Juha Siltala

The material basis for psychological boundaries

"Autonomous" and "relational" ideal types from the point of view of the bargaining power of common men

1. Property and freedom?

Property is only one power source among others, such as military, political or intellectual power. It cannot exist without other power sources: Violators of property must be sanctioned, vested interests lobbied for and ideologically justified.

In the US Neo-Conservative discourse, property and freedom are straightforwardly fused. Richard Pipes explains the English "Sonderweg" in history by the fact that English kings could not wage war financed by earnings of their domains but were obliged to solicit taxes from the parliament, consisting mostly of small landed capitalists, who then were able to press habeas corpus rights and legislative power for themselves. In Eastern countries, however, where patrimonialism prevailed, the crown owned its subjects and their holdings. There, the subjects had at most a limited usufruct for their land and could not use property as source of bargaining power against the crown.[1]

Property rights enabled their holders to say no to their overlord and refuse to provide all their surplus for his wars. In his memoirs, Pipes succinctly summarizes his scholarship: "The most dependable means of thwarting government from expanding its power and encroaching on citizens' liberties, therefore, was to make certain that the bulk of the wealth rested in the hands of citizens in the form of inalienable property."[2] Disregarding its political use in the Reaganite USA, this claim does deserve closer consideration.

Translated into philosophical language, the question of withholding resources for one's own use concerns the precondition of autonomy: how does one to stay in contact with others without being instrumentalized by others? For a psychoanalytically oriented researcher, the vicissitudes of the property concept are interesting in regard to separation and individuation: as one way to set boundaries between one's own will and others' wills. Social sciences, on the other hand, have actually emerged to solve the problem of integration of individual freedom and social order. Analogically, the acquisition of land that could be bought and sold may have corresponded to a sort of individuation as compared to living enmeshed in an intricate system of symbiotic obligations.

---

1 Pipes (1999).

2 Pipes (2003), p. 113.

Jahrbuch für Psychohistorische Forschung, 7 (2006), S. 181-206 Mattes Verlag, Heidelberg

2. Proprietary relationships and the system of conditional property rights

In feudal society, property was defined by proprietary relationships. No one owned his estate exclusively; instead, it was used according to mutual obligation. When the system of conditional property is taken as the central definition of feudalism, feudalism can be extended as far as into the 18th century in western Europe. We can thus rescue feudalism as an analytic concept from the contextual disputes of medievalists and escape the narrowest juridical definition, restricting feudalism to the area between the Loire and the Elbe ca. 1000 AD.[3] But we could just as well skip the problematic feudalism entirely and speak more strictly about a system of conditional property rights. I will reserve "feudalism" as the synonym for conditional property rights for the sake of late 20th century analogies between robber barons and corporate CEOs, because the feudalism concept may catch obviously distinct phenomena.

When the king granted land to a lord, king's rights over the land still remained, except for the particular interest he had parted with. Everyone from the king down through the tenants and sub-tenants to the peasants who tilled the land had a certain dominion over it, but no one held an absolute lordship over it. Mutual obligations were renegotiated according to power relations but never ceased to be reciprocal.[4]

The feudal conceptualization was most often considered that the dominium of the landlord was primary, with the peasant usage to be derived from it. Free peasants were rare.[5] Peasant estates in general bore more liabilities than did those of the lords, had to deliver material servitude and most often were under the jurisdiction of the lord. Peasant usage was based on contracts and was according to K. F. Eichhorn, a researcher into feudal justice, "kein wahres Eigentum" (not real property), even if it could be hereditary.[6] In this system of mutual dependencies, the boundaries between "mine" and "thine" were not exclusive. According to Damian Hecker, the medieval freedom was never general but meant freedom from a definite payment in a system of mutual services and obligations. A freedom meant freedom from a third person's will, not an absolute discretionary power: Every freedom was filled with obligations.

The fundamental concept of medieval law was not the abstract freedom of an isolated individual, but rather social obligation. Freedoms were privileges and participation in a hierarchical order. Who was not bounded and protected, was not free but an outlaw. Property never appeared free from the power relationship (Herrschaft), and civil justice was not separated from public justice. The broadest definition of dominium covered the territory of a "state," the narrowest covered only a definite possession. As late as in the 18th century, dominium became "Hoheit," evolving into pure civil justice. During medieval and the early "modern" centuries, multifaceted rights were defined not by the possibility for their transfer but by their practical use.[7]

3 Teschke (2003), pp. 49-60; Brunner (1958); Hietaniemi et al. (1997).

4 McIlwain (1932), p. 181; Schlatter (1973), pp. 63-64.

5 Bluntschli (1853), pp. 287-288, 321.

6 Eichhorn (1845), §§ 245, 247; Stobbe (1882/83) § 71; Gerber (1891), pp. 127-128.

7 Hecker (1990), pp. 43, 73-80, 83-84, 87, 107, 112.

The continuity of conditional property rights, along with the shrinking of the peasants' autonomy, characterized the emergence of the first centralized states. For a man making his earning by work, land tenure under the system of conditional property rights conferred weak formal guarantees against the demands of his lord. The subjects were not possessive individuals but existed only as a means to produce land rent or taxes for the nobility and the crown. "Free" peasants in Sweden (including Finland) have often been seen as a contrast to serfs in eastern Europe, but they too were, first and foremost, tax subjects. At worst, during the 17th century wars of religion, annual rent and taxes consumed all the surplus of land in use by the peasantry[8], and according to the new Swedish instructions in the 1690s, half the yield of the farm belonged to the crown. In principle, tax arrears for a period of three years, despite temporary exemption from taxes during crop failures, would cost the peasant his hereditary rights (bördsrätt). Neither the crown nor the donation holders recognized even usufruct for such a peasant, who could be freely evicted if changing the farmer could ensure better results for the farm. These crown peasants were equal to tenant farmers on old allodial manor lands.

On the new donations in Sweden and Finland since 1604, which in practice privatized state power of land taxation by half but differed from East European Gutsherrschaft, being merely administrative units for taxed farming, those peasants who had lost their hereditary rights could be taxed more flexibly and required to perform day labor, at worst 3 days a week instead of the official 18 days a year per house that was set for tax peasants. Peasants' negotiating power diminished, as the quality and amount of the rent could be dictated by the lord, appealing to the indefinite character of mutual obligations (Hoheit). Features of Gutsherrschaft were underlined in old allodial fiefdoms of the nobility.[9]

Not even the peasant enjoying hereditary rights to pay taxes directly to the crown according to the fixed registries or cadastres enjoyed dominium plenum (full possession) during the dominance of the high nobility during the 17th century: best, he had the right to use and inhabit his lands (dominium utile), whereas the dominium directum belonged either to the crown or to the landlord. The main difference between donated tax peasants and those accountable directly to the crown was not in the level of tax burden but in the consistence of the land rent – noblemen preferred day labor, whereas cash or products were more practical for the purposes of the crown.[10]

The limit for tax and labor were set by crop failures demanding tax reductions and by shortage in the labor force which prevented evictions of unproductive tenants: regardless of all juridical achievements of the nobility, the lords had in practice to accept the rent that their peasants delivered. Conflicts caused by the policy of appropriation often outweighed any possible benefits of the increased

8 Lindegren (1992), p. 192.

9 Kujala (2003), pp. 36-46, 49-51, 54-94, 101-113, 132-133, 140, 142, 150-151, footnote 203. Cf. Wunder (1995), pp. 23-24.

10 Jutikkala (1958), pp.142-162; Revera (1975), pp. 14, 86-87; Kujala (2003), p. 46 footnote 49, 140, 142, 146.

burden on peasants.[11] Overburdening the peasants seldom paid off: The lords or the crown had to accept the rent the peasants considered fair to pay or could afford; over-extending them only made the official economy collapse and drove the taxpayers into a subsistence economy.[12]

Even had subordination of peasants not been total, and the crown had had to negotiate with local communities,[13] holding the means of production as such did not make peasants free and guarantee against impingements. Antti Kujala has criticized the revisionist tendency of newer Swedish historians to deny or relativize the fact that the lords of donated tax-yielding lands systematically sought to obtain their tax subjects' inheritance.[14] Kujala emphasizes, along with James C. Scott[15], that the weapons of the weak to resist corvée, wage labor, land rent or exaggerated taxation are foot-dragging, dissimulation, false compliance, feigned ignorance, pilfering, slander, boycott, arson, sabotage, and military desertion. These can limit total exploitation. Those subordinated unofficially established their own criteria of a fair deal. For those who had to work for living, private property was one means among others to withhold from the elite something they would be able to give, but the giving of which would not serve their own rational interests.

Although this unwritten "constitution" of economic exchange, the "moral economy" [16] of subjects, was continuously tested and redefined by both the lords and their subjects, its existence was nevertheless acknowledged by both parties. Charles Tilly has shown how those in power react to pressure with bargaining.[17] During the Great Northern War, peasants ceased to pay taxes entirely and began to desert from the militias, after the army had proven unable to protect them. Taxation can thus be seen as a power compromise in which the taxpayers tried to fix the quantity of taxation and the crown tried to bypass these fixed amounts written in the cadastre by means of extraordinary auxiliary taxes and levies.[18]

The Italian strike limited expropriation, but this method of bringing the subjects' own will into play – this negative "Eigensinn" – also thwarted the peasants' own initiative to improve their living conditions. The peasants, whose surplus was in toto expropriated either by the nobles or indirectly by the crown to be used mainly for overseas wars or manors, were not actually encouraged to be innovative or

---

[11] Kujala (2003), pp. 36-46, 49-51, 54-94, 101-113, 132-133, 140, 142, 150-151.

[12] Kujala (2003), pp.112-113; 132-133, 147, 151.

[13] Cf. the discussion of the power state by Eva Österberg and Erling Sandmo in the preface of Österberg & Sogner (2000). Jan Lindegren (1980), Heikki Ylikangas (1991), Charles Tilly (1995) and Kimmo Katajala (2002) have emphasized the military state's power to exploit peasants suffocating resistance by means of capital punishment and conscriptions, whereas the more prevailing trend – partly reflecting the postmodern emphasis on individual construction of social realities – has been to show how the crown had to negotiate with its taxpayers (Österberg (1989); Gustafsson (1994); Karonen (1999), pp. 329-331). Kujala sees the Nordic model of interaction stemming from Otto Brunner's (1939) vision of reciprocal obligations binding masters and vassals in the Middle Ages.

[14] Kujala (2003), pp. 22-26, 95-100.

[15] Scott (1975), pp. 28-41, 289-350.

[16] Moore (1978), pp. 3-48; Thompson (1991), pp.185-258.

[17] Tilly (1995), pp. 99-103.

[18] Kujala (2003), pp. 30-33, 93, 112-114, 152-157, 163, 184-188.

effective in their management of land. This was especially the case for the peasants of southwest Finland, who were required to do day-labor in lieu of taxes or rent during the summer. In Ostrobothnia, on the other hand, peasants had the incentive to increase their productivity – in order to pay taxes in cash or to hire substitute soldiers – by producing tar.[19] This was the fiscal argument presented for the enclosure acts during the 1730s and 1740s.

The Swedish instances of peasants' resource control and withholding can be generalized. Benno Teschke has shown that both medieval lords and the absolutist "modern" state were dependent on the silent consent of their fiscal subjects. Due to lack of manpower after the Black Death, the French peasants pressed for hereditary rights to their tenures. The main obstacle to appropriating more surplus from the peasants was the fact that they – in many parts of western Europe – had succeeded in confirming their tenure as hereditary after the Black Death and the ensuing shortage of manpower. The peasant families were able to support themselves on a subsistence basis outside the market. As the landlords tried to expropriate all the surplus, there were no longer incentives for more effort than required for everyday life.[20] A system that tried to expropriate all the surplus from primary producers for elite wars was compelled to wage wars to expand the tax base, because productivity could not be increased.

3. Competition for the tax base and enclosure acts

A miracle of productivity occurred before the industrial takeoff: During the millennia of conditional property rights and serfdom, economic growth was unknown, but its curve began to rise exponentially towards the end of the 18th century in Europe, along with the end of the conditional property system.[21] The confirmation of private estates for peasants since the latter half of the 18th century in western and northern Europe was motivated by geopolitical competition between states as regards population and the tax base, not by humanitarian concerns, but it brought along with it a broadening middle class that was less at the mercy of fate.[22]

The "Great Transformation" into so-called modern property relationships began with the enclosure decrees in Tudor England. The enclosure acts introduced the idea that land could belong to individuals in the form of real estate. Landed estates were broken up into individual pieces of property that could be bought and sold. Proprietary relationships gave way to property relationships. Although the everyday life for peasants had often been precarious, English covenants guaranteed every man a right to remain on the land of his or her ancestors. Capricious landlords were not able to expel peasants from the land they were born onto. As the labor market was created by law, millions of peasants were freed both from their fixed obligations and from their traditional birth rights of attachment to a place, thus

[19] Villstrand (1992), pp. 219-244

[20] Teschke (2003), pp.168-172.

[21] Bernstein(2004), pp. 15-30.

[22] Pettersson (1983), pp. 49-78; Greenfeld (2001); Teschke (2003), p. 266.

obliging them to contract and sell their labor for wages in urban and industrial markets.[23]

In Sweden (including Finland), corresponding enclosure acts had been carried out since the middle of the 18th century on fiscal and mercantilist grounds. Established peasants were eager to support enclosure, if they could withhold forest, its value now estimated in money, and other undivided commons for their own use and for their offspring. A central conflict between crown and peasants was the division of "surplus" forests and meadows: The crown would have liked to find more estates to pay taxes, whereas the existing estates preferred division among the existing ones.[24] Property conferred bargaining power for this rural middle class and protected them from the fate of latifundia peons.[25]

The downside of enclosure acts was an enlarging proletariat forced to perform labor at any wage, being deprived of any alternative source of livelihood, the use of common land. Property thus could be turned into one weapon of the weak among other, more concealed methods to withhold one's labor from the elite; for the landless population, however, the redistributive implication of reciprocal consent was obliterated.

The last remnants of feudal over-dominium were removed in 1789, as the king of Sweden allied with the peasants against the rebellious nobility: The inherited estates owned by the peasants were declared equally inalienable as the nobility's estates and could no longer be confiscated for tax failure. The majority of the peasants living on crown land (formerly tax donations of the nobility rejoined to the sources of direct crown revenue since 1680) were confirmed in their rights of inheritance. Rent and tax began to be separated from each other.[26]

Property became a source of bargaining power for smallholders as soon as their contracting partner could no longer confiscate it. Until then, the peasants existed in principle only as easily replaceable tax producers for the purposes of the crown or noblemen. After the enclosure acts and confirmation of their dominium directum, prosperous peasants in Sweden/Finland and Denmark/Norway, now owning their estates and forests, were able to participate in market relationships when they needed cash, but also could stay away if they were lazy or content with living for subsistence.[27] Thus, the world market for buying wood and butter existed as a possibility but not yet as a pressure for peasant way of living. This decentralization of economic resources also promoted active citizenship and parliamentary politics, just as Richard Pipes has claimed.

During the latter half of the 18th century, as life expectancy increased, people began to overcome their fatalistic attitude toward life in general.[28] The relationship

---

[23] Polanyi (1944); Rifkin (2000), pp. 78-79.

[24] Ojanperä-Oksa (1996); Toivanen (1997); Talvitie (2005).

[25] Kuisma (1993), pp. 109-120.

[26] Berglund (1868/69).

[27] Swedish rural history has shown that the methods of agriculture had already developed before the enclosure acts, and population growth was accelerated; these factors, on the other hand, drove peasants and crown, simultaneously, to increase productivity. Olai (1987), pp. 104-109; Hoppe-Langton (1994), p. 50.

[28] Jay (2000), xx, 34-35, 58; Bernstein (2004), pp. 12-17, 46-47.

between effort and reward is crucial for health. The psychology of hope based on the studies by Martin Seligman connects this new optimism with self-efficacy: People need to control what happens to them. Along with their increasing control over life also emerged a sense of a discrete self able to affect the world.[29]

Institutional factors were more important than was industrialization: Industrial takeoff seems at first to have had negative effects. Average life expectancy in England between 1760 and 1820 improved but between 1820 and 1860 no longer increased. Much the same pattern appeared in infant mortality rates. Height increased during the late 18th century, but this was in the early 19th century followed by a deterioration. To be sure rapid population growth would have been unsustainable without the industrial takeoff about 1800, but was obviously not caused by the expansion.[30] Confirmation of commoners' property rights may have been the underlying factor behind the improvement and increasing expectations during the latter half of the 18th century.

It should be emphasized that the philosophy of liberalism was developed in a society where property was decentralized and dispersed and where the owners of it opposed any kind of centralized monopolies governing the market access.

4. Exclusive property rights

John Locke provided the ideology of individualism in his work *Of Civil Government* (1690): he defined private property as an inalienable natural right, logically primary to any social relationships. A man produced his own property by adding his labor to the raw stuff of nature, thus creating added value. Because he had "a Property in his own Person," "the Labour of his Body, and the Work of his hands," too "are properly his." "Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby his property". Everyone could legitimately claim for himself "as much land as a man tills, plants, improves, cultivates, and can use the product of."[31]

In Locke's theory, a man expands the boundaries of his personality through labor, thus unilaterally changing parts of the reciprocal outside world into parts of his inviolable private world. The historians of theories of justice see the emergence of modern exclusive property rights in the shift from original occupation of land into work as the justification for private property.[32] According to Manfred Brocker, John Locke was the first to remove contractual elements or others' consent from the property theory, and this shattered the basis of any distributive justice. The original occupation of a piece of land would have required a contract for recognition of fait accompli, the shift from communal ownership into private properties. Differences in wealth corresponded directly with differences in industriousness. In the Lockean framework, a state could not tax its citizens by appealing to the common good

[29] Niedhammer et al. (2004); Reading (2004); Sagan (1987).

[30] Bernstein (2004), pp. 225-232.

[31] Locke (1965), § 27 and "Of Property".

[32] Paasto (2004), p. 74.

without their consent. Work was all that was needed to establish an exclusive relationship between a person and an object.[33]

In the elaborated theory of exclusive property rights, the rights of the subject of justice were guaranteed by the state as defined spheres of private autonomy, where the subject's discretionary freedom prevailed against the will of others. Free promises turned into wealth, because the person who promises something is able to transfer his/her right based on a promise to a third person. Property meant a domain with a protected right of use. Anyone who interfered in this use could be held responsible for reparations.[34]

The evolution of legal systems during the 19th century was measured by how soon each adopted the Roman concept of exclusive property rights and abandoned the medieval system of partial property rights.[35] Adoption of Roman law finally came to confirm peasant property, changing the tax into a rent, thus separating the public and private spheres of justice. In German countries, where conditional property rights lasted longer than in England, the definite rent obligation could be removed by compensating for the loss of the lord's property as early as in the 18th century. Peasant tenures came to be treated as property. Even a long tenure came to confer upon the peasant family the rights to convey, to inherit, and to encumber their estate with debt. Not even the broadest work or rent obligations were able to make a farmer's "gewere" incomplete. To be sure, land could not be as easily divided as other possessions, but the limitations gradually faded. Substantial property as limitless and exclusive right to use preceded in theory the change in real circumstances in which positive jurisprudence for a long time still acknowledged a variety of tenures.[36]

For the Romanist systematizers of law, any tenures or partial property rights were a contradictio in adjecto despite the fact that medieval people had lived by them and sub-possessions still were juridically acknowledged in Prussia and Bavaria. "A Dominium Utile is, however, not a real right of property but a right to a third person's thing, the (juridical) content of which, however, is defined by the (non-juridical) illusion that the user (exerting dominium utilis) would be a proprietor". The Dominus might have exerted a broader right to use a thing than others might, but could not be a proprietor if the dominus directus had not ceased to be the proprietor.[37] The proprietor retained the right to convey, transform, and defend his property after having given away the right to use it, and after the limitations ceased, the right of property returns in its entire scope (nuda proprietas). The proprietorship could not be parted but the proprietor defined the purpose and scope of every use. Just as Romanists did, the Germanists claimed that the original full property would be restored as the limitations set by law or a third person's right ceased to exert

[33] Brocker (1992), pp. 1, 122, 165, 184, 281.
[34] Pöyhönen (2000), pp. xii-xiii, 16, 38-39.
[35] Paasto (2004), passim.
[36] Eichhorn (1845), §§ 256-257; Stobbe (1882/83) §§ 71, 78; Gierke (1895-1917), vol. II, pp. 369-371, 374; Paasto (2004), p. 252.
[37] Windscheid (1879), footnotes 5-11.

influence.[40] This contradiction was solved by acknowledging only one kind of property and interpreting other kinds to be loans.

In the German feudal tradition, a longer or shorter tenure established the difference between concepts such as "vererbliches Eigentum," "lebenslängliches Eigentum und Leibsucht," "Lehnrecht und Leiherecht," "ablösbare Satzung und vormundschaftliches Nutzungsrecht." [41] Besides hereditary possession, there had also been life-long, tenured, conditional, deferred, and future possession. The tenure of a thing was relative, limited, and partial, changing over history. Private, family, clan, communal, and state rights overlapped each other in landed estates. German feudalism did not separate private and public and differentiated rights according to persons, whereas Roman juridical thought abstracted justice from concrete social settings. Liaisons between real estate, social status, political rights, and communities possessing rights faded, as Roman law replaced German historical and contextual traditions.

The evolution of justice meant for the jurists of the 19th century decontextualization of rights and linkage to free individual wills. Juridical concepts should be distilled from the description of various exchange acts that actually have taken place, and real interests should be replaced by abstract rules separating rights concerning a person and rights concerning a thing.[42]

The Romanist defended an absolute property concept resolutely, whereas the Germanists conferred upon the state more power to regulate the content and scope of the property. This nuance can be explained by a more collectivist concept of nation and the national soul.[43] Social intervention against the capitalist's abuses was more easily launched on the Germanist basis, whereas the absolute concept of property was used to prevent regulation. But the concept of absolute property was only a theoretical foundation stone for a legal system, indefinite as regard to time and scope – its factual use was always more regulated.[44]

The act of acquisition, work, was never a sufficient foundation for retaining property, even if the theories of justice adopted more and more mechanical causality, abandoning the qualitative and essential order of the ancient world. Locke was used to justify unlimited wealth, in disregard to the limited resources of land, still mentioned by Hugo Grotius, Samuel Pufendorff and Immanuel Kant.[45] A secular justification proved to be an ambiguous guarantee of private property.

Property as an exclusive, permanent, and absolute subjective right was gradually established in the interpretations of the French Code Civile during the 19th century. The system was built starting from the person: the will, the separation of mine and thine, and juridical relationships based on these facts. In the juridical arguments,

---

40 von Roth (1880-86), pp. 54-61, 123; Paasto (2004), pp. 284-286.

41 Schröder (1889), p. 261; Paasto (2004), pp. 337-338.

42 Gerber (1891), pp. 1-13, 36, 49, 55, 118-124; Gierke (1895-1917), vol. II, pp. 348-357, 369-371; Paasto (2004), pp. 302-309, 317-321.

43 Paasto (2004), p. 301; Greenfeld (2001), pp. 154-223.

44 Paasto (2004), pp. 339, 347-355.

45 Hecker (1990), pp. 116-85, 183, 194-199; Hecker (1995), pp. 385, 389-393; Paasto (2004), pp. 84-90.

a relationship with an object replaced social recognition and communal interests in the juridical arguments.

However, a definition of property has never prevented the regulation of ownership. Even be the state of nature constituted by private property instead by communal property, every state limits it, even though newer natural rights theories attempted to make the private sphere sacrosanct against every interference. In practice, property rights never attained a position of pure "object" relationship; the question always concerned interpersonal positions in a system of justice. Kant and Hegel, for instance, assumed common consensus for acquisition and equal possibilities to acquire property, when not to redistribute it.[46]

According to Päivi Paasto[47], who has studied the juridical literature and philosophy of Germany during the 19th century, the philosophical and juridical argument for the emergence of private property concentrated on the question of original occupation vs. labor as alternative sources of property rights. How could the natural rights that a person himself possessed be transferred to land through his work, if some other person already occupied the land? Was one allowed to transfer unequal opportunities through inheritance? The exclusive relationship between the possessor exerting his free will and the inanimate object of his will was to be complicated by the fact of mutual recognition of each one's rights that thus became dependent on one's contribution. Property as an exclusive right to use objects was shadowed by obligations to benefit the community through the use of one's abilities.[48]

A typical line of argumentation claimed that property was based on the inalienable freedom of an individual, so that acquired property or tenure rights could not be limited without violating that person's natural rights. The factual situation was the starting point for theorizing, and any deviation from the presupposed original equality in acquisition remained unexplained.[49] Exclusion fueled communitarian critiques claiming that property was usurpation of common goods, goods produced cooperatively. According to Pierre-Joseph Proudhon, even the results of a private person's work depended so heavily on others' work that their exclusive possession could be questioned.[50] Human work that conquered nature and made it submit to the sphere of untouchable human autonomy could easily serve as a moral argument against parasitic capitalists; then, it was used as a universal norm and no longer as the foundation for positive justice.[51] For Schopenhauer, for instance, everyone possessed his own body and his efforts, so that the expropriation of the results was equal to slavery as an insult to the person.[52] In jurisprudence, the alleged origins of private property faded from consciousness, as property came to be seen as a concrete

---

46 Paasto (2004), pp. 95-154.
47 Paasto (2004), pp. 43-62.
48 Harris (1996), pp. 182-212, 230-236, 278-; Paasto (2004), pp. 59-63.
49 von Zeiler (1819), pp. 25-32.
50 Proudhon (1840).
51 Brocker (1992), pp. 306, 324, 328.
52 Paasto (2004), pp. 155-160.

object and not as a power position in the ever-changing social constellation.[53] Property was dealt with as a positive fact of life.

New theories of liberalism came to elevate acquisition as self-fulfillment: Property became a sign of each man's personal triumph. John Gerald Ruggie has suggested[54] that the emergence of the self-conscious man, as hypothesized by the psychologists of hope, correlates with exclusive rights and clear boundaries. According to Jeremy Rifkin, the shift from proprietary service to private property altered the very nature of human relationships and gave rise to modern sensibilities, including the new sense of self and the private realm and new institutions like the nation-state and the constitutional form of government.[55] Property had come to be seen as an inalienable part of a person in a phase of history that David Riesman once typologized by inner-directed entrepreneurs as the prevalent social character.[56] But as soon as the conditions of competition changed, property was redefined as conditional, and autonomous persons – along with their material basis – as obstacles to efficient production.

5. Re-collectivization of property relationships

Modern market and power relationships were characterized by property-as-an-inalienable-object concept for only a short period. According to Rifkin, in an era in which the amassing of physical capital defined the terms of commerce, and consumer goods defined the status of the individual, property rights reigned supreme.[57]

Both the owner and the owned began to encompass collective features. During the US "Gilded Age" (the 1880s), upon corporations was conferred the status of citizens with all accompanying civil rights. Between 1898 and 1904, the US economy was transformed from one in which indvidually owned enterprises competed freely among themselves into one dominated by a relatively few huge corporations, and each of which owned by many shareholders, could own stock in each other.

Big corporations as rulers of the markets made many populists and democrats question the continuity of the ideal republic, in which freeholders' property enabled them to have an influence on public affairs on the basis of their independent considerations.[58] Corporations had citizens' rights but not citizens' obligations: They were free to pursue their private interests without constraints.

Courts handled corporations as juridical "persons," with their own identity separate from the individual owners' and managers', entitled to conduct business in their own name and go to court to assert their rights. Viewed as an entity, "not imaginary or fictitious, but real, not artificial but natural," as described by University of Chicago law professor Arthur W. Machen in 1911, the corporation was trans-

---

[53] Paasto (2004), pp. 209-211, 223-224, 228-230, 239-243, 247, 280-282.
[54] Ruggie (1993), p. 169.
[55] Rifkin (2000), pp. 79-80.
[56] Riesman et al. (1950).
[57] Rifkin (2000), p. 82.
[58] Lasch (1991).

formed into a free being.[59] Initially, private property had become untouchable as a part of a person and his free will. Now, the pursuit of profit by the corporations was equated with the exercise of an individual's free will and declared almost holy. Minimum-wage and maximum-hour protection was interpreted as an offence against personal liberty.

As long as this rule prevailed, shareholder value was not counterbalanced by public interest. The lawsuit Ford v. Dodge of 1916 still represents the legal principle that managers have a legal duty to put shareholders' interests above all others and have no legal authority to serve any other interest. Ford's decision to cancel a dividend to reduce prices was solved to the benefit of shareholders: a company could not be run "for the merely incidental benefit of shareholders and for the primary purpose of benefitting others." [60] Externalization of costs and privatization of profits as a tendency was built into the corporate system, where the liabilities of the owners were limited and management separated from ownership of the company. Shareholders cannot be sued for the crimes committed by a corporation, and directors have traditionally been protected by the fact that they have no direct involvement in decision-making. Executives can seldom be proven to be "directing minds" behind destructive actions.[61]

This tendency towards maximization of profits at the cost of staff could be constrained by forcing corporations to reinternalize costs, but only when political regulation was backed up by popular opinion. Corporations were based on legal agreements and can be deconstructed by revocation of their charter as publicly traded companies, if they do not otherwise honor the legitimate interests of their employees, society, and the environment. Maximizing profits as the only goal of a company has been based on an economic theory of a perfect market that does not allow any deviation from maximal efficiency. But human societies seldom have approached the perfect market situation.[62]

In Europe, the opposite collectivization of the concept of property took place, as the system of mutual social insurance was being built up after the end of the 19th century, and labor contracts were collectivized. As long as farmers, shopkeepers, and self-employed entrepreneurs constituted the majority, wage labor could be dealt with as a police problem at the margins. But as dependent employees grew into the vast majority, including more and more white collar workers, the problem was addressed – under the threat of strikes and revolution – as a social one. Paid labor was turned from a discontinuous market commodity into a sort of shareholdership of society beyond the still-existing inequality between have and have-nots.[63] At best, during the long cycle of growth since World War II, culminating in the 1970s, life-long jobs were conceived of as the jobholder's private property, and he could even sue his employers when fired without his, his trade union's or the state bureaucracy's

---

[59] Quot. Horwitz (1987), p. 51.

[60] Smith (1998).

[61] Bakan (2004).

[62] Livingston (2000); Bakan (2004); *Helsingin Sanomat* 21. 5. 2006 "Osakeyhtiölain soisi edistävän yhteiskuntamoraalia" Timo J. Tuovinen.

[63] Castel (2000); Marshall (1973).

consent. Thus, jobs approached land tenure as a source of autonomy and bargaining power, as well documented by income statistics that indicate that the early 1970s were the best of times of Western European employees.

The fundamental Marxist critique that welfare capitalism left heteronomous work and surplus value untouched needs some revision: During the 1970s, as political pressure from the left and from trade unions peaked, the functional share of GDP between capital and labor was most favorable for employees with their 70% share (as compared to 55% on average in the 1990s), and their net increase in wages / salaries was, for instance, 20,5% in West Germany, versus in the 1990s, –2.2% .[64] The compensation for US CEOs was only 30-fold that of their employees, now it is 530-fold for the top 100 CEOs.

Subjective identification with the middle class and a new sensitivity to personal choices, coming to the fore during the 1960s, was based on hard facts. Self-actualization as a norm and rejection of the sacrificial work ethic of earlier generations remained a lasting heritage of the "affluent society" atmosphere of the 1960s. But just as land tenures proved to be dependent on the competitive advantage of "nations", so did job tenure with all its perks and benefits. The person, this romantic potential beyond the ever-shifting social roles, proved to be a social construction – but once it emerged, it resisted the changes that made middle-class expectations diminish.

The market saturation of the world economy since 1974 can be defined as an overcapacity problem.[65] Instead of shortening working hours based on good productivity, the problem was "solved" from the point of view of capital return: To stop the loss of profits from investment, employers now required cuts in wages or downsized their work force. According to Neoliberals, gaining hegemony since the plunge in the Fordist boom of postwar decades, the collapse of the Bretton Woods system of regulated capital transfers, and the crisis of national macropolitics, the collective welfare system meant that the undeserving majority voted itself into the purse of a wealthier minority. This was an insult not only to individual freedom but to the iron laws of evolution, causing determining the societies to stagnate.[66] A new deal was necessary to reward investors and to return paid labor to the basics, to being a mere market tool with no social guarantees that only made the labor market inflexible and reduced total competitiveness of a site.

Supply-side economics has required the employees to do more with less in order to encourage investments and growth, but as a matter of fact the investments have concentrated in assets, real estate, and the products of the flourishing finance industry instead in production to fuel employment and consumption.[67] Capital markets were deregulated in order to encourage investment but instead of starting a benign cycle of industrial renewal, consumption, and welfare, the capital obliged the

---

64 Müller (2004), p. 57. See also *The New York Times*, August 22, 2005 "Why a Booming Economy Feels Flat. Personal Income Is a Key Area Where Workers Fall Behind, Compared With the Past" Mark Turnbull.

65 Brenner (1998).

66 Tilman (2001); Schui & Blankenburg (2002); Walpen (2004).

67 Jenner (1999); Huffschmid (2002); Bonner & Wiggin (2003); Hannich (2005).

production economy to perform continuous benchmarking with other sources of profit in the virtual realm of financial speculation.

The struggle for survival replaced the romantic dreams of reconciliation of man with the nature of the 1960s: now, some employees had to overextend themselves, while others suffered from underemployment or from being totally dropped from the work force. Instrumental concerns of competitive units, be they sites, companies, profit centers, or individuals, prevailed at the cost of value-rational goal setting. The fear of linking things into an over-arching picture is most obvious in the US Republicans' counter-science, but the same anti-intellectual atmosphere rules also in Europe, where, for instance, the universities are starving, and intellectual freedom is hollowed out through management and a quality-assurance bureaucracy. A closing down of the mental spaces in an alleged information society results from a manic defense against vulnerability, and loss of control, and a hidden aggression unconsciously haunting the ruling elites.

Bipolar mental disorder seems evident on the societal level in such a way that while employers show mania, their employees suffer from depression. Employees everywhere seem to have lost their sense of causal efficacy, the origins of all hope: Collectively, they can no longer strike for a fairer deal, because capital may exit, and as individuals, they cannot win, because they must do more with less without even then being certain of their jobs; they can be laid off due to minor differences in capital returns. As a matter of fact, western employees face the feudal conditions ante-18th century, when all the surplus the commoners produced was appropriated, and a fatalistic attitude seemed the only adaptive reaction.

But fatalism concerns only things beyond one's personal sphere: people are in general quite optimistic as regards their career, family life, friends and hobbies, but turn pessimistic as regards politics, the environment, or corporations. "I'm OK – You are not!" This kind of split in emotions can be explained by a dissociation characteristic to trauma but adaptive in the short run. This small-scale optimism also explains the real estate cocooning and "Bohemian Bourgeois" nostalgia for solid things and handicraft. Seen from the point of view of Peter Sloterdijk, self-comforting by one's closest environment is not only a regression but maybe also regression in the service of the ego: an attempt to achieve some protected space for personal meaning-giving as a basis for further contacts with the ever-shifting external world.

Some culture diagnoses certainly see children now "growing up in a world of networks and connectivity in which combative notions of mine and thine, so characteristic of the propertied market economy, are giving way to a more independent and embedded means of perceiving reality – one more cooperative than competitive and more wedded to systems thinking and consensus building." [68] Praise for the information society has, on the other hand, turned communication into community and required employees to give up "Darwinian survival" and surrender unconditionally to the social organization they live in.[69] These organizational meta-subjects, in their turn, have not replaced the Darwinist struggle with pursuit of the common good as easily as some theories of network economy seem to presuppose. Academic

[68] Rifkin (2000), pp. 12-13.
[69] Siltala (2004).

enthusiasm during the 1990s for deconstruction of essential selves and the fervor against "false concreteness" of the provisional results of relational processes might also have been a defensive reaction: attempts to rescue hope and see only the emancipatory side in the collapse of rugged, middle-class male autonomy in the labor market, demanding more and more flexibility, discontinuity, and elastic values.

The liberating advantages of property emphasized by Pipes seem to grow according with the amount and liquidity of wealth but turn into the opposite as regards small owners and solid, locally rooted property, which may have use value for its holders but is not easy to sell. Big Money is able to evade taxes, the social obligation often principally connected with the very concept of property, whereas the middle classes must shoulder a growing set of obligations, because their tied up savings or real estate cannot flee over borders.

The seemingly unhistorical analogy between late capitalism and feudalism may be carried even further: The CEOs and the inside players in the stock exchange market are benefitting from their structural position at the top of the food chain, like the medieval robber barons or 17th century war entrepreneurs, both of them possessing the means of coercion – the weapons – and thus able to privatize state power for their personal use. Their compensation is not based on diligence or skill. In contrast, those who have to earn their living by work are more and more doomed to fill the lowest levels of the value chain, be they employees or independent subcontractors or self-employed professionals.

"Businesses already are well along the way toward the transition from ownership to access. They are selling off their real estate, shrinking their inventories, leasing their equipment, and outsourcing their activities in a life-or-death race to rid themselves of every conceivable kind of physical property. ... Many companies no longer sell things to one another but rather pool and share their collective resources, creating vast supplier-user networks that co-manage each others' businesses." [70] What matters is command of market access, and market access is often monopolized by technical standards/platforms, brands, delivery chains, or quality assurances. Owning the means of production no longer guarantees bargaining muscle like that.

Consequently, selling one's own work no longer makes an individual independent – the only thing that does is commanding market access over many others. A producer has to accept the price dictated by Wal-Mart; a trucking entrepreneur, in debt for his truck, accepts grudgingly the price bargained between a big forest industry company and the logistics chain between the subcontractor and the client, and the "independently" contracting cleaning woman seldom meets with a client, supplied by a chain for half her earnings. In the new economy, smallholders – be they small entrepreneurs such as independent shop keepers, contractors, farmers, or researchers – must submit to producing cheap raw material or to combining components for the final product of the corporation, defined by the franchise, brand, or standard.[71]

---

[70] Rifkin (2000), p. 5, see also pp. 36-55.

[71] Rifkin (2000), pp. 56-72. In Helsinki city area, there are only 26 "wild" foodshops. *Vartti* 20. 10. 2005 "Pienen piirin ruokakauppias".

Bourgeois civil justice equated during the 19th century the ability to work with capital investment. Now, the principal difference between these equal items of personal property is even more striking, because small, independent entrepreneurs and farmers still could be seen as "typical" citizens instead poor vagabonds: Owning one's ability to support oneself does not free the "owner" from the compulsion to work under any required conditions.[72] A small proprietor does no longer possess himself.

Creative work, so central to the person-centered Lockean theory of private property, is one illustrative example. The intellectual property rights of inventors, writers and artists are under growing pressure in the network society, but rights are confirmed by every existing state power for the corporations commanding market access. The industrial inventor, for instance the Finnish inventors of text messaging, once adopted the morality that it is inappropriate to appropriate an idea that has emerged in collaboration based on open sources. This has not prevented publicly traded stock market companies from privatizing "common goods" for their own benefit. "It felt bad for all us undemanding developers that our work, once proven to be valuable, enriched people quite other than us," says Matti Makkonen, graduate engineer. "If we had just invented text messaging, we would establish our own company to produce devices for sending messages and require royalties from all telecompanies." Ideas developed at work are more and more interpreted as belonging to the employer, not to their creators.[73] The relational, power-dependent concept of property is practiced when author's rights against illegal copying via the net are weighed against the right to free communication among consumers. The former is doomed as old-fashioned, when new technology turns "creative work again into something free floating, from which anyone is allowed to draw as much as s/he desires." [74] Again, we could see an analogy with conditional property rights: Peasants or employees are allowed to use their talents/resources only for the benefit of the lord, not to enrich themselves into independence from the obligation to work.

Thus, the ideology of a free market is used against the intentions of its 17th and 18th century theorists to justify confiscation of the products of those who have brought something into being by their own work. Instead, this creative capacity is conferred on capital that transforms use values into revenue. Corporations have replaced individuals as juridical subjects exerting exclusive property rights, whereas individuals face more and more the other side of the property concept: property as a social obligation for which to be held accountable for.

Legal definitions now follow practice. Reflecting the social rights developed during the 20th century, even the right to property has been considered to have changed into a regulated position of merely some rights among others, and the scope of the concept of property has been defined by actual law makers; wealth has thus

---

[72] Decker & Hecker (2002), pp. 95-126.

[73] *Helsingin Sanomat* 15. 6. 2006 "Keksinnöistä maksettava arvon mukaan" Matti Makkonen. Cf. *Helsingin Sanomat* 11. 6. 2006 "Suomalaiskeksintöjä tarjolla – halvalla"; Huuskonen 2006; Kontkanen 2006; *Helsingin Sanomat* 20. 5. 2006 "Tekijänoikeudet jo haitaksi tieteellisille kirjastoille" Jarmo Saarti.

[74] Pöyhönen (2000), p. 141; *Helsingin Sanomat* 29. 6. 2005 "USA: n korkein oikeus vahvisti tekijänoikeuksien asemaa verkossa", 1. 7. 2005 "Kilpajuoksu teknologian kanssa".

come to mean occupying a position in the dynamic system of mutual obligations. According to the socially-minded mainstream of justice, this shift has been paradigmatic. According to some dissidents, all the limitations can be explained as deviations from the original freedom, and continuity from 19th century bourgeois thinking still prevails.[75] Juha Pöyhönen, professor of civil justice, defines the new concept of wealth as an ever-shifting position of risk. A deal no longer produces an irreversible and exclusive right forever, but the holder of property remains entangled in a web of reciprocal obligations between persons who represent different interests deserving protection. The protection of wealth varies according to these interests and depends on policy adopted by various actors. There no longer exists a sphere of permanently protected private autonomy.[76] In a superficial sense, the concurrence between various contracts no longer excluding each other's validity that is dependent more on a communal sense of justice than on abstract rights[77] seems to return to the feudal way of conceptualizing property relationships as proprietary relationships.

The difference between the generally condemned private interest and the eulogized public good lies in the capital return. Property should circulate, bring in revenues, or else it will be shifted into other hands. For instance, private forests are in hardly any sense private, when the owners are obliged to sell whenever it suits the forest industry, at prices dictated by local monopolies. Because forestry is publicly funded, the harvest should serve the forest industry, thus defined as the representative of the public good. "When the growth of a forest stops, it brings about double damage. In the capital market, the owner would gain a good return for his forest earnings, and new forest would begin to grow. When the forest is not harvested, the owner loses his wealth," declares a mill owner, demanding punitive taxation for these incompetent holders of universal capital.[78] Until now, farmers have not viewed their inherited estates as just another commodities among others – instead, their moral imperative has been to hold onto their estates to ensure security down the generations. Land improved by one's own hand has more value enshrined in it than mere surplus value. "A piece of land is like a beloved being – it cannot be owned. It can be taken care of and loved. New generations will always follow, new assignations would ensue." Thus, land was seen to guarantee ontological continuity and the ultimate meaning of life.[79] Now, it is not allowed to stay out of the market or to participate in trade only when one needs to sell.

The rentablity spiral forces more and more people to abandon agriculture as humane way of life, and the maximized units left are industrial plants run by international TNCs. These, following the logic of an industrial economy of scale, have to expand, and to reduce unit costs infinitely. As suppliers of specialized raw material for vertically integrated agribusiness, entrepreneurial farmers have to shoulder

---

[75] Zitting & Rautiala (1963) p. 205; Kartio (1991) p. 155; Pöyhönen (2000), pp. xi-xvii; Sontis (1973), pp. 981ff.; Rittstieg (1983), pp. 161ff.; Lewis (1985), pp. 241; Peter (1949), pp. 30, 64, 102; Paasto (2004), p. 351.

[76] Pöyhönen (2000), pp. 140-150.

[77] Pöyhönen (2000), pp. 169, 171, 196.

[78] *Helsingin Sanomat* 19. 3. 2005 "Sahayrittäjä rankaisisi puuta panttaavia metsänomistajia verolla".

[79] *Yliopisto* 14/2004 "Kiinni ikuisessa maassa", "Ei vapaasti vaihdettavissa" Virve Pohjanpalo.

market risks with earnings that often remain lower than for waged labor. They are forced to live at a self-sustaining level under market stress, but debt and the mortgage spiral prevent them from living on a self-sustaining level outside the market, as peasants have traditionally been able to do.

Mario Cogoy, an Italian economist, says that the extreme form of a market utopia consists of two ideas: On the one hand, people are supposed to acquire professional competence in one single field, where they will then earn sufficient funds to buy everything else in life from the market. On the other hand, this will imply total abolition of work and skills in the private life of people, since all labor and skills are absorbed into the market. Now, it is impossible to think of the commercial economy as auxiliary, serving the needs of families and individuals instead of using them as means of production and consumption. Total capitalization of life thus excludes the alternative that most people, according to value studies, now appreciate the most: working less after the satisfaction of their basic needs. Robert Jungk, the founder of futurology, once made the point that "people out of work are in a certain way in a privileged position because they are no longer chained to the capitalist production machine. They have more time, they can think and act in ways which may be beneficial for society, if they only have enough motivation."[80]

For the western middle classes, a paid-for real estate means freedom to choose between vita contemplativa and vita activa. But in a system of ever-shifting power positions, a mortgaged house no longer guarantees a relative freedom from labor market dependency: Private property may be eliminated if it prevents the participation of its holder in "free" competition on an equal basis or prevents area development for the benefit of capital investors. The labor force should move without constraints and pay taxes for their fictive dwelling incomes, thus remaining under pressure to maximize their incomes. "This is like Nottingham in reverse," comments Charles Svoboda, regarding Spanish coastal construction: middle-class real estate is confiscated with formal compensation in order to "make money for a few" at the command of hotel or holiday village chains – and the victims of confiscation have to pay for the traffic and services they have tried to escape! In the Rocky Mountains, gas production spoils natural resources on which local people are dependent. They cannot prevent it, because resources underneath the surface belong to the state government, and the Federal Bureau of Land Management privatizes this common good for publicly traded stock market companies, leaving only 12% of the profit for local use. If proprietors are companies large enough to assert their rights, their private interest is interpreted as the public interest; they might even be allowed to plan city areas, bypassing the community government.[81] The main purpose of a city is no longer the common good but return for investment, just as is the case in the

[80] Cocoy (1995); Pietilä (2004) (quoting Jungk).

[81] *Helsingin Sanomat* 24. 7. 2005 "Ikaalisten kaupunki leventää tietä yksityisen tilan maille", 20. 8. 2005 "Kaupunkipolitiikka uusliberalistisella linjalla" Anne Haila, 7. 8. 2005 "Janakkala saa pakkolunastaa sukuhuvilan kuntopolun vuoksi", 8. 5. 2006 "Maakaasubuumi mullistaa Kalliovuorten herkkää ympäristöä", 12. 6. 2006 "Kaoottinen rakentaminen vähentää loma-asumisen suosiota Espanjassa" (Stadt als Beute).

publicly traded corporations now fitting both communal administration and co-operative societies into a Procrustean bed.[82]

Bringing in the cash to produce a capital return of 10-15% is the only effort that nowadays is rewarded with options large enough to free a CEO from work for the rest of his life. Even the natural monopolistic profits of a privatized energy company are honored with such rewards, even if the profits are not invested in useful purposes but in stock bubbles.[83] And making "inefficient" capital more productive means shrinking the free space of those who work for money and cannot live on capital return.

Property in middle-class dreams may refer to a haven in a heartless world. Daniel Kahneman[84] and other psychologists of economic behavior have shown how loss-averse common people are (compared with the psychopathic insensitivity to the consequences of the big players of "creative destruction" [85]). In the common mentality, a loss weighs more than a comparable chance to gain. The tension between willing risk-takers, playing with others' money, and risk-averse common citizens may prove to be a decisive conflict dimension in the modern world.

Consumer confidence in the USA has recently stemmed first and foremost from the real estate bubble, the family house being the main property of members of the middle class, and its price being boosted by the low rate of interest. A long-term study shows, however, that real estate owners have never prospered irreversibly. Robert J. Schiller, a Yale economist, claims that every housing boom of the last few centuries has been followed by decades in which home values fell relative to inflation. On the Herengracht canal, an upscale neighborhood in Amsterdam, the actual financial return that a house produces for its owner has often been fantastic for 25 or 50 years, but the long-term trend matches the general rise in house prices equal to gains in people's incomes. Over the long course of history, families have not been forced to devote an ever-larger chunk of their money to the roof over their heads. "A whole lot of the price increases you see in houses is imaginary, because it's just inflation," says Piet M. A. Eichholtz, an economist from Maastrich University. "People say, 'I have a house. It protects me against the economic imbalances or misfortunes of the country.' The big lesson is that real estate does not give you the protection that people think it does." [86] Why support finance capitalism, if one's assets are doomed to lose their fictive value?

Family inheritance loses its significance. In the USA, nearly 40% of those in the World War II generation say it is very important to pass real estate or financial

---

[82] *Osuustoiminta* 2/2006 "Katainen lupasi korjausta osuuskuntien verokohteluun", 7. 6. 2006 "Kuntien voitontavoittelu vaatii jatkuvaa kustannusten supistamista".

[83] *Helsingin Sanomat* 23. 9. 2005 "Fortumin johdolla päällekkäiset palkkiot", 5. 10. 2005 "Fortumin tuotekehitys on supistunut kolmasosaan seitsemässä vudoessa", "Yhtiöiden edullisuus ja matalat korot pitävät pörssin vilkkaana", 21. 10. 2005 "Fortum tekee hyvää tulosta monopolillaan", 9. 6. 2006 "Kun mikään ei riitä" Jenni Virtanen.

[84] E.g. Kahneman (2003).

[85] Babiak & Hare (2006).

[86] *The New York Times*, August 21, 2005 "Be Warned: Mr. Bubble's Worried Again". Cf. *Helsingin Sanomat* 5. 9. 2005 "Helsingin asunnot ovat taas kivunneet huippuhintoihin": The prices of flats in Helsinki since the 1960s have grown 2.5-fold although remaining the same elsewhere in Finland.

assets onto their kids, while only 10% of baby boomers agree to this opinion.[87] The middle-classes people often have to consume their earnings themselves to make ends meet, and the horizon of expectations has been focused on individual self-actualization, not on ontological anchoring in the chain of generations.

Deprived of collective safety nets or stable property, employees are obliged to accept any work at the market price, even below the level of sustainability.[88] Benefits from portable pension funds will never be as high as in the pay-as-you-go-system of mutual insurance, even if the last years of the 1990s promised it. After the bubble had burst, pension-fund savers in the USA found themselves to have a 201k retirement program instead of 401k. Now, pension savers are solicited with a promise of 7% average profit in the long run, but if companies were so productive, there would exist no problem in financing public pension systems.[89] Small investors or "Lumpeninvestoriat," as stock market analysts William Bonner and Addison Wiggin condescendingly call them, have always had to pay the bill for the gains the first movers make. Information is equally available and decisions the most rational only in a theoretical market model.[90] Attracting people to put their savings in financial assets or letting them participate in the formerly exclusive high-yield funds of big players, using hedge fund techniques (taking a high level of debt, using derivatives which allow investors to bet on price moves without taking full ownership of shares, and selling borrowed securities in the hope of buying them back at a lower price, making money from market downturns) may mean democratizing the risk but hardly democratizing profit chances. Returns have fallen, and opportunities for generating high performance from inefficient markets are rare.[91]

Common citizens are forced to participate in a game that they cannot understand. A new deal has occurred for the benefit of capital, because the bargaining power of employees has vanished, and their means for survival outside direct market dependency have been gone. For those who have to work to make their living, private property, be it a piece of land or a permanent job, has ceased to confer independence; instead, they become more and more market-dependent. Common people who have sought security in mutual insurance and politically guaranteed jobs are now forced to take part in market competition to the full to keep afloat. The very notion of public interest, protecting the agency of the majority, is slipping away, as corporates are remaking citizens in their own image. Property has returned to its medieval phase as a pure power relationship, and that is why property becomes irrelevant for corporations who share the market among themselves.

---

[87] *The New York Times*, August 1, 2005 "The greatest generations shares the wealth". See also *Helsingin Sanomat* 22. 8. 2005 "Vaurastuneet suuret ikäluokat luopuvat perinnöstä yhä useammin".

[88] Recently, more and more blue-collar workers have refused to accept unfair payment and work conditions, eating their savings and resorting to disability insurance. They do no longer value their work because it is not valued in payment. *The New York Times*, 31 July 2006 "Men Not Working and Not Wanting Just Any Job".

[89] Stiglitz (2003); *Helsingin Sanomat* 8. 5. 2006 "Eläkepäivillä tarvittavat varat kannattaa panna tuottamaan" Susanna Miekk-oja & Vesa Puttonen.

[90] Thurow (2003); Frank (2004); Hannich (2005).

[91] *Financial Times*, June 18, 2005 "Private investors set to join the party".

Pipes universalizes the political blessings of the modern English property concept from the 17th century, a period of a more equal distribution of property, ignoring the possibility of private monopolies. Quite like Friedrich von Hayek and Milton Friedman, two central Neo-Liberal economists, he sees monopolies only in trade unions or in rent-seeking by the bureaucracy, presupposing that the economic equilibrium of the free market will automatically be based on fair market access.[92]

It is easy to understand that Pipes, as Jewish refugee, who narrowly escaped from Nazi-occupied Poland, is interested in the resources of individuals against state power and neglects the possibility that individuals may also obtain resources by and through the state against monopolistic power in the private sector. Another Jewish refugee, Hannah Arendt, held the opposite point of view concerning monopolies: "All our experiences ... tell us that the process of expropriation that started with the rise of capitalism does not stop with the expropriation of the means of production; only legal and political institutions that are independent of economic forces and their automatism can control the inherently monstrous possibilities of this process. What protects freedom is the division between governmental and economic power, or to put it in Marxian language, the fact that the state and its constitution are not superstructures." [93] Pipes' main question as to the economic distribution as a basis for a republic and division of power remains valid, but his general conclusions are confused due to his indifference to the dynamics of capital as separated from middle class livelihood.

The potential for any change may be hidden in the fact that the common people so seldom win in the monopolistic game. One obvious form of Foucauldian "productive" power, the sense of being an exception from the majority, encourages people to expect a social rise due to their inherent quality and to distance themselves from the "losers," who apparently are ontologically different and also somehow deserve their fate in the weakest-link reality TV shows. As soon as people realize that they cannot escape the structural fate of holding junk jobs and bonds by playing opportunist game strategies, their sense of individual worth and the restorative resources of their private "claustrospheres" can be mobilized against the structures of the labor market and against the subjugation of human needs by capital.

References

Arendt, Hannah (1972): Crises of the Republic. (Harcourt Brace Jovanovich, New York 1972).

Babiak, P. / Hare, R. (2006): Snakes in Suits. Psychopaths in the Workplace (Regan Books, New York 2006).

Bakan, Joel (2004): The Corporation. The Pathological Pursuit of Profit and Power (Constable, London 2004).

Berglund, Theodor (1868-69): Om äganderätten till jord. *JFT* 1868-69, 26-52.

Bernstein, Jay W. (2004): Birth of Plenty. How the Prosperity of the Modern World was created (McGraw-Hill, New York 2004).

---

[92] Schui (2000), pp. 76-79.

[93] Arendt (1972) (Thoughts on Politics and Revolution), p. 173; Young-Bruehl (1982), pp. 398-406.

Bluntschli, J. K. (1853): Deutsches Privatrecht. Erster Band (München 1853).

Bonner, William / Wiggin, Addison (2003): Financial Reckoning Day. Surviving the Soft Depression of the 21st Century (Wiley, Hoboken, NJ 2003).

Brenner, R. (1998): The economics of global turbulence. *New Left Review* I/229 (1998), 1-265.

Brocker, Manfred (1992): Arbeit und Eigentum. Der Paradigmenwechsel in der neuzeitlichen Eigentumstheorie (Wissenschaftliche Buchgesellschaft, Darmstadt 1992).

Brunner, Heinrich (1961): Deutsche Rechtsgeschichte. I. 3. Nachdruck der 2. Auflage (1906) (Duncker & Humblot, Berlin 1961).

Brunner, Otto (1939): Land und Herrschaft: Grundfragen der territorialen Verfassungsgeschichte Südostdeutschlands im Mittelalter, Bd. 5. (Rohrer, Baden b. Wien 1939).

Brunner, Otto (1958): Sozialgeschichte Europas im Mittelalter. (Vandenhoeck & Ruprecht, Göttingen 1958).

Brunner, Otto (1990): Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter. (Wissenschaftliche Buchgesellschaft, Darmstadt, 5. Aufl. 1990).

Castel, Robert (2000): Die Metamorphosen der sozialen Frage. Eine Chronik der Lohnarbeit (UVK Universitätsverlag Konstanz Gmbh, Konstanz 2000).

Cocoy, Mario (1995): Market and non-market determinants of private consumption and their impacts on the environment. *Ecological Economics* 13 (1995), 169-180.

Decker, Peter / Hecker, Konrad (2002): Das Proletariat. Politisch emanzipiert – sozial diszipliniert – global ausgenutzt – nationalistisch verdorben. Die große Karriere der lohnarbeitenden Klasse kommt an ihr gerechtes Ende (GegenStandpunkt Verlag, München 2002).

Eichhorn, Karl Friedrich (1845): Einleitung in das deutsche Privatrecht mit Einschluss des Lehenrechts. (5. verbess. Ausgabe, Vandenhoek & Ruprecht, Göttingen 1845).

Frank, E. (2004): The Raw Deal. How Myths and Misinformation About the Deficit, Inflation, and Wealth Impoverish America (Beacon Press, Boston 2004).

Gerber, Carl Friedrich (1891): System des Deutschen Privatrechts. (16. Auflage, G. Fischer, Jena 1891).

Gierke, Otto (1895-1917): Deutsches Privatrecht. I-III (Duncker & Humblot, Leipzig 1895-1917).

Greenfeld, Liah (2001): The Spirit of Capitalism. Nationalism and Economic Growth (Harvard University Press, Cambridge, MA / London 2001).

Gustafsson, Harald (1994): Political Interantion in the Old Regime: Central Power and Local Society in the Eighteenth-Century Nordic States (Lund 1994).

Hannich, Günter (2005): Börsenkrach und Weltwirtschaftskrise. Der Weg in den 3. Weltkrieg (Jochen Kopp Verlag, Rottenburg 2005).

Harris, J. W. N (1996) : Property and Justice. (Oxford 1996).

Hecker, Damian (1990): Eigentum als Sachherrschaft. Zur Genese und Kritik eines besonderen Herrschaftsanspruchs. *Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft. Neue Folge* 57 (1990) (Schöningh, Paderborn / München / Wien / Zürich)

Hecker, Damian (1995): Plädoyer für einen offenen Eigentumsbegriff. Zu einem Freiheits- und Eigentumsbegriff ohne Recht zur Herrschaft über Sachen. *In*: Grawert, Rolf / Schlink, Bernhard / Wahl, Rainer / Wieland, Joachim (Hg.): Offene Staatlichkeit. Festschrift für Ernst-Wolfgang Böckenförde zum 65. Geburtstag (Berlin 1995), pp. 379-393.

Hietaniemi, Tapani / Karasjärvi, Tero / Kokkonen, Ossi / Lehtonen, Tuomas M. S. / Malkki, Janne / Nurmiainen, Jouko / Piippo, Mikko / Sadeniemi, Matti (1997): Feodalismi. Uuden ajan käsite, keskiajan ilmiö, maailmanhistorian kategoria (Vastapaino, Tampere 1997).

Hoppe, Göran / Langton, John (1994): Peasantry to capitalism. Western Östergötland in the nineteenth century. *Cambridge studies of historical geography* 22 (1994) (Cambridge).

Horwitz, Morton (1987): Santa Clara revised: The development of corporate theory. *In:* Samuels, Warren / Miller, Arthur (eds.): Corporations and Society: Power and Responsibility. (Greenwood Press, New York 1987).

Huffschmid, Jörg (2002): Politische Ökonomie der Finanzmärkte (VSA, Hamburg 2002).

Huuskonen, Mikko (2006): Copyright, Mass Use and Exclusivity. On the Industry Initiated Limitations to Copyright Exclusivity, Especially Regarding Sound Recording and Broadcasting. Diss. University of Helsinki (Yliopistopaino, Helsinki 2006).

Jay, Peter (2000): The Wealth of Man. (Public Affairs, New York 2000).

Jenner, Gedo (1999): Das Ende des Kapitalismus – Triumph oder Kollaps eines Wirtschaftssystems? (Fischer, Frankfurt/M. 1999).

Jutikkala, Eino (1958): Suomen talonpojan historia. Toinen, uudistettu ja lisätty laitos (SKS, Turku 1958).

Kahneman, Daniel (2003): A psychological perspective on economics. *American Economic Review* 93 (2003), 162-168.

Karonen, Petri (1999): Pohjoinen suurvalta: Ruotsi ja Suomi 1521-1809 (WSOY, Porvoo 1999).

Kartio, Leena (1991): Esineoikeuden perusteet. (Lakimiesliiton kustannus, Helsinki 1991).

Katajala, Kimmo (2002): Suomalainen kapina: Talonpoikaislevottomuudet ja poliittisen kulttuurin muutos Ruotsin ajalla (n. 1150-1800). *Historiallisia tutkimuksia* 212 (SKS, Helsinki 2002).

Kontkanen, Pirjo (2006): Tekijänoikeudet yliopistotutkimuksessa ja -opetuksessa. (Helsingin yliopisto, yksityisoikeuden laitos, Helsinki 2006).

Kuisma, Markku (1993): Metsäteollisuuden maa. Suomi, metsä ja kansainvälinen järjestelmä 1620-1920 (SKS, Helsinki 1993).

Kujala, Antti (2003): The Crown, the Nobility and the Peasants 1630-1713. Tax, rent and relations of power. *Studia Historica* 69 (Finnish Literature Society, Helsinki 2003).

Lasch, Christopher (1991): The True and Only Heaven. Progress and Its Critiques (W. W. Norton & Company, New York / London 1991).

Lewis, Carole (1985): The Modern Concept of the Ownership of Land. *Acta Juridica* 1985, pp. 241-266.

Lindegren, Jan (1980): Utskrivning och utsugning: Produktion och reproduction i Bygdeå 1620-1640. *Studia Historica Uppsaliensia* 117 (Acta Universitatis Uppsaliensis, Uppsala 1980).

Lindegren, Jan (1992): Ökade ekonomiska krav och öffentliga bördor 1550-1750. *In*: Winge, H. (ed.): Lokalsamfunn og ovrighet i Norden ca. 1550-1750 (Oslo 1992).

Livingston, J. (2000): The strange career of the "Social Self". *Radical History Review* 76 (2000), 53-79.

Locke, John (1965): Two Treatises of Government. 2 (ed. Peter Laslett). (Mentor Books, New York 1965).

Marshall, T. H. (1973): Class, Citizenship, and Social Development. (Greenwood Press, Westport 1973).

McIlwain, Charles H. (1932): The Growth of Political Thoughts in the West, from the Greeks to the End of the Middle Ages. (Macmillan, New York 1932).

Moore, Barrington (1978): Injustice. The Social Bases of Obedience and Revolt (Macmillan, London 1978).

Müller, Albrecht (2004): Die Reform-Lüge. 40 Denkfehler, Mythen und Legenden, mit denen Politik und Wirtschaft Deutschland ruinieren (Droemer, München 2004).

Niedhammer, I. / Tek, L. / Starke, D. / Siegrist, J. (2004): Efford-reward imbalance model and self-reported health: Cross sectional and perspective evidence from the GAZEL cohort. *Social Science and Medicine* 58 (2004), 1531-1541.

Ojanperä-Oksa, Outi (1996): Niitynvaltaukset ja niittyriidat Ilmajoen pitäjässä 1762-1808. Suomen ja Skandinavian historian pro gradu - tutkielma, Helsingin yliopisto.

Olai, Birgitta (1983): Storkiftet I Ekebyborna: svensk jordbruksutveckling avspeglad I en östgötasocken. *Studia historica Upsaliensia* 130 (Acta Universitatis Uppsaliensis, Uppsala 1983).

Olai, Birgitta (1987): "...till vinnande af ett redigt Storskifte..." En komparativ studie av storskiftet I fem härader. *Studia historica Upsaliensia* 145 (Acta Universitatis Uppsaliensis, Uppsala 1987).

Österberg, Eva (1989): Bönder och centralmakt I det tidigmoderna Sverige: Konflikt – kompromiss – politisk kultur. *Scandia* 62 (1989), 73-95.

Österberg, Eva / Sogner, Solvi (eds., 2000): People Meet the Law: Control and conflict-handling in courts: the Nordic countries in the post-Reformation and pre-industrial period. (Universitetsforlag, Oslo 2000).

Paasto, Päivi (1994): Omistuskäsitteistön rakenteesta: tutkimus jaetun omistusopin mahdollisuudesta ja merkityksestä omistuskäsitteistössä 1700-luvun lopulle tultaessa. Sarja C: *Scripta lingua Fennica edita* 101 (Turun yliopiston julkaisuja, Turku 1994).

Paasto, Päivi (2004): Omistuksen juuret. Omistusoikeuden perustelua koskeva oppihistoriallinen tutkimus. *Suomalaisen Lakimiesyhdistyksen julkaisuja* A: 255 (Suomalainen lakimiesyhdistys, Jyväskylä 2004).

Peter, Hans (1949): Wandlungen der Eigentumslehre seit dem 19. Jahrhundert. Ein Beitrag zur neueren Geschichte des Zivilrechts (Aarau 1949).

Pettersson, Ronny (1983): Laga skifte I Hallands län 1827-1876: Förändring mellan regeltwång och handlingsfrihet. *Stockholm studies in economic history* 6. (Acta Universitatis Stockholmiensis, Stockholm 1983).

Pietilä, Hilkka (2004): Households as the counterforce to globalization. A dream of an option out of drudgery and slavery of the market (unpublished manuscript).

Pipes, Richard (1999): Property and Feedom (Alfred A. Knopf, New York 1999).

Pipes, Richard (2003): VIXI. Memoirs of a Non-Belonger (Yale UP, New Haven / London 1999).

Polanyi, Karl (1944): The Great Transformation: The Political and Economic Origins of Our Time. (Beacon Press, Boston, Mass., 1944).

Pöyhönen, Juha (2000): Uusi varallisuusoikeus (Kauppakaari Oyj - Lakimiesliiton kustannus, Helsinki 2000).

Proudhon, Pierre-Joseph (1840): What is Property? An Inquiry into the Principle of Right and of Government (transl. Benj. R. Tucker). (New York 1970).

Reading, Anthony (2004): Hope & Despair. How Perceptions of the Future Shape Human Behavior (The John Hopkins University Press, Baltimore / London 2004).

Revera, Margareta (1975): Gods och gård 1650-1680. Magnus Gabriel De la Gardies godsbildning och godsdrift i Västergötland. 1. *Studia Historica Uppsaliensia* 70 (Acta Universitatis Uppsaliensis, Uppsala 1975).

Riesman, David / Glazer, Nathan / Denney, Reuel (1950): The Lonely Crowd. A Study in the Changing American Character (Yale UP, New Haven / London 1969).

Rifkin, Jeremy (2000): The Age of Access. How the Shift from Ownership to Access is Transforming Modern Life (Penguin Books, London 2000).

Rittstieg, Helmut (1983): Zur Entwicklung des Grundeigentums. *Juristenzeitung* 5-6/1983, 161-167.

Ruggie, John Gerard (1993): Territoriality and Beyond: Problematizing Modernity in International Relations. *International Organization* 47 (1993), 139-174.

Sagan, L. A. (1987): The Health of Nations: True Causes of Sickness and Well-Being (Basic Books, New York 1987).

Schlatter, Richard (1973): Private Property: The History of an Idea (Russell & Russell, New York 1973).

Schröder, Richard (1889): Lehrbuch der Deutschen Rechtsgeschichte. (Leipzig 1889).

Schui, H. (2000): Wie die Kapitalmacht auf die Köpfe wirkt. *In:* Schui, H. / Spoo, E. (Hg.): Geld ist genug da. Reichtum in Deutschland (3., aktualisierte Auflage, Distel Verlag, Heilbronn 2000), 71-88.

Schui, Herbert / Blankenburg, Stephanie (2002): Neoliberalismus: Theorie, Gegner, Praxis. (VSA, Hamburg 2002).

Scott, James C. (1975): Weapons of the Weak: Everyday Forms of Peasant Resistance. (Yale UP, New Haven 1975).

Siltala, Juha (2004): Elastic minds at the flexible labor market. The rise and fall of psychological man. *In:* Janus, Ludwig / Kurth, Winfried (eds.): Psychohistorie und Politik. *Jahrbuch für Psychohistorische Forschung* 4 (2003) (Mattes Verlag, Heidelberg 2004), pp. 185-212.

Smith, Gordon D. (1998): The shareholder primacy norm. *The Journal of Corporation Law* 23 (1998).

Sontis, Johannes (1973): Strukturelle Betrachtungen zum Eigentumsbegriff. *In*: Paulus, G. / Diederichsen, U. / Canaris, C-W. (Hg.): Festschrift für Karl Larenz. (München 1973), pp. 981-1002.

Stiglitz, Joseph E. (2003): Globalization and Its Discontents. (W. W. Norton & Company, New York / London 2003).

Stobbe, Otto (1882/83): Handbuch des Deutschen Privatrechts. I-II. (2. Auflage, Wilhelm Herz Verlag, Berlin 1882/1883).

Sundberg, Kerstin (1993) Resurcer och sociala relationer. Studier av ett lokalsamhälle I förändring 1600-1800: Österhaninge och Västerhaninge socknar. *Bibliotheca historica Lundensis* 76 (Lund University Press, Lund 1993).

Talvitie, Petri (2005): Vastarintaa vai myötämieltä? Talonpoikien suhtautuminen isojakoon Uudellamaalla 1757-1848. Suomen ja Pohjoismaiden historian pro gradu -tutkielma, Helsingin yliopisto.

Teschke, Benno (2003): The Myth of 1648. Class, Geopolitics and the Making of Modern International Relations (Verso, London / New York 2003).

Thompson, Edward Palmer (1991): Customs in common. (The Merlin Press, London 1991).

Thurow, L. C. (2003): Fortune Favors the Bold: What We Must Do to Build a New and Lasting Global Prosperity. (Collins, New York 2003).

Tilly, Charles (1995): Coercion, Capital, and European States, AD 990-1992. (Basil Blackwell, Cambridge, MA, 1995).

Tilman, R. (2001): Ideology and Utopia in the Social Philosophy of the Libertarian Economists. *Contributions in Economics and Economic History* 223 (Greenwood Press, Westport, Connecticutt / London 2001).

Toivanen, Hannes (1997): Yksilöllisen ja erillisen synty. Kollektiivisen maanhallinnan kriisi Merikarvialla vuosina 1750-1800. Suomen ja Skandinavian historian pro gradu -tutkielma, Helsingin yliopisto.

Villstrand, Nils-Erik (1992): Anpassning eller protest. Lokalsamhället inför utskrivningen av fotfolk till den svenska riksmakten 1620-1679 (Åbo Akademis förlag, Åbo 1992).

Walpen, Bernhard (2004): Die offenen Feinde und ihre Gesellschaft. Eine hegemontheoretische Studie zur Mont Pélerin Society. *Schriften zur Geschichte und Kritik der politischen Ökonomie* 1 (VSA, Hamburg 2004).

Windscheid, Bernhard (1879): Lehrbuch des Pandektenrechtes, 1. Bd. (5. Auflage, Ebner & Seubert, Stuttgart 1879).

von Roth, Paul (1880-86) System des Deutschen Privatrechts. (Tübingen 1880-1886).

von Zeiler, Franz Edlen (1819): Das natürliche Privat-Recht. (3. verbesserte Auflage, Beck, Wien 1819).

Wunder, Heide (1995): Das Selbstverständliche denken. *In*: Peters, Jan (Hg.): Gutsherrschaft als soziales Modell. Vergleichende Betrachtungen zur Funktionsweise frühzeitlicher Agrargesellschaften. *Historische Zeitschrift*, Beiheft 18 (1995).

Ylikangas, Heikki (1991): The Historical Connections of European Peasant Revolts. *Scandinavian Journal of History* 26 (1991), 85-104.

Ylikangas, Heikki (2004): Kiista uudisasutuksesta isojaon syynä. *Historiallinen aikakauskirja* 102 (2004), 494-507.

Young-Bruehl, Elisabeth (1982): Hannah Arendt. For Love of the World (Second Edition, Yale UP, New Haven / London 2004).

Zitting, Simo / Rautiala, Martti (1963): Esineoikeuden oppikirja. Yleinen osa. *Suomen lakimiesliiton kirjasarja* 20 (Suomen lakimiesliiton kustannus, Helsinki 1963).