

Property as a Fiduciary Relationship and the Extension of Economic Democracy

What Role for Unconditional Basic Income?

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Abstract: During the last two centuries, property understood as an exclusive and unlimited dominion became common sense. Before, the idea of property as a fiduciary relationship, which is still present in contemporary social constitutionalism, was closely linked to the view that the exercise of freedom entails the capacity to shape those property rights that channel socioeconomic life. Today, new ways to operationalise such an approach must be found. This article explores the scope of ‘direct strategies’ (the state as proprietor, democratically limited forms of private property, and common property) and ‘indirect strategies’ (the distribution of ‘social power’ through the introduction of unconditional public policy schemes such as basic income) in the recovery of the idea and the practice of collective fiduciary control over the economic realm.

Keywords: bargaining power, basic income, economic democracy, fiduciary relationships, inalienable rights, nationalisation, property, social power

The Commonness of the Absolutist Interpretive Conjuncture of Property

One of the main problems facing the study of philosophical and political traditions concerns the plausibility of their interpretations



of past social, economic and legal realities. Sometimes there is evidence that the identification of a particular tradition was the result of a fallacious interpretation or historical and analytical bias, although this does not preclude its scholarly acceptance. Thus, interpretive conjunctures matter and contribute to shaping the common sense of an entire epoch.¹

Perhaps one of the most striking examples of this is that, over the last two centuries, property understood as an exclusive and unlimited domain became common sense. It was – and is – common sense that became inextricably associated with liberalism. The widespread acceptance from the eighteenth century onwards of the assumption that property is tantamount to absolute dominion over things obscured the complexity of previously existing notions of property and hindered the ability to imagine institutional solutions that were not based on such an exclusive and excluding conception of property.

Surely, the most relevant conception that was buried under the absolutist conception of property was the notion that property should be understood and institutionalised as a public good of all humans, which, under certain conditions, is entrusted to private owners, or to the state, or managed as commons. That is, a fiduciary conception of property that can be found in the origin of Medieval commons or in the Renaissance republics and regained its political presence with the rise of social constitutionalism in the early twentieth century (Mundó 2021).

The idea of property as a fiduciary relationship, which is still present in contemporary democratic-republican social constitutionalism, opened the doors to the view that the exercise of individual and collective freedom entails the capacity to shape all those property rights that channel the bulk of socioeconomic life, without this implying the cancellation of private initiative. Today, new ways to conceive of and operationalise economic democracy – here understood as the collective control over the ‘common-wealth’² – must be found. This article explores the scope of ‘direct strategies’ (the state as proprietor, democratically limited forms of private property, and common property) and ‘indirect strategies’ (the distribution of ‘social power’ through the introduction of unconditional public policy schemes such as basic income) in the making of polities where the idea and the practice of collective fiduciary control

over economic life regains political centrality and thus paves the way towards a democratic understanding of the nationalisation of the economic realm.

Against Common Sense: The Ideology of Property Understood as Exclusive and Unlimited Dominion

The history of the notion of property is diverse and is full of examples of realities that are the result of the overlap and interweaving of different legal devices and changing historical dynamics. Property justified by continued occupation (acquisitive prescription), the right of enjoying all the advantages derivable from the use of something that belongs to another (usufruct) or delegated property to circumvent the limitations on its transmission and to mitigate tax obligations (i.e., English uses) are but examples of a plurality of practices and regulations that are not adequately captured by a one-dimensional categorisation.

However, in the last two centuries the rhetoric of proprietary absolutism has only spread and consolidated (Mundó et al. 2022). It is an ideology that often carelessly intermingles the different historical sources to converge in a property modality understood as an absolute individual right, with a complete legal guarantee of private possession, disposition, and alienation, which would constitute the necessary condition for individual happiness, self-government, political stability, and economic prosperity (Gordon 1995: 95). Imbued with these heritages, perhaps two of the most influential sources of the spread of property understood as something absolute have been the Anglo-Saxon conception of unlimited property expressed by William Blackstone and unlimited property as embodied in the Napoleonic Civil Code.

The Unlimited Property Myth

For a long time, in Anglo-Saxon academic handbooks on the subject of ‘property’, it was customary to begin by quoting the words of William Blackstone in his *Commentaries on the Laws of England* (1765–1769), where the author describes the allegedly absolute rights associated with property: There is nothing which so generally strikes the imagination, and engages the affections of mankind, as

the right of property; or that sole and despotic dominion which one man exercises over the external things of the world, in total exclusion of any other individual in the universe (Blackstone 1765–1769, book 2). Blackstone’s classical statement about the ‘exclusive’ and ‘despotic’ dominion entailed by property rights has proved to be very attractive for those who believe they can do whatever they please with their property. They can use it at will, sell it to whomever they want, and, among many other things, they can do something fundamental: exclude others from its use. Interestingly, Blackstone already warned us about the inconvenience of examining too closely the origins of property rights. If we were too preoccupied with this matter, he said, we might discover an illicit origin and might have to cope with the uneasy certainty that our right to possession largely depended on the dispossession of others. Thus, the Achilles’ heel of property understood as absolute, excluding, despotic dominion over one thing might be its illegitimate origin, the fact that it derives from dispossession through violence, conquest, robbery, and extortion:

Pleased as we are with the possession, we seem afraid to look back to the means by which it was acquired, as if fearful of some element in our title; or at best we rest satisfied with the decision of the laws in our favour, without examining the reason or authority upon which those laws have been built. . . . These enquiries, it must be owed, would be useless and even troublesome in common life. It is well if the mass of mankind will obey the laws when made, without scrutinizing too nicely into reasons of making them (Blackstone 1765–1769, book 2).

However, actual legal practice was far richer and more diverse than we may be led to believe by the notion that we have inherited from Blackstone.³ Indeed, many passages in his *Commentaries* were just illustrations of how the legal practice in matters of property refuted any absolute notion of it (Alschuler 1996; Burns 1985: 81–82, Gordon 1995: 95–96; Rose 1999; Whelan 1980). There existed many legal regulations concerning property rights that seriously contradict our commonly accepted assumptions, because property was subject to multiple limitations, such as the right that allowed one person to walk through someone else’s property and, thus, took such property as non-absolute, or the possibility of preventing a neighbour from erecting certain kinds of buildings on the land that

he owned (the so-called restrictive covenant or servitude). Another example of non-absolute property is when Blackstone himself argued that an owner did not have the right to set fire to his own house, even if he or she did not damage any third party's property (Blackstone 1765–1769, book 4). Also, he was aware of the widespread existence of common property (be it in the form of jointly held property, or collective sharecropping or tenancy) and of communal rights over nominally private land (Blackstone 1765–1769, book 2). In practice, property rights were not absolute: they were restricted by, and existed in conjunction with, other rights. As Robert Gordon (1995: 96) states on sound grounds:

What strikes the backward-looking observer as curious is simply this: that in the midst of such a lush flowering of absolute dominion talk in theoretical and political discourse, English legal doctrines should contain so very few plausible instances of absolute dominion rights. Moreover, it is curious that English and colonial social practices contained so many property relations that actually seemed to traduce the ideal of absolute individual rights. The real building-blocks of basic eighteenth-century social and economic institutions were not absolute dominion rights but, instead, property rights fragmented and split among many holders; property rights held and managed collectively by many owners; property relations of dependence and subordination; property subject to arbitrary and discretionary direction or destruction at the will of others; property surrounded by restriction on use and alienation; property qualified and regulated for communal or state purposes; property destabilized by fluctuating and conflicting regimes of legal regulation. Blackstone's *Commentaries* themselves are a compendious catalogue of 'relative' and qualified property relations.

Insisting on this idea, David Schorr holds that: 'Not only did "absolute" ownership not exist in England, it was hardly discussed even as a mythological ideal type' (Schorr 2009: 107). Moreover, in the late eighteenth century, property in contracts deviated from absolute dominion ideology in much of the prevalent forms of commercial property: paper money, shares of the public debt, certificates of the stock in land or insurance companies, mortgages on land or inventory, bills of exchange, promissory notes, accounts receivable, and so on (Gordon 1995: 98–99).

Despite everything, Blackstone's exclusivist notion of property nourished the social and political imagination of the Anglo-Saxon world throughout the nineteenth and twentieth centuries, a fact of

which many examples can be found.⁴ But it has been in recent decades when this exclusivist notion has become more prominent in academic writing, a fact that has completely obscured the complexity and diversity of Blackstone's view of what the common sense concerning property was.⁵

A Not-So-Absolute Right

In European continental – and particularly French – law, two great opposite traditions concerning land appropriation exist: simultaneous properties and absolute property. In the system of 'simultaneous properties' (as it was called in the eighteenth century by the magistrates at the Nancy court of appeal), based purely on custom and actuality, the same asset sustains a plurality of different ownerships or tenures, each of them giving rise to a different utility. Multiple owners cohabit on the same land. Since each of them derives some benefit from a particular aspect of the property, none of them own it in the most absolute way (Demélas and Vivier 2003; Vivier 1998).

From the French Revolution on, a new kind of appropriation becomes established, one whose theoretical elaboration had long been brewing based on the Roman legal model: exclusive property. According to this type of property, which has rigorous but simple legal contours, all the generated utilities are reunited in the hands of a single individual. It is he who is the only 'proprietor'. His property rights encompass all aspects of the portion of territory under his dominion and all its derivations. Exclusivism triumphs with the French Revolution, gradually consolidates during the nineteenth century, and has a major impact in the twentieth century. However, the English translation of the conception of property in Roman law (*dominium*) as absolute property should be taken with caution.⁶ Although the various components of what today constitutes property regulation were developed in Rome (*ius utendi, fruendi, abutendi*), they were never theorised as absolute rights in the sense that they supposedly derive from the French Civil Code of 1804. Any reflection on this only made sense in contrast to other rights that granted limited powers of economic use. In general, in Roman law (perhaps except for the compilers of the Byzantine era) generalisations such as those made by the drafters of the Napoleonic Code were avoided. The reality was that divided property and simultaneous properties survived until the end of the eighteenth century,

when feudal burdens on property were extinguished, thus appearing to be a unitary and absolute concept that displaced the notion of plural property.

With this, the theory of the *plura dominia* (the variety of modalities of partial use, temporarily subjected to burdens) is abandoned with the integration of the *iura in re* (rights that are exercised over the property itself) in the property. From this moment on, property is conceived as a pre-existing and conceptually constant right, which contains the ability of becoming *iura in re*. The configuration of the new unitary property right integrated elements of rationalist natural law, the economic conception of the Physiocrats, and other French legal elaborations of the seventeenth and eighteenth centuries, leading to four fundamental principles: subjective right, autonomy of the will, freedom of the contract, and the recognition of civil personality in every individual (Mundó et al. 2022). In the Civil Code, property was consolidated as a subjective right, with the formal features of being absolute, exclusive, and perpetual. According to the well-known Article 544: ‘Property is the right to enjoy and dispose of things in the most absolute way’. As Rafe Blaufarb (2016) asserts, the autonomisation of the civil-private domain with respect to the political-public domain that is articulated after the French Revolution allows the extension of a conception of property that enables an absolute notion of property. However, the literal interpretation of this encoding has often obscured two fundamental aspects. First, the notion of ‘absolute’ property has, above all, a clear sense of rupture with the simultaneous properties and feudal burdens associated with property prior to the French Revolution. Second, the actual legal application of property law was much more complex and plural than mere unitary legal abstraction might lead us to think. In fact, many of these literal interpretations were quickly refuted by the facts: the evolution of economic conditions, the emergence of labour movements and the demand for the constitutionalisation of social rights led to the incorporation of actual limitations of all kinds to the rhetoric of proprietary absolutism.⁷

In the same way that happens with an exacerbated interpretation of Roman *dominium*, the concept ‘absolute’ in the Napoleonic Code in no way means ‘unlimited’, since no society could tolerate the application of such a notion of property. However, this absolutist way of understanding property turned out to be so open and

expansive that it made it very difficult to distinguish between the exercise of powers that derive from property and the exercise of freedom inherent to any citizen. In this sense, the property relative to dominion becomes freedom to act on the physical world, legally covered with a legitimate exclusivity. Hence, the interpretation according to which the Napoleonic civil codification facilitated the spread of the ideology of proprietary absolutism in continental Europe is only partially correct (Congost 2003). Even when property is predicated ‘in the most absolute way’, the democratic state (understood as the fiduciary political power entrusted by the free people) retains the regulatory powers, in such a way as to guarantee reciprocal freedom among all citizens, thus being able to interfere in the implementation of property rights through limitations or prohibitions (as stated in Articles 4 and 5 of the *Déclaration des Droits de l’Homme et du Citoyen* and in successive constitutional provisos).⁸

Inalienable Rights and the Fiduciary Constitutionalisation of Property: Overturning the Absolutist Common Sense of Property Rights

As we have shown, the idea-force that underlies the notion of property, both in the English domain from the eighteenth century and in the post-revolutionary French Civil Code, projects the representation of an exclusive and excluding, apparently unlimited right. But, as we have argued, this is only part of the story. It is necessary to highlight, on the one hand, the various examples of social and economic practices (and of jurisprudential decisions) that reveal a more complex and plural reality of the development of property rights in the real world. And, on the other, it is essential to make visible once again that the notion of property contained in much of contemporary democratic-republican constitutionalism has an inherently social dimension (Alexander 2006).

In this second sense, the constitutionalisation of the social function of property is one of the fundamental manifestations of the constitutionalisation of private law. In the past, the codification of private law norms into autonomous codes (particularly, civil and commercial codes) enabled to shield areas of private economic

activity against ‘disruptive’ interference from the state, thus creating islands of seemingly unlimited power for private owners. By avoiding the heterointegration of the legal system with the *ius commune* and through its regulatory self-sufficiency, the private law codifications had favoured an economic counter-power to the political power, since any legislative intervention that interfered with the ‘free’ economic concurrence of the social forces was understood as illegitimate. At most, using Bacon’s famous dictum, the rest of the public legal system served as custodian of private law (*tanquam custos iuri privato*).

However, this legal-institutional device designed to shield an autonomous sphere from private economic interests turned out to be completely incapable of incorporating the demands of the working classes during the second half of the nineteenth and early twentieth centuries (once the pace of criminal repression of workers was exhausted). The failure of the idea of a spontaneous social order based on a supposed fundamental economic freedom crystallises in a new way of conceiving constitutions, which will not only clamp down on state powers, but will also set out to restrain the private ones. Now, the protection of the rights and freedoms of the people is no longer understood as a permanent tension between the *ex-ante* shielding of private economic interests against the timid *ex-post* intervention of the public (state) powers but is conceived as an architecture of constitutionalised fiduciary limitation of (all) powers (Mundó et al. 2022).

According to the fiduciary relational scheme, the promotion of the public good implies the limitation of state public powers, but also, and very notably, of private economic powers, which become conceptually linked to their social function. Thus, the core conception of property is no longer limited from the outside but is conceived as inherently limited based on inalienable and equal rights of citizenship (Mundó et al. 2022). As is well known, we can find an illustrative historical example of a fiduciary re-foundation of property rights in the Mexican Revolutionary Constitution of 1917, which in Article 27 establishes that the ownership of the lands and waters ‘within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property’. In turn, ‘[t]he Nation shall at all times have the right to

impose on private property such limitations as the public interest may demand, as well as the right to regulate the utilisation of natural resources which are susceptible of appropriation, in order to conserve them and to ensure a most equitable distribution'. And it concludes, for such matters 'ownership by the Nation is inalienable and imprescriptible'.

Economic Democracy as Collective Control over the 'Common-Wealth'

Let us move now one step forward. If, as it has been said, the normative aim was and still is 'the protection of the rights and freedoms of the people' (in other words, the protection of the democratic nature of social and economic relations) through 'an architecture of constitutionalised fiduciary limitation of (all) powers', it must be immediately added that the perspective of property as a fiduciary relationship includes, but goes beyond, the act of collectively controlling concrete isolated resources. In effect, the understanding of property as a fiduciary relationship should not fall in any sort of 'fetishism of the appropriate resource' that would lead us to 'merely' check and command what is being done exactly with resource A, B, or C. On the contrary, the understanding of property as a fiduciary relationship places the citizenry in the situation in which, by checking and commanding what proprietors exactly do with resource A, B, or C, it enables the collective capacity to control and shape the entire social and economic space where human communities operate.

In effect, there are many decisions that should be made in common within a democratic polity: which activities are to be carried out? In other words: what is to be produced? Through which concrete practices? Through which ways to associate with others (we know well a myriad of possibilities exist)? To put it bluntly: the fiduciary conception of property is not only about making sure that the wetland will not be dried by its proprietors for them to build and industrial park, but also (even mainly) about guaranteeing all citizens the right to setup institutional mechanisms for them to shape and manage all forms of production, reproduction, consumption, leisure, entrepreneurship, and community involvement. In the end,

we are echoing here the old Polanyian project aimed at finding ways to embed the economy and much of social life into societal democratic decision-making processes (Polanyi 1944). Which of these concrete ‘ways’ could end up being under contemporary circumstances and whether they may acquire a ‘direct’ or an ‘indirect’ nature is something that will be explored in the fifth section of this article.

In any case, the fiduciary conception of property urges us to introduce legal and institutional devices to universalise economic democracy, here understood as the fourfold capacity for individuals and groups (1) to decide what social relations they wish to ‘enter’ in order to perform activities (very primarily, economic activity or, in other words, paid and unpaid work); (2) to determine the (im)material nature of the space where they decide to stay and work, which requires the capacity of having a ‘voice’ that is effectively listened to; (3) to opt for ‘exiting’ this space in case its nature and functioning go against what they wish for their lives; and (4) in case they opt for leaving, to resort to an outside-the-previous-space (outside-the-previous-workplace) offering tools for second and subsequent opportunities, that is, to effectively ‘restart’ their (re)productive lives in other terms and conditions (Casassas 2016).⁹ In sum, such (economic) democracy that is so closely linked to the many possible forms of property as a fiduciary relationship consists in, to use Harrington’s motto (Harrington 1992), doing and undoing social relations ‘of one’s own’, be it individually and/or collectively.

But where does the legitimacy of the very act of collectively controlling socioeconomic life emanate from? A crucial aspect of the fiduciary conception of property is the underlying understanding of wealth as a social product. As contemporarily stressed by economist Mariana Mazzucato (2018), wealth must be seen as the (im)material result of common endeavours. In effect, goods and services are only possible insofar as they are part of dense nets of knowledge and information flows and collectively made material spaces and devices. This means that wealth does not come from individual merit (or, at least, it only does so very partially), but it is a heritage from past activities and the result of many forms of alien yet widely intertwined efforts.¹⁰ To put it succinctly, goods and services derive from some of (or all) the following realities: (1) a value that proprietors of the means of production extract from

(the activity of) the workers (in Marxian terms, the ‘surplus value’); (2) high and intense doses of care work that constitute a necessary condition for all other kinds of work (Federici 2020); (3) private heritages; (4) the societal heritage of all the knowledge, tools and infrastructures that have been accumulated over more than 150,000 years of history of our species; and (5) governmental help to private owners of big firms, who often benefit from tax credits, the public mutualisation of risk and losses (Varoufakis 2011), and the privatisation of public investment in basic science and technological innovation (Mazzucato 2018).

If so, there is need for a collective decision and control over how property rights and productive, reproductive, and distributive arrangements and environments are shaped, and this is what the institutions and legal devices in which the fiduciary conception of property concretise aim at offering. In the end, we are not far from the old emancipatory project of ‘collectively controlling the means of production’ (and reproduction, one must add today), in the broadest sense of the terms ‘production’ and ‘reproduction’, which includes a huge myriad of activities and processes.

How to Operationalise the Fiduciary Constitutionalisation of Property?

Direct Strategies: The State, the Law, the Commons

As stated before, when it comes to giving a concrete legal and institutional shape to the conception of property as a fiduciary relationship, one must escape from the kind of ‘fetishism of the concrete resource’ that would isolate us in the protection and surveillance of what is being done with concrete resource A, B, or C only. But needless to say, collectively controlling what humans do with concrete resource A, B, or C is still important. This requires that political action take place in order to bridle (or even to bar and extirpate) the activity of those actors who might make potentially harmful use of resource A, B, or C by restricting their opportunity sets and making sure that any kind of use of the resource be appropriate in terms of the protection of the common good, that is, in terms of the satisfaction of the individual and collective needs and the maintenance and reproduction of the resource throughout

generations. In order to achieve this goal, three sets of ‘direct strategies’ are at our disposal.

First, states may become the legal proprietors of the resource in order to preserve it, take care of it and guarantee that present and future generations (will) have the right to universally access it. When the Cochabamba Water War and gas conflict led to the appropriation of these resources by the Bolivian State, it could be witnessed that large communities of people may use state apparatuses to safeguard and consolidate the collective capacity to co-determine how the resources was to be used. Of course, in these cases relevant doses of bottom-up control of state action and accountability are needed in order to make sure that public property does not degenerate into parasitic bureaucratised statism – hence the importance of welcoming and making good use of all ‘creative tensions’ between social movements and political institutions to guarantee that such institutions, which must be seen as a mere ‘agent’, remain nothing but an instrument of their ‘principal’, that is, the sovereign people.¹¹

Second, the legal enforcement of the ‘social function’ of private property plays a crucial role too. As has been seen in the second and third sections, there is a longstanding tradition with important roots within republican theory and practice that upholds the idea that private property (and any profits deriving from it) is legitimate insofar as it is coordinated with the observance of the duty – to put it again in the terms used by the 1917 Mexican Revolutionary Constitution – to ‘ensure a most equitable distribution of public wealth’. Such ‘social constitutionalism’ is not an anecdotal historical rarity, but a common-sense intellectual and political stream that permeates the bulk of constitutions that were sanctioned in the aftermath of World War II in Western Europe and even throughout the Cold War (Domènech 2004; Pisarello 2011). In 1978, Article 128 of the Spanish Constitution reads that ‘the entire wealth of the country in its different forms, irrespective of ownership, shall be subordinated to the general interest. . . . State intervention in companies may be imposed when the public interest so demands’. And let us move to non-Western territories: Article 23, sections 2 and 3 of the 1948 Korean Constitution, with Amendments thought 1987, states that ‘the exercise of property rights shall conform to the public welfare. Expropriation, use, or restriction of private property from public

necessity and compensation therefore are governed by law'. For reasons that have already been explored, it seems that restricted, limited private property was seen as a necessity within a pre-neoliberal world that aimed at avoiding freedom-limiting economic practices that had recently led to extraordinary societal catastrophes.

Third and finally, an appropriate (fiduciary) use of the resource may also be 'directly' achieved through various forms of 'commoning', that is, through the communal appropriation and management of a certain good or set of (im)material goods. As pointed out by Benjamin Coriat (2015), a distinction should be made between the 'common good' (i.e., the concrete resource, like a set of buildings, a set of vegetable gardens, a fishery, water, gas, a certain source of knowledge, etc.) and the 'common', which includes the common good itself but goes beyond it, as it encompasses a wide 'bundle of rights' (Schlager and Ostrom 1992) that is collectively determined by the community and through which such community makes sovereign decisions regarding the access to the resource (who, when, how, under which conditions, etc.), its shaping and management throughout time, and, finally, its possible closure and/or alienation. Collectively giving rise to these bundles of rights and regulations that 'govern the commons' (Ostrom 1990) constitutes an obvious concretisation of the understanding of property as something that emanates from fiduciary commitments.

Indirect Strategies: Unconditional Basic Income as 'Social Power'

This article aims at giving a prominent space to the analysis of unconditional public policy schemes as 'indirect strategies' to operationalise the fiduciary constitutionalisation of property. In particular, it wonders whether such fiduciary constitutionalisation of property might be also favoured by the presence of basic income, that is, 'a periodic cash payment unconditionally delivered to all on an individual basis, without means-test or work requirement'.¹²

The idea is quite straightforward. If individuals and groups were empowered with a wide set of unconditional resources including an amount of cash set (at least) at the level of the poverty line, which would mean that basic needs would be met, they would be able, in every single scenario of social life, to negotiate the terms and conditions of every single productive and reproductive

space or institution they might want to give rise to and operate with, including the property rights and relations that would accompany the emergence and running of those spaces and institutions (Casassas 2018). This is why ‘pre-distributive’ policies such as basic income and a whole package of measures including in-kind benefits¹³ make the best of kind of sense, as they do not limit themselves to *ex-post* ‘assist those who lose out through accident or misfortune (although this must be done), but instead to put all citizens in a position to manage their own affairs and take part in social cooperation on a footing of mutual respect under appropriately equal conditions’ (Rawls 2001: 139).¹⁴ In effect, instead of rescuing individuals and groups once they have been dispossessed and, therefore, once they have lost their effective freedom and economic sovereignty, ‘pre-distributive’ policies reach individuals and groups *ex-ante*, which (1) helps them to keep clear of harmful social relations from the start and (2) increases their bargaining power when it comes to institute any kind of productive, reproductive and distributive arrangement.¹⁵

This is why some have seen basic income as an institutional tool universally guaranteeing a crucial ‘social power’ (Wright 2006a, 2006b) for individuals and groups to be no longer forced to accept unwanted social relations, spaces, and institutions, and to enter into all kinds of bargaining processes with real capacities to co-determine the nature of those social relations, spaces, and institutions – starting with work relations – and, if needed, exit them (Casassas 2016, 2018). Thus, the ultimate goal of these ‘indirect strategies’ is not the control over what is being done with concrete resource A, B, or C, but the universal distribution of ‘social power’ for individuals and groups to shape and control, to put it metaphorically, the whole alphabet, that is, to collectively master all possible scenarios within socioeconomic life in which social relations (including property relations) are to be instituted. As stated in the third section, the fiduciary relational scheme emphasises that the promotion of the public good implies not only the limitation of state powers, but also, and very crucially, of private economic powers. Unconditional resources such as basic income would help to equalise bargaining positions for all parties to enter economic life with real capacities to participate in the setting up of private economic environments on a freedom- and democracy-respecting basis.

But how? Through which concrete mechanisms might basic income, together with other unconditional schemes, democratise economic life? In other words, in which resources and social mechanisms does bargaining power emanating from unconditionality crystallise?¹⁶ Let us mention just three of them. First, the unconditional availability of an income stream means time to set in motion projects of one's own without freedom-limiting emergencies and anxieties – it is well known that being able to be 'patient', to wait for more favourable scenarios, has strong positive implications within long negotiation processes. Second, unconditional resources such as basic income mean proneness to take all those risks that are associated with the act of exploring and triggering individual and/or collective projects of one's own. Third and finally, basic income must also be equated with what we might call 'the right to credit', in the twofold sense of (1) the right to modest yet unceasing monetary resources to be used to boost life plans of one's own far from arbitrary interference from other parties, and (2) the right to 'social trust', that is, to second and subsequent opportunities the society as a whole decides that needs to be universally enjoyed.¹⁷

In sum, the fact that all parties would be able to negotiate the nature of social relations in better conditions does not mean that socioeconomic life would be mostly channelled through fiduciary relationships in the strictly legal sense of the word, that is, with 'principals' entrusting their 'agents' with activities the former consider important – in the end, unconditionality 'only' ensures that strong freedom-limiting imbalances in bargaining processes be redressed. But equalising bargaining positions – or, at least, making them less asymmetrical – makes it possible to generalise and iterate the twofold act of entrusting others with tasks and activities we consider important and accepting requests and assignments from others, without this meaning that either party has to accept any form of coercion or domination and renounce their right to an autonomous existence and to control the bulk of economic life. So understood, such political economy of mutual undominated assignments constitutes a true 'indirect' way to materialise the old goal of collectively controlling the shaping of social and economic institutions that, as we have seen in the third and fourth sections, underlies the understanding of property as a fiduciary relationship that needs to be constitutionalised.

‘Ownership by the Nation Is Inalienable and Imprescriptible’: The Fiduciary Conception of Property and the Nationalisation of Economic Life

Article 27 of the Mexican Revolutionary Constitution could not be clearer: ‘the ownership of the lands and waters ... is vested originally in the Nation’. This means that the people as a whole, as the sovereign body, must be entitled, without exclusions, to scrutinise and, if needed, redirect the nature and destinies of all kinds of economic activity, which includes all property rights channelling such economic activity. And this, and nothing else, is what the ‘nationalisation of economic life’, which must be seen as a fully bottom-up endeavour, consists of. In this way, it is less important to know (1) to what extent the state, a democratically driven state, plays a central role as the legal owner of resources and means of production; (2) how much room is given to private property – of course, here understood as a fiduciary mandate in which the proprietor is the trustee of the demos – in the articulation of the socioeconomic realm; (3) whether or not a wide range of forms of common property proliferates; (4) whether or not unconditional public policy schemes, such as basic income, have been widely introduced in order to universally bestow upon individuals and groups relevant degrees of bargaining power; and (5) which combination of these strategies and institutional mechanisms operates within a certain society, and in which proportions. What is really important when it comes to promoting the democratic nature of social and economic arrangements is that some of those strategies and institutional mechanisms – if not all of them – be put in place to ‘nationalise economic life’, that is, to boost people’s capacity to take control over the collective socioeconomic destinies – which by no means excludes the presence of plenty of room for private initiative, whatever forms it might take. And such ‘nationalisation of economic life’, which is the very backdrop of the fiduciary conception of property rights, is something that must remain, as the Mexican Revolutionary Constitution establishes, ‘inalienable and imprescriptible’.

It is in this sense that the lifting of the absolutist interpretive veil on property in favour of a fiduciary conception of property rights makes it possible to recover and rearticulate institutional solutions that are congruent with a democratic-republican conception of freedom.

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Notes

1. The term ‘interpretive conjuncture’ is borrowed from Desan (2004: 10). We call interpretive conjunctures those situations in which several fields of study that are separated by the dynamics of academic division of labour merge into a certain perspective; besides, very different and even politically/ideologically opposing stands meet in such a perspective, and, although this perspective may offer a misleading

historical account of the issue, it stands and falls, benefiting as it does from the diversity of support it receives (Mundó 2017a: 19–20).

2. The use of the term ‘common-wealth’ responds to the assumption, which we make in the wake of the work of critical economists like Mariana Mazzucato (2018) or Yanis Varoufakis (2016), that wealth must be understood as the aggregate result of individual and collective endeavours with long historical trajectories and multiple ramifications that merge within a public (re)productive sphere the nature and running of which goes far beyond – but does not exclude – the logics of individual effort and merit.
3. Rose (1999: 66–67) stressed that Blackstone must have been fully aware of the lack of accuracy in the definition of property (land) in the eighteenth century, and how such a reductionist notion of an ‘excluding, despotic dominion’ managed to penetrate the forthcoming ideas on property.
4. ‘Before 1900, almost all North-American lawyers had read at least part of Blackstone’s work’ (Alschuler 1996: 7). Lockmilller (1938: 176) estimated that, between 1789 and 1915, Blackstone’s *Commentaries* were quoted over 10,000 times in North American court cases.
5. According to Schorr (2008: 123, 126; emphasis added): ‘The increase of citations of “sole and despotic dominion” from the 1950s to the 1990s outstrips the increase in articles mentioning Blackstone in any context by a factor of ten. . . . It is only in recent years, and particularly in the United States, that something like a consensus has emerged that there was, in earlier times, a *Blackstonian conception of property that made no room for community*’.
6. For a cogent reflection on the falsely absolute character of the complex and diverse Roman understanding of property, see Birks (1985: 1): ‘In relation to the content, the word ‘absolute’ suggests that the Roman owner was free from restriction in relation with things which he owned, that he could do as he pleased. It also carried another overtone. It implies not only that observably his use was unrestricted but also that it was in some sense incapable of restriction. It should, however, be immediately obvious that no community could tolerate ownership literally unrestricted in its content’.
7. Michel Vidal (1976–1977) analyses in detail how the French jurisprudence of the nineteenth century establishes limitations on the omnipotence, considered excessive, of the owner over his assets, thus deforming limits that formally seemed immovable in favour of demands tending to recognise social duties and avoid abuses of power. He also details how many interpreters and commentators of the Civil Code inferred their absolutist conclusions ‘nourishing themselves with deductions from texts and combinations between texts that had no relationship whatsoever with historical reality or social reality, without direct contact with the facts, forgetting about that, linked to changing social institutions, property rights are constantly evolving’ (Vidal 1976–1977: 39). To better understand the mystified dogmatic interpretation that the Code has received since it was enacted, see also Bonnecase (1933: 208–233).
8. The proposals around the wording of the text of the *Déclaration* are well known, among which the observations of Robespierre stand out, which seek to emphasise the effective limitation of property subject to the common good (Bosc 2020; Gauthier 1992).
9. The use of the ideas of ‘exiting’ and having a ‘voice’ that is (or is not) effectively listened to – and the ideas of ‘entering’ and ‘restarting’ – has been inspired by Hirschman (1970).
10. And this is why Yanis Varoufakis (2016) suggests the introduction of a basic income under the form of a ‘social dividend’ aiming at universally distributing collectively produced wealth.

11. For a Bolivia-based analysis of the potentialities of such ‘creative tensions’ in keeping the democratic nature of the state, see García Linera (2018). For a study of the ‘principal/agent’ relationship in the democratic running of public institutions, see Domènech (2004) and Mundó (2017b).
12. This is how the definition of basic income that is offered by Basic Income Earth Network (BIEN) reads. See Basic Income Earth Network homepage, www.basicincome.org (accessed 23 April 2022).
13. This point is far from being negligible. Basic income should be a part of a wider package of measures including important social rights that concretise in (unconditional) in-kind policies such as healthcare, education, housing, care policies, and more. In the absence of these ‘other policies’, the introduction of a basic income may become a neoliberal dystopia: if social actors had a sum of money set at the poverty line, but they had to buy all those goods and services in the market, where, for instance, the price of health insurances grows with risk, basic income would vanish immediately, just as would do the kind of social (bargaining) power it is expected to bring about (Casassas and De Wispelaere 2016; Haagh 2019).
14. It should be noted here that in spite of the insistence on the importance of ‘pre-distribution’ as a core feature of the Rawlsian attempt to reconstruct the (republican) ideal of a ‘property-owning democracy’, Rawls himself was against the very idea of an unconditional pre-distributive cash transfer scheme.
15. This is especially the case when such pre-distributive policies go hand in hand with restrictions and controls of great accumulations or private economic power. In effect, even if social actors have been empowered ‘from below’, it can be extremely difficult for them to enter the social and economic spaces where their projects are due to unfold if such social and economic spaces – markets, for instance – become the domain of the few. Hence the importance of political control over great accumulations of private economic power, as they are likely to come with the introduction of entry barriers and other freedom-limiting predatory practices. In this sense, the ‘ground’ – basic income and in-kind benefits – must go along with a political and institutional analysis and design of possible forms of ‘ceilings’ (Casassas and De Wispelaere 2016).
16. A systematic analysis of the determining factors of bargaining power that has inspired our threefold answer to this question can be found in Elster (2007).
17. We are indebted to Michael Krätke for very inspiring conversations on this point.

References

- Alexander, G. S. 2006. *The Global Debate over Constitutional Property*. Chicago: The University of Chicago Press.
- Alschuler, A. W. 1996. ‘Rediscovering Blackstone’, *University of Pennsylvania Law Review* 145 (1): 1–55.
- Birks, P. 1985. ‘The Roman Law Concept of Dominium and the Idea of Absolute Ownership’, *Acta Juridica* 1: 1–37.
- Blackstone, W. 1765–1769. *Commentaries on the Laws of England*. Oxford: Clarendon Press.
- Blaufarb, R. 2016. *The Great Demarcation: The French Revolution and the Invention of Modern Property*. Oxford: Oxford University Press.
- Bonnecase, J. 1933. *La pensée juridique française de 1804 à l’heure présente*:

- ses variations et ses traits essentiels* [French legal thought from 1804 to the present time: Its variations and essential features]. Bordeaux: Delmas.
- Bosc, Y. 2020. ‘Représentants, mandataires et commettants: Robespierre, la relation fiduciaire et le droit à l’existence matériel et politique’ [Representatives, agents and principals: Robespierre, the fiduciary relationship and the material and political right to existence], *Daimon* 81: 67–82.
- Burns, R. P. 1985. ‘Blackstone Theory of the “Absolute” Rights of Property’, *University of Cincinnati Law Review* 54 (1): 67–86.
- Casassas, D. 2016. ‘Economic Sovereignty as the Democratization of Work: The Role of Basic Income’, *Basic Income Studies* 11 (1): 1–15.
- Casassas, D. 2018. *Libertad incondicional. La renta básica en la revolución democrática* [Unconditional freedom. Basic income in the democratic revolution]. Barcelona: Paidós.
- Casassas, D. and J. De Wispelaere. 2016. ‘Republicanism and the Political Economy of Democracy’, *European Journal of Social Theory* 19 (2): 283–300.
- Congost, R. 2003. ‘Rights and Historical Analysis: What Rights? What History?’, *Past & Present* 181: 73–106.
- Coriat, B. (ed). 2015. *Le retour des comuns. La crise de l’idéologie propriétaire* [The return of the commons. The crisis of the proprietarian ideology]. Paris: Les liens qui libèrent.
- Demélas, M-D. and N. Vivier. 2003. *Les propriétés collectives face aux attaques libérales (1750–1914): Europe occidentale et Amérique latine* [Collective properties in the face of liberal attacks (1750–1914): Western Europe and Latin America]. Rennes: Presses Universitaires de Rennes.
- Desan, S. 2004. *The Family on Trial in Revolutionary France*. Berkeley: University of California Press.
- Domènech, A. 2004. *El eclipse de la fraternidad. Una revisión republicana de la tradición socialista* [The eclipse of fraternity. A republican revision of the socialist tradition]. Barcelona: Crítica.
- Elster, J. 2007. *Explaining Social Behavior: More Nuts and Bolts for the Social Sciences*. New York: Cambridge University Press.
- Federici, S. 2020. *Revolution at Point Zero: Housework, Reproduction, and Feminist Struggle*. Oakland, CA: PM Press.
- García Linera, A. 2018. ‘Creative Tensions’. In S. Thompson, R. Barragán, X. Albó, S. Qayum and M. Goodale (eds), *The Bolivia Reader. History, Culture, Politics*. Durham, NC: Duke University Press, 662–666.
- Gauthier, F. 1992. *Triomphe et mort du droit naturel en Révolution, 1789–1795–1802* [Triumph and death of natural law in the Revolution, 1789–1795–1802]. Paris: PUF.
- Gordon, R. W. 1995. ‘Paradoxical Property’. In J. Brewer and S. Staves (eds), *Early Modern Conceptions of Property*. London: Routledge, 95–110.
- Haagh, L. 2019. *The Case for Universal Basic Income*. Cambridge: Polity Press.

- Harrington, J. (1656–1747) 1992. *The Commonwealth of Oceana and a System of Politics*, edited by J. G. A. Pocock. Cambridge: Cambridge University Press.
- Hirschman, A. O. 1970. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. Cambridge, MA: Harvard University Press.
- Lockmilller, D. 1938. *Sir William Blackstone*. Chapel Hill: University of North Carolina Press.
- Mazzucato, M. 2018. *The Value of Everything: Making and Taking in the Global Economy*. London: Penguin.
- Mundó, J. 2017a. ‘Locke’s Property in Historical Perspective: Natural Law and the Shaping of Modern Political Common Sense’, *Analele Universitatii din Craiova-Seria Filosofie* 40 (2): 19–40.
- Mundó, J. 2017b. ‘La constitución fiduciaria de la libertad política (Por qué son importantes las coyunturas interpretativas en la filosofía política)’ [The fiduciary constitution of political freedom (Why interpretive conjunctures are important in political philosophy)], *Isegoría* 57: 433–454.
- Mundó, J. 2021. ‘Del absolutismo propietario a la constitucionalización de la función social de la propiedad’ [From proprietary absolutism to the constitutionalisation of the social function of property]. In N. Sánchez-Madrid (ed), *La precariedad desde la filosofía social. Genealogías, diagnósticos y resistencias*. Madrid: Los Libros de la Catarata, 23–48.
- Mundó, J., S. Soza and N.F.M.M. Albrecht. 2022 (forthcoming). ‘Privatization and the governance of the commons’. In J. Chamberlain and A. Azmanova (eds), *Capitalism, Democracy, Socialism: Critical Debates*. New York: Springer.
- Ostrom, E. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. New York: Cambridge University Press.
- Pisarello, G. 2011. *Un largo Termidor. La ofensiva del constitucionalismo antidemocrático* [A long Termidor. The offensive of antidemocratic constitutionalism]. Madrid: Trotta.
- Polanyi, K. 1944. *The Great Transformation. The Political and Economic Origins of Our Time*. Boston: Beacon Press.
- Rawls, J. 2001. *Justice as Fairness: A Restatement*. Cambridge, MA: Belknap Press.
- Rose, C. M. 1999. ‘Canons of Property Talk, or, Blackstone’s Anxiety’. In J. Balkin (ed), *Legal Canons*. New York: New York University Press.
- Schlager, E. and E. Ostrom. 1992. ‘Property-Rights Regimes and Natural Resources: A Conceptual Analysis’, *Land Economics* 68 (3): 249–262.
- Schorr, D. B. 2009. ‘How Blackstone Became a Blackstonian’, *Theoretical Inquiries in Law* 10: 103–126.
- Varoufakis, Y. 2011. *The Global Minotaur: America, the True Origins of the Financial Crisis and the Future of the Global Economy*. London: Zed Books.
- Varoufakis, Y. 2016. ‘When Does a Society Become Social?’ Paper presented at the Future of Work Conference Convened by the Gottlieb Duttweiler Institute, Zurich, 4 May.

- Vidal, M. (1976-1977). 'La propriété dans l'école de l'exégèse en France', *Quaderni fiorentini per la storia del pensiero giuridico moderno* 5-6: 7–40.
- Vivier, N. 1998. *Propriété collective et identité communale. Les Biens Communaux en France 1750–1914* [Collective property and communal identity. Communal property in France 1750–1914]. Paris: Publications de la Sorbonne.
- Whelan, F. G. 1980. 'Property as Artifice: Hume and Blackstone', *Nomos* 22: 101–129.
- Wright, E. O. 2006a. 'Compass Points: Towards a Socialist Alternative', *New Left Review* 41: 93–124.
- Wright, E. O. 2006b. 'Basic Income as a Socialist Project', *Basic Income Studies* 1 (1): 1–11.