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International Law and Property Law: Missing Connections?

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What is private property today?

Abstract

I will reflect on the following propositions:

Marx wrote in 1843 “The Romans were the first to have formulated the right of private property, i.e., the abstract right, the private right, the right of the abstract person. The Roman conception of private right is private right in its classical formulation.” Bringing the matter up to date, he also wrote: “The right of man to private property is, therefore, the right to enjoy one’s property and to dispose of it at one’s discretion (*à son gré*), without regard to other men, independently of society, the right of self-interest. This individual liberty and its application form the basis of civil society. It makes every man see in other men not the realization of his own freedom, but the *barrier* to it.”

By 1848 he and Engels were quite clear that they were calling for the abolition not of “individual property” but of “bourgeois property”, that is, capital. In other words, the power of capital to subjugate the labour of others.

From one point of view what we see today is as in the 19<sup>th</sup> century the raging hunger of capital for new opportunities to valorise itself. Marx wrote: “Hitherto, capital has been regarded from its material side as a *simple production process*. But, from the side of its formal specificity, this process is a *process of self-valorisation*. Self-valorisation includes preservation of the prior value, as well as its multiplication.” (*Grundrisse*, Penguin edition, p.310-311). That is, Capital as insatiable vampire.

Alain Badiou has recently written (2009): “... we are closer to a set of problems already examined in the 19th century than we are to the grand history of the revolutions of the 20th century. Just as after 1840, we are now confronted to absolutely cynical capitalists, more and more inspired by the idea that only wealth counts, that the poor are just lazy, that the Africans are backward and that the future, with no discernible limit, belongs to the ‘civilized bourgeoisies’ of the western world. All kinds of phenomena from the 19th century reappear: extraordinarily extended zones of misery within rich countries; inequalities forever growing; a radical cut between the people of the working classes, or the unemployed, and the middle classes; the complete dissolution of political power in the service of property and capitalist profit; the disorganization of revolutionaries; the nihilist despair of large portions of the youth; the servility of a large majority of intellectuals; and the experimental activity of some groups in quest of the contemporary means to establish the communist hypothesis. All these characteristics are very close to the political situation which was dominant in Europe in the middle of the 19th Century.”

As to private property in general, he also wrote (2008) in the context of inheritance: “It seems to me we might begin by considering private property as representation of *das Ding*, as an element connected powerfully to the superego. There is something very superegoic in all of this... The question of inheritance is one of death. The deceased is represented by his property. The taking place of the dead subject in the question of inheritance is his property. This taking of the place of the dead subject, his property, for the ensemble of inheritors, will be very much caught up in drive [sera très pulsionnelle]... Because if we leave to people of today the delirious possibility that they want (that they be able to transmit their property to whomever they want, under the conditions they want, etc.), they are going to exercise... a tyranny of the present over the future, a tyranny that people may come to believe is in fact catastrophic.”

For Badiou, then: “That if competition, ‘free market,’ the search for little jouissances and the walls that protect you from the desire of the weak are the alpha and omega of all existence, collective or private, the human beast is not worth a scrap.”