Books.
- Plutarch. *Plutarch's lives*. Retrieved from http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Lives/Solon*.html
- Poulantzas, N. (1978). *Classes in contemporary capitalism*. London: Verso.
- Rancière, J. (2003). Comments and responses. *Theory and Event*, 6(4).
- Rancière, J. (2007). *Hatred of democracy*. London, Verso.
- Rousseau, J. J. (1754). *Discourse on the origin of inequality*. Retrieved from <http://www.constitution.org/jjr/ineq.htm>.
- Tonder, L., & Thomassen, L. (Eds.). (2005). *Radical democracy: Politics between abundance and lack*. Manchester: Manchester University Press.