

**Massimiliano Tomba:**

*Restoration. The Work of Anachrony*

(Draft)

## A) Chapter: "Private and Social Property"

### 1. Aims and Focus of the chapter

#### 1.1 Reveal compresence and tensions between dominant forms of property and alternatives

- Alternatives reside in "other social practices": "The aim of this chapter is to show the compresence and tensions between different legal layers related to property regimes. These tensions demonstrate both the unstable and contingent character of dominant property forms and possible alternatives rooted in other social practices" (p.2)

#### 1.2 Dismantle ideology through an engagement with alternative practices, compresent in multiple "historical-temporal strata"

- "This chapter aims to dismantle this ideology from the perspective of alternative proprietary practices and trajectories to that of the dominant modernity. [...] It is not a question of contrasting the tragedy of the commons with the equally ideological comedy of a happy ending. In place of this, it is a question of working with the compresence and tension between different historical-temporal strata." (p. 5)

#### 1.3 Focus on the relation between modern property relations and past/present alternatives

- "In this chapter I focus mainly on the structuring of modern private property relations and the multiple past and present alternatives. From the point of view of the dominant temporality, these alternatives survive in the present as anachronisms. But what these anachronisms show is the compresence of different temporal layers in tension between each other." (p. 6)
  - elements of this relation: dominant temporality, anachronisms, and different temporal layers
  - relation between these elements is characterized as a "tension between each other"
  - different temporal layers are/could be the source of a "theoretical arsenal alternative to dominant modernity" (p. 6)

## 2. The past as battlefield: "a different theoretical and historiographical method"

#### 2.1 Modernity tends to project its (historical-political) concepts – i.e. its understanding of private property – onto the past, giving them an almost metahistorical character

- Example: *ius utendi et abutendi*. This Latin expression did not exist in antiquity but was a "reinvention of Roman law" by Jean-Étienne-Marie Portalis (1746-1807) who defined the right to private property by inventing a Roman origin (p. 1).
- Consequence: "typically modern political and economic concepts are 'naturalized' until they appear eternal" (p. 2), "metahistorical principles" (p. 4)
- Problem: This modern reactive homogenization (i) "absolutizes the superficial historical strata", eliminating "historical depth to provide a flat and universal image of the present" (p. 5); it tends to, ideologically, (ii) cover historical alternatives and/or (iii) addresses the multiple past and present alternatives as less developed, "irrational, residual, savage, undisciplined, and lazy" (p. 13): as "Anachronisms".
  - Conception of progress/Ideology (Allen: Self-congratulation-bias): "This reverse teleology [Hegel] puts past events in order in accordance with an already known and normatively accepted outcome. From this historical perspective, which is

already an implicit philosophy of history, it is always possible to outline a progress from primitive forms of common ownership to more rational property relations” (p. 18)

- Stabilizing/paralyzing effect: “having severed the link with tradition, needed new strategies of legitimation”, “this is how history was born: as a discipline to form an army of guards for the existing order through the control of the past. Those who control the past also control the present. And the future” (p. 25)

→ Twofold Anachrony: The dominant modernity projects its concepts – anachronistically – onto the past and alternatives to the dominant modernity appear as anachronistic – outdated – in it.

## 2.2. This problematic retroactive homogenization is challenged by some social movements and their “reservoir of memory”

- Within some social movements – supposedly backward, “anachronistic” – practices become manifest, which (i) can be understood as theory (“alternative theory in action”, p. 1) and (ii) have the potential to erode the existing social and political order by activating the vast “reservoir of memory and its energy” (p. 3)
- “The commons, their tradition, practice, and memory emerge from historical strata that have been covered by a new legal regime of property forms” (p. 2)
- By contrasting the dominant modernity in this way, the tensions become visible and can have both, an (i) enabling/empowering and a (ii) critical dimension: “From these tensions there arise both the historical analysis of other forms of possession, what alternatives the present can disclose, and the ideology that saturates the present with historical categories elevated to metahistorical principles” (p. 5)

→ The alternative practices of social movements found in alternative trajectories of the past do not only present a critique of the *status quo* but can – positively turned – offer alternatives that can replace the current entrenched concepts.

## **3. Tension/Clash as a normative configuring relation: the normative parameters of legal and political concepts are configured within the clash/war between life forms and systems**

### 3.1 The ‘agent’ of this configuration is the tension: “processes are configured within the tension”

### 3.2. The elements of this configuration are:

- a) opposing/incompatible temporal trajectories
- b) political, legal and proprietary systems and
- c) different life forms

- “What I want to highlight is how the polemic nature of modern political and legal concepts is to be read in relation to a long war between life forms and legal systems. The long war against commons and forms of common ownership was fought both with the cannons of colonial violence organized by the state and through the canon of political thinkers which finally became dominant. Every concept employed by Locke, and other representatives of the canon was forged in this clash and bears traces of it. It is up to a new political theory to bring this out” (p. 15)
- “What I maintain, through these examples, is that there is no transition from the pluralist legal structure of the Middle Ages to the modern one. There is a war between incompatible legal systems” (p. 29)
- “The temporal trajectories in tension with each other should not be understood as distinct elements located at the extremes of a tension, but as open processes that are configured within the tension.” (p.29)

## B) Chapter: “Cochabamba Water War. Practices of Social Property”

### 1. Theses

1.1 The insurgency in Cochabamba broke the dichotomy between public and private property, launching the possibility of social property.

1.2 The water war is a clash between the legal trajectories and temporalities of state and insurgent peoples.

1.3 These legal trajectories and temporalities are incommensurable.

### 2. Opposed terms of the clash

Private Property	Social Property
individual possession	common possession
Individual rights	Reciprocal obligations
Synchronizing grammar	Asynchronous grammar
Unity principle	Plurality principle
Colonialism, dispossession, state intervention, state monopoly, privatization	Insurgency, customs, and traditions
Representation, recognition dynamics	Subjects of rights

## C) Questions

1. In your considerations there are some obvious parallels to Walter Benjamin's *On The Concept of History*. Could you elaborate a bit more on this? Which theses, which considerations of Benjamin matter to you in particular?
2. You seem to distinguish between “history” (dominant, with a tendency to ideological bias) and “traditions”/“customs” (potentially insurgent): could you say something more about this distinction?
3. Is the trust in the functioning of (local) social groups/communities connected to customs/traditions really to be accepted, uncritically? After all, isn't there a danger of considerable exclusion mechanisms and alternative concentrations of power (family associations, etc.) that were beneficial to overcome?
4. At an important point you speak of “anger”, of “angry energy bursting forth from a pent-up reservoir of memory that threatens to undermine the existing social and political order” (p. 3): What role does this feeling – this “anger” – play in the activation of uprising groups and how does it arise? What role does the interrupted relationship to a suppressed past/tradition play here?
5. You state that a certain “historical perspective”, “is already an implicit philosophy of history” (p.18): Could you further expand on this consideration and its implications?
6. *Lebensformen* und immanent critique: What connections do you see to Rahel Jaeggi's understanding of forms of life and/or to the concept of Immanent Critique?
7. Insurgency and struggle for recognition: The water war cannot be properly understood as a struggle for recognition (p. 8: “The dialect, or even the struggle for recognition, starts from the premise of a common and shared juridical horizon, it starts from a wrong or from a more egalitarian redistributive request. In Cochabamba the local communities are subjects with full rights”). Local communities are not subordinate to the state but have their own legality. These legalities are not synchronous and the tension between them gives rise to unforeseen forms of life. – So: Is synchronicity of strata a premise for the struggle for recognition to take place?

## D) Appendix: Chronology of Cochabamba Water War

- 1532. The Spaniards arrive in Bolivia.
- 1739. Insurgency in Oruro.
- 1750. Insurgency in Chuani.
- 1780. The insurgency in the Andes claims abolition of slavery + restitution of the land to its rightful owners.
- 1874 The Disentailment Law dissolves the communal forms of possession, recognizing the absolute right of individual property and the state expropriation for national necessity. → “progressive” intervention by the state.
- 1952. New peasant revolts on the countryside. Bolivian National Revolution. --> unitary nation intervention
- 1953. Agrarian Laws (land expropriation and its redistribution; erosion of the ayllu as a jurisdictional space) → “modernizing” intervention by the state.
- 1985. Decree 21060 attacks trade unions and introduces structural adjustments based on privatization.
- 1986. The privatization of the mines gives rise of the “March in Defense of Life”.
- 1994. Law of Popular Participation leaves institutional room for community forms.
- 1999. Law 2029 attacks systems of self-management of resources at community level, imposing the state monopoly on water and promoting the participation of the private sector (the consortium Aguas del Tunari) → legal synchronization of the state; The price of water increases 200%; Dec. Beginning of the mobilizations through a web of assemblies led by the Coalition in Defense of Water and Life (Coordinadora).
- 2000. 7 Abr. The State declares a “state of siege” in Cochabamba. 8 Abr. A 17-year-old student is killed by a Bolivian captain. The population rises up; the contract with Aguas del Tunari is canceled. The government repeal Law 2029 and issues the Law 2066. Dec. Cochabamba Declaration is published.
- 2005. Evo Morales is elected → the social experiment of Cochabamba enters in decline.
- 2009. The new Constitution only recognizes classical forms of ownership (public, private and its variants) → end to the social property experiment.
- 2010. Apr. The “Universal Declaration of Rights of Mother Earth” presupposes a power that guarantees the rights of a vulnerable subject → political regression from the 2000 Manifesto. Oct. Morales administration opens up 56 new areas for oil extraction, some of which in indigenous territories.