

The Grammar of Modernity

by Ulysse Lojkin

The latest book by Catherine Colliot-Thélène, who died in 2022, crowns a vast body of work in the field of political philosophy. She drew inspiration from a meticulous and enlightening reinterpretation of the classics in order to understand the contemporary world.

Reviewed: Catherine Colliot-Thélène, *Le commun de la liberté. Du droit de propriété au devoir d'hospitalité*, Presses Universitaires de France, 2022, 291 pp., €21.50.

Catherine Colliot-Thélène's latest book follows on from *La Démocratie sans demos*, published in 2011, which advocated a conception of democracy based on the "rights-bearing subject", as opposed to the community of sovereign people. In terms of the history of philosophy, this was a statement in favor of Kant and against Rousseau. However, in her book, the author did not consider the consequences of this political theory in the sphere of material production: is not the rights-bearing subject in fact the bourgeois subject, and is not the first of these rights the right to private property, the premise of capitalist class relations? Such is the question that informs *Le Commun de la liberté*, one of those rare books that combine the most flawless scholarship with the ambition to answer the most important questions for oneself. Her theory is announced right from the introduction: the author champions liberal individualism and assumes that it "necessarily implies the justification of private property", but contests the notion that "private property guarantees capitalist relations of production in advance" (p. 19).

Kant with Marx

What makes this presentation so stimulating is the perfectly mastered back-and-forth between the history of philosophy and the most contemporary issues. Thus, the first chapters are devoted to a parallel re-reading of two guiding references, Kant and Marx. The former is generally associated with an uncompromising defense of private property, with any intervention by the public authorities in bilateral contracts equated with harmful paternalism—the theory then being that the only legitimate destiny for the non-owners is the sale of their labor power. Marx, meanwhile, is often associated with the reduction of property rights—and indeed all subjective rights—to a mere façade for relations of production by which one class dominates another. The only prospect of emancipation would then be the revolutionary abolition of rights and the emergence of a socialist community based on direct solidarity.

The author revisits these two interpretations through a close reading of the texts. She first seeks to show that Kant's *Doctrine of Right*, when properly understood, not only asserts the right of everyone to own private property, but also that "everyone must be an owner" (p. 56). To do so, she probes the Kantian conceptual architecture and draws out the centrality of the concept of "independence", which she interprets as "the possibility given to all individuals to determine the content of their action as they see fit, without outside interference": "it is from this, and this alone, that rationally justifiable constraint can be deduced" (pp. 79-80). However central and important private property may be in the *Doctrine of Right*, it is not, therefore, a final instance; rather, it is deduced from, and must serve, the more fundamental imperative of universal independence. Kantian private property should then be interpreted as "the mode by which each individual gains access to the 'common'" (p. 91), which concludes the argument: everyone must be an owner, or in the words of one of Kant's preparatory manuscripts, everyone has the "innate right" to "take a place on earth" (quoted on p. 91).

With regard to Marx, the author points out that *Capital* shows how mass non-ownership, far from being natural, is a result continually reproduced by the dynamics of accumulation and exploitation. A contradiction therefore exists between the exaltation of property in bourgeois discourse, and the reality of non-ownership produced by the bourgeois system. Does this imply that socialism, in opposition to this merely verbal property, establishes a system of real property? The author acknowledges that Marx devotes very little space to explicit developments on the

configuration of a socialist society, but builds on the famous passage at the end of the first book of *Capital* that announces the expropriation of the expropriators:

"This does not re-establish private property but, if anything, individual property based on the very conquests of the capitalist era: on cooperation and common ownership of land and the means of production" (quoted on p. 144).

What is this non-private individual property? The author challenges Engels, for whom it referred solely to ownership of the means of consumption, and proposes her own interpretation: "the non-contingent, unconditional access of all individuals to the means required for existence" (p. 145), or "the guarantees likely to ensure that everyone can live without submitting to the command of others" (p. 147).

This, then, is the result of the exegetical work: by emphasizing the concept of independence, Kant is brought back to Marx; by emphasizing the generality of the notion of property, Marx is brought back to Kant. Each of these two operations is open to discussion. Kant is explicit about the legitimacy of lucrative property and wage-labor¹, and makes it clear that the state cannot recognize any claims made by workers other than those included in their employment contract². This is a reminder that the interpretation of Kant as a thinker of the bourgeois order is not baseless. This does not, however, disqualify Colliot-Thélène's interpretation, which could be reinserted into the tradition of Kantian socialism, founded on the imperative of respect for workers' dignity, from the Marburg school to the present day³.

The book's interpretation of Marx is appealing, since it is difficult to imagine how products would be allocated in the future socialist society if not by legal rules of appropriation. However, if we confine ourselves to the texts, the diagnosis is less clear-cut. The author does not comment on a passage from the *Critique of the Gotha Programme* which shows that the more mature Marx was every bit as hostile to right as the Marx of the Jewish Question: "It is therefore a right of inequality in its content, like every right. Right by its very nature can only consist in the application of an equal

¹ This refers to the *locatio rei* and *locatio operae* contracts in §31 of the *Doctrine of Right*.

² See the example of the servant that the nominal contract does not protect against inflation, in the appendix to the introduction to the *Doctrine of Right*.

³ "Every rational being', even the poorest day laborer, 'exists as an end in itself', is not a machine, not a 'means to the use of such-and-such an arbiter', is not a 'thing' but a 'person', in whom resides a humanity that must be sacred to us. Can the core idea of socialism, the idea of community, be expressed more simply or announced more clearly?" wrote Karl Vorländer, discussing Kant's text in *Kant und der Sozialismus*, Berlin, Reuther & Reichard, 1900, chap. 1, p. 7 (own translation). Several contributions have continued this line of thought in a recent issue of the *Kantian Review*, vol. 22, Issue 4, "Kant After Marx", Dec. 2017.

standard; but unequal individuals (and they would not be different individuals if they were not unequal) are only measurable by an equal standard in so far as they are brought under an equal point of view, are taken from one definite side only [...]"⁴ Yet this was the passage on which Soviet legal theorist Evgeny Pashukanis based his assertion that, with revolution, property would lose its "legal form" and revert to a "living elementary relation", and that "the form of right in general would be given a death sentence"⁵.

Defending social rights

What is the non-capitalist form of universal private property, guaranteeing "access to the common" for all, that would be the meeting point for Kant and Marx? To further clarify its scope, the book turns to scholars of social rights. Some, such as Léon Duguit in the early 20th century and Alain Supiot today, emphasize objective right as the legal expression of substantial social solidarity: "For each person to enjoy his or her rights, these minor rights must be enshrined in a capital Right. (...) This Right derives from the State, that is, from the legislative sovereignty of a Prince or a Nation" (Alain Supiot, quoted on p. 169). In fact, the social rights of the welfare state are part of a bureaucratic machinery that does not always respect the individuality of each right-holder. However, the author argues that they can be viewed in opposition to the Kantian primacy of subjective rights, whose normative force precedes the specific objective rights that are only limited translations of them. Social rights should then be understood as a right to "social property", to borrow the term used by Robert Castel in his history of the social state (pp. 181-182).

This conception of property requires the rejection of exclusionary mechanisms, in particular by granting social rights to the poor and to migrants, who are the focus of the last part of the book. With regard to the poor, the author resolutely opposes all forms of assistance or protection from above that reduce them to the status of minors or "passive subjects". The political goal is clear: to oppose the control and oppression of the poor and unemployed typical of the neoliberal period – the reforms imposed by Clinton in the USA, Hartz in Germany, and Macron in France. The philosophical

⁴ K. Marx, *Critique of the Gotha Programme*, New York: International Publishers, 1938 [1875], pp. 9-10.

⁵ Evgeny Pashukanis, *The General Theory of Law and Marxism* [1924], chap. 4. For a complete overview of this question, see Y. Douet, "Le problème du dépérissement du droit chez Marx et Engels", *Droit & Philosophie*, n° 10 – "Marx et le droit", 2018.

underpinning of these reforms would be a "teleological", instrumental, conception of social benefits, which are not guaranteed rights but tools deployed by the state according to the goals it sets for itself. President Macron's statement to the Parliament that "there is no longer a right to unemployment, but rather access to a right offered by society⁶" crystallizes this conception, which is the exact opposite of the primacy of rights over duties advocated by Colliot-Thélène.

In a similar vein, the author is opposed not only to policies that exclude migrants, but also to progressive discourses that promote their "inclusion" in a people or state conceived as the ultimate provider of rights. This prompts her to criticize Nancy Fraser⁷, whose proposals for transnationalizing the public sphere are still trapped in a model of sovereignty and self-legislation that is ultimately incompatible with universal rights. Here, the author draws on the ideas she developed in her book *La Démocratie sans « demos »* to show that it is indeed possible to think of politics in terms of inalienable rights, and concludes that migrants' rights must be recognized prior to, and independently of, their inclusion in a host society. This clearly implicates us in the "contradiction between the territorial arrangement of political powers and the 'natural' right of every human being to equal rights" (p. 237). But it also opens up a new perspective: the migration issue should not be considered only in terms of its final stage—the arrival of people on foreign soil—but also before this arrival, by demanding that we "transform the world that produces misery and migration" (p. 251)⁸.

Which institutions?

This suggestive yet open-ended phrase raises the question of which specific institutions would carry out the author's philosophical program and give concrete form to the idea of private property without capitalist domination. The author

⁶ Emmanuel Macron, address to the Congress of the French Parliament in Versailles, July 2018, quoted by Colliot-Thélène, p. 219.

⁷ Nancy Fraser, *Scales of Justice. Reimagining Political Space in a Globalizing World*, Columbia University Press, 2008.

⁸ On this particular point, the author overlooks a major difficulty: it has been observed that when a poor country becomes slightly more prosperous, emigration does not decrease but actually increases, before tapering off at a more advanced level of development. On this subject, see Michael A. Clemens, "[The emigration life cycle: how development shapes emigration from poor countries](#)", Center for Global Development, paper n° 540, August 2020.

maintains that it is not her task to specify the institutions that would best satisfy, here and now, the normative imperative she defends in the book (pp. 153-4). There is, however, one particular social right that seems to provide the framework for the book: the right to work (in particular p. 95, p. 101, p. 147, p. 157, p. 211), which she favors over direct cash benefits that "can only be a stopgap" (p. 101).

In my view, the reason for this preference is not entirely clear. It is true that, with such a right, every able-bodied person could "procure the means of his/her self-preservation through his/her free activity" (p. 101). However, is not such determination, "through one's activity", something the author adds to the primary concept of independence with no logical connection to it? If we adhere to this concept, then unconditional cash benefits could fulfil the same role. And perhaps they would do it even better, since simple monetary redistribution would interfere minimally with the free property and contracts market so dear to Kant and the liberal tradition. This is why left-wing liberals are often more in favor of a universal income than of public services or a right to work, which would inevitably involve collectively defining these guaranteed jobs, and possibly putting them in competition with those in the market sector.

My intention here is by no means to question the political proposal for a job guarantee currently being debated in the public sphere⁹, but rather to suggest that it is difficult to infer from a liberal theoretical framework.

Beyond private property

The same question could be raised with regard to the welfare state's various social rights. Although the author points out that they have always remained limited due to the lack of a right to work, she seems, like Robert Castel, to consider them to be a minimal version of the guarantee of independence to which she aspires. But are they compatible with the pre-eminence given to the concept of private property? Robert Castel, the key reference in chapter 4 on social rights, speaks of "social property" as opposed to private property. This difference in terminology is not coincidental. The financing of the welfare state is based on large-scale compulsory taxation, which undermines private property in the primary sense of the term, as liberals have been

⁹ See Pavlina Tcherneva, *The Case for a Job Guarantee*, Polity, 2020. Her proposal is discussed in detail by Clément Carbonnier in his [review of the book for *Le Grand Continent*](#), 10 April 2021.

quick to point out. In line with Habermas, the author responds that while taxes "may appear to be an infringement of private property, their purpose and justification is in fact to guarantee everyone the security that private property precisely provides, and the freedom that goes with it" (p. 166); however, this would seem to show that the social state substitutes the objective of security for that of property ("security of existence" is also mentioned as a goal of social rights on p. 182).

After all, even from the point of view of its beneficiaries, the right to social protection is not a property. Economists may sometimes calculate the monetary property equivalent of social security¹⁰ or pension¹¹ entitlements. But they are also careful to point out that this is not private property in the truest sense, as defined by the rights of *usus*, *fructus* and *abusus*. This is also one of the criticisms levelled at Robert Castel by Bernard Friot, who has placed great emphasis on the institutional originality of social security.

Social contributions and benefits are not social property: rather, they are components of wages and, like them, are a flow resource, without the accumulation of a stock from which we would derive a right to a resource as part of a co-ownership arrangement. Retirement pensions, for example, are not the counterpart of past contributions by pensioners, whose accrual in the form of points (or valued by the number of years of service in relation to a reference salary) functions in the same way as an estate. Wage earners are fundamentally non-owners; they are strangers to lucrative property, of which they have no need, even in a "social" form, to guarantee their security. The socialized wage is not a euphemistic form of wealth, linked to it in the upper ranks of wage-earners and taking its place, at least in terms of security of consumption, in the lower ranks¹².

The right to a financial flow, such as pay-as-you-go pensions or unemployment insurance, can therefore only be understood as private property in a very narrow, metonymic sense. The right to benefits in kind, such as public health and education services, falls even further short of this. The right to work, which the author advocates, can only be understood in this terminology if one accepts that one's job is one's own.

Ultimately, the reduction of this multitude of rights and obligations to the property right, a fortiori if we insist on speaking of private property, may meet with

¹⁰ Sylvain Catherine, Max Miller, Natasha Sarin, "[Social Security and Trends in Wealth Inequality](#)", February 2020, research paper by Jacobs Levy Equity Management Center for Quantitative Financial Research, available on the Social Science Research Network.

¹¹ Clément Dherbécourt, Gautier Maigne, Mathilde Viennot, "[La retraite, le patrimoine de ceux qui n'en ont pas ?](#)", France Stratégie, Analysis note n° 89, May 2020.

¹² Claude Didry, Bernard Friot and Robert Castel, "Symposium sur *Les métamorphoses de la question sociale*", *Sociologie du travail*, vol. 43, n° 2, April-June 2001.

some resistance. The emphasis on inscribing social claims in the "language of rights" (p. 156, p. 180) is more convincing. To put it in the same terms as the above-quoted programmatic moment of the introduction, it even seems to me that the book's implicit project is not so much to promote private property by distinguishing it from capitalism, as to promote subjective rights by distinguishing them from private property in its literal sense. Such is the fruit of the union of Kant and Marx: legitimizing social rights conceived as subjective rights, and transforming them from de facto conquests of contingent struggles into universal rights associated with the human person.

At several points in the book, this enterprise is accompanied by a reference to "modernity", which would thus be the age of rights. This echoes the work of Max Weber, whom the author has studied in great depth and detail in the past, from *Désenchantement de l'État* (Minuit, 1992) to the synthetic work *Sociologie de Max Weber* (La Découverte, 2006). It is the dual historical process of individualization and rationalization that has established rights as the normative grammar of modernity.

This book makes a significant contribution by inviting the debates on overcoming capitalism to be framed within this grammar of rights, and for this, Catherine Colliot-Thélène should be commended. As we have seen, the rights themselves remain somewhat undefined, and further work could be done in this regard. In order to give them substance and define the institutional architecture that would underpin them, a different kind of philosophy may be needed, one that abandons the Kantian mode of reasoning and embraces the historical and political context of contemporary capitalist societies.

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