Democratic Socialism and Private Property

ANDREW KERNOHAN

I. Democratic socialists typically call for the abolition of private property in the means of production, and its replacement by some form of democratic control. I shall argue that, on the contrary, democratic socialists should seriously consider the value of maintaining a transformed system of private property rights in the means of production, in order to create the democratic control which is their goal.

This contention may seem paradoxical. On the face of it, an individual's right to private property in a means of production entails that this individual be able to exclude others...
from any control over this property. This, it may be objected, is autocratic control, the very opposite of the democratic control sought by democratic socialism. Such an objection, however, assumes a very simplified conception of private property rights, one in which all of the rights to a thing associated with the notion of property are concentrated in one person, the owner. This conception of full, undivided capitalist ownership is a notion which held sway for a very limited period of history, roughly from the end of feudalism to the beginnings of the twentieth century. It has been destroyed by the needs of complex organizations for correspondingly complex divisions of ownership rights. The common law conception of private property, which allows the coexistence of many packages of different property rights in the same thing at the same time, has been reasserted. It will be the task of this essay to describe the common law conception of the fragmentation of private property rights, and to suggest how this conception can provide a framework through which democratic control over the means of production can be achieved.

The contention that democratic socialism requires the maintenance of private property rights can seem overly simplistic on two misinterpretations. If the contention meant only that persons might have exclusive ownership of the means of consumption, it would be rather trivial. There is no problem for socialists, or anyone else, with private property rights in objects like toothbrushes and acorns (Locke) that we consume in isolation. Rather, a less obvious case will be argued. It will be contended that democratic socialism requires the assignment of private property rights in the means of production, and not just in the means of consumption. This leads to another potential misinterpretation. It might be thought that what is being suggested is a return to the democratic ideals of Jefferson or Rousseau, which would involve the fragmentation of large corporations into small businesses, each under the sole and exclusive proprietorship of one worker. For example, an industry could be broken down into work stations, and then the means of production involved in each work station could be conveyed to a worker as his or her private property in the sense of full capitalist ownership. But such a suggestion would sacrifice all the productive advantages of cooperative work, and perhaps jeopardize the material conditions for the imple-
mentation of the democratic socialist ideal in the first place. What is contended here is not that ownership be preserved intact and the means of production be fragmented, but quite the opposite. The common law notion of property rights provides the tools, at least in principle, whereby the advantages of the cooperative utilization of the means of production can be reaped, but property rights to the intact mass divided in such a way as to facilitate democratic control by the workers.

From the perspective of historical materialism, the contention that democratic socialism can be achieved by a just distribution of fragmented legal property rights may seem wrongheaded. From that perspective, any system of justice is adequately determined by the economic basis of society. True democratic socialism will not be attainable then by any redistribution of rights to control property, but must await the necessary historical development of the forces and relations of production. Be that as it may, this essay can be read as a suggestion, based on a purely conceptual analysis of property rights, of how to achieve some approximation to true democratic socialism at this particular stage in history. Like any such suggestion, it must pass the test of political practice. Further, it might seem wrongheaded to attempt a conception of socialism that employs, in any essential capacity, the notion of a right. All conceptions of the rights of persons are inherently bound up with the bourgeois view of human nature, and this latter is likely incompatible with true democratic socialism. As with the first reservation, a full discussion of this issue is beyond the scope of this paper. But again, the suggestion being made could be seen as applicable only in a particular stage in the development of human nature, though the discussion of democracy by consensus that appears below gives some arguments on the need for democratic rights under all future historical conditions.

The aim of the present essay is to argue that democratic control over the means of production requires the distribution of a set of rights in the means of production corresponding to the component private property rights of full capitalist ownership. This essay will indicate both that the law permits this fragmentation, and that the process has already begun. There are, however, several important and relevant issues that will not be discussed. Foremost among these missing issues is
the nature of the principles that should govern the distribution of these fragments of private property rights. A discussion of this issue would require the description and justification of a complete theory of democracy, and would be an immense task. Instead this essay will begin the preliminary task of discussing the nature of the sorts of things—property rights—that such principles should distribute in the context of cooperative utilization of large-scale means of production. Besides offering no principles and no justifications, the essay will offer no practical advice on implementation: what laws to change; how to write corporate constitutions; how to compensate previous owners for rights transferred or annulled; a strategy and timetable for the transition; and so on. With these caveats, we can move on.

For a vision of the nature of property and its role in democratic socialism, let us turn to the work of the noted Canadian political theorist, C. B. Macpherson. For Macpherson, the core to the notion of having a property right is having "a right in the sense of an enforceable claim to some use or benefit of something, whether it is a right to a share in some common resource or an individual right in some particular thing. What distinguishes property from mere momentary possession is that property is a claim that will be enforced by society or the state or by custom or convention or law." The core notion of a right of access can be supplemented by an additional component, the right to exclude others from the use or benefit of a thing, to create the concept of private property. The bearer of a property right can be either an individual person or a corporate person (a corporation or the state). Combining these two distinctions, Macpherson develops three interesting categories of property. The core notion is that of the common property of individuals, the right of access of individuals to things, in particular to the means of production. Though enforced by the state, such common property rights are property rights of individuals, and not of the state itself. The category of being the common property of the state or other corporate persons, which is a possible combination, is not an interesting one. The other two interesting combinations are private property per se, the right of individuals to access things and exclude others from them; and state prop-
If Macpherson's taxonomy of concepts of property is complete, a democratic socialist calling for the abolition of private property in the means of production can only offer one of two generic alternatives for its replacement: common property or state property. A society might also be structured out of a mixture of the two. For example, one can imagine a plurality of corporate bodies whose property was common to the members of each, while private with respect to non-members. But this would involve merely a mixture of the two types of property already discussed, and not the compounding of an entirely new type of property. Macpherson recommends the first of the two alternatives, common property, to the democratic socialist in the liberal-democratic tradition: "If liberal-democratic societies are to be the guarantors of rights essential to the equal possibility of individual members using and developing their human capacities, the individual property right that is needed is not the exclusive right but the right not to be excluded from the use or benefit of things (including society's productive powers) which are the achievements of the whole society." In what follows, both common and state property will be examined as the possible basis for democratic socialism, and will be found to be inadequate. Instead it will be argued that a system of individual private property rights is not only permitted but required by the principle of democratic control of the means of production. But before making this case, more must be said about the institution of private property.

Property is ubiquitous, invisible and misunderstood. To see the truth of the first part of this claim, one just has to look around. Just about everything one can see, and many intangible things that one cannot, is somehow property. Yet being property is not a visible property (in another sense of the word) in the same way as is being red or being three inches long. One way to make a system of property visible is to imagine trying to explain human behaviour in Canadian society to an alien being from a society without property rights. Why does this person walk on the sidewalk and not take a shorter, more comfortable route across a nearby lawn, or
simply drive to his or her destination in the nearest unlocked car? Why does a hungry person not just take a doughnut from the shelf behind the counter, or another person standing cold and wet in the snow not just enter the nearest house to get warm? Why locks? Why money? Why the stock exchange? To answer the alien's questions, one would have to explain the system of property rights which is part of the content of the behaviour.

We can distinguish three sorts of views on property. The naive view has it that objects are themselves property. The automobile with license number such and such is John's property. But a moment's thought about what distinguishes John's car from all the other cars on the road brings one to the unsophisticated view that what is important is the existence of a certain relationship between John and his car. John has a property right in his car, or John owns it. What makes this view unsophisticated is the notion that there is some single right that John has, by virtue of which the car is his property. Anglo-American and Canadian lawyers, however, have a more sophisticated view of property. To have property in a thing is to have a collection of different sorts of rights in it, with the complication that the contents of the collection may sometimes be limited or conditioned in specified ways. Thus John may have the right to enjoy his car and exclude others from such enjoyment, but he may not have the right to sell it without permission from the bank where he obtained his car loan. Or perhaps he may have the right to sell it on condition that he immediately repay his bank the outstanding amount of the car loan. This is a very simple example. The possibilities for designing various collections of rights in the same thing are endless. Some political philosophers have tended to work with an unsophisticated view of property rights. For example, Robert Nozick says: "The central core of the notion of a property right in x, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with x; the right to choose which of the constrained set of options concerning x shall be realized or attempted." It is extremely unlikely that so obviously well-read a philosopher as Nozick should be unaware of the sophisticated legal view of property rights. Indeed, in the paragraph following the one from which this quotation is taken, he discusses how different
people might make different types of decisions with regard to the same x. And in another chapter, he uses the views of some recent economists on the separability of bundles of property rights in a hypothetical history of the origins of *demoktesis*, the "ownership of the people, by the people, and for the people." More plausibly, Nozick, like any good author, had an audience in mind while he wrote, and this audience could be counted on to have an unsophisticated view of property rights.

What, then, accounts for the prevalence and unquestioning assumption of an unsophisticated view of property rights amongst non-lawyers, philosophers and laypeople alike? Partially, of course, it is ignorance. Because of the state of society at this point in time, most of us own little more than our labour and our personal possessions, and such ownership fits well with the unsophisticated view of property. Few of us are party to the large scale commercial transactions in aid of which the sophisticated view has been developed. Those who do engage in such transactions have little interest in informing the rest of us about their nature. Even when the sophisticated view does come into our lives, as in the fine print on the back of a loan contract with a bank, it is hidden in incomprehensible legal terminology. Furthermore, the paradigm of ownership which North American culture presents us with is that of the original peasant appropriator who mixed his (seldom her) labour with the virgin land and thereby acquired all conceivable property rights to it. However false, as a matter of historical record, this paradigm may be, it colours the unsophisticated view of modern property.

Whatever its causes, the unsophisticated view is also supported by a tempting but fallacious argument based on the concept of private property. It follows from the concept of privateness that a proprietor has the right to exclude all others from a piece of private property. This can easily be taken to imply that the proprietor can exclude others from any rights at all in this property. The fallacy here is easily visible from the sophisticated viewpoint. Take, for example, the case of John, his car, and the bank. John having a private property right to the enjoyment of his automobile presumably means he can exclude others, including his bank manager, from the enjoyment of his automobile, but John's right does not exclude the bank from the right to sell the automobile should the bank
foreclose on his loan. Having a private property right in a thing means a proprietor can exclude all others from the exercise of that particular right, not that the proprietor can exclude others from exercising different rights in the thing. Only in a case where the proprietor happens to own all the private property rights to the thing which are available, can he or she do this.\(^\text{11}\)

It is instructive to catalogue the various sorts of rights that can come into play when someone owns a thing. The noted legal scholar, A. M. Honore, has provided the following list of eleven standard "incidents" of what he calls the liberal concept of ownership.\(^\text{12}\) What Honore has in mind is a list of all the rights that a person could have in a thing if that person had the "greatest possible interest in a thing which a mature system of law recognizes."\(^\text{13}\) This is not to imply that a person must either have such full capitalist ownership or no interest at all. On the contrary, lesser interests are possible. But an account of full capitalist ownership gives us a complete listing of the possible sorts of rights people can have in things, and, for Honore, gives us a paradigm case of ownership to which difficult questions concerning who is the owner of a thing can be compared. The incidents are:

(1) The right to possess. This is the right to be put in, and to remain in, physical control of a thing. It differs from simple physical possession in the state of nature because a system of property provides legal procedures, backed by the power of the state, whereby possession can be achieved and maintained.

(2) The right to use. This is the right to the personal use and enjoyment of a thing.

(3) The right to manage. This is the right to decide how, when and by whom a thing shall be used. Consider, for example, the management powers of the owner of some force of production like a drill press. The owner can use it him or herself, rent it to someone, subject such rental to conditions, hire someone to use it, contract the terms of work with either an employee or a trade union, delegate various managerial powers, and so on. The right to manage the means of production in a society is a tremendously important part of the distribution of power in that society.

(4) The right to the income. If the thing produces income in the form of rent, interest, profit or produce, the owner has the right to such income.

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(5) The right to the capital. This is the right to consume, waste or destroy a thing, and the right to alienate the thing by way of sale or gift etc. Clearly this is a foundational right of the capitalist property system. Without fairly extensive rights to sell or market property and its produce, the capitalist system of production could not be organized. Feudal systems of property rights did not allow such an unrestricted power to alienate property, and thus had to be changed in order to accommodate the capitalist mode of production.

(6) The right to security. In the strongest sense, this would be immunity from expropriation. But even the legal system of the United States does not provide such strong security. Instead there exists a weaker sense of security requiring that compensation be paid in cases of expropriation. The right to security can be strengthened by placing conditions on compensated expropriation, such as requiring that it be for the public good.

(7) Transmissibility. This is basically the power to decide, by means of a will, what will happen to the property rights of others after one's death. This is not unrestricted since devices like the rule against perpetuities limit how far into the future an owner's decision can extend.

(8) The absence of term. In the paradigm case of ownership, that of land owned in fee simple, the owner's rights do not cease at any particular date, not even—because of the right to transmit property—at the owner's death. This is the standard. Other cases of ownership are for a fixed term; for example, leases, copyrights, patents, life estates, etc.

(9) The prohibition of harmful use. A prohibition is only in the loosest sense a property "right". Nonetheless, an owner's right to use property is limited by tort, by nuisance and criminal laws, and sometimes by other public laws. Property rights are not rights to violate property rights, or human rights, of others.

(10) Liability to execution. An owner's property rights may be taken by the legal system for payment of his or her debts.

(11) Residuary rights. When a bundle of property rights of lesser extent than full capitalist ownership (such as a lease) terminates, there is some person to whom the bundle of rights reverts.
These are the sorts of rights which accrue to the paradigm of ownership, the paradigm being the peasant farmer who owns a small piece of land in fee simple. But we no longer live in a peasant economy; our society is much more complex and requires for its regulation a correspondingly more complex system of property rights. This has not necessarily meant the creation of new sorts of rights. Rather it has meant that different bundles of rights have been assembled out of these eleven fragments of ownership. Consider what ownership of a share in a joint stock company means. Firstly it is not the ownership of any tangible thing, a stock certificate or a drill press on a factory floor. It is a second order right: the right to an intangible which is a bundle of rights over the assets of the company. But this bundle is not the full collection of Honore's standard incidents. What the stockholder owns typically does not include the right to possess any of the company's assets or to use them for personal enjoyment. It includes a very slender management right: the right to vote on who will manage these assets. It also includes a right to a share in the company's income, security from expropriation, and absence of term and residuary rights. It does not include the right to alienate any of the company's assets. This is the prerogative of the board of directors and their appointees, and should not be confused with the right to alienate the share's bundles of rights, i.e., to sell the stock. The assets of the company are not liable to execution for the debts of the stockholder, except indirectly in cases where the stockholder is the principal owner of the company and his or her shares are taken in repayment of debt, and used to force the resolution of the company.

The example of the joint stock company suggests how the concept of full capitalist ownership has been eroded by the history of capitalism itself. The implication is that a consistent defender of capitalism cannot claim that full capitalist ownership is a natural right preserved only by the capitalist system. Property law contains myriad devices by which the eleven standard incidents pertaining to any one thing can be apportioned among various owners: trust funds which divide management from income; estates of various duration; joint and co-tenancies; leases; servitudes; security giving; etc. All of these devices are used by lawyers to define precisely the prop-
 property interests being traded in the complex deals being made by their capitalist clients. It is the complicated requirements of modern capitalism itself which lead to the fragmentation of the original conception of full capitalist ownership.\textsuperscript{16}

Against this it might be objected that although a shareholder's first order rights to the company's assets may be less than full, his or her second order property right to this share (the attenuated bundle of rights to the assets) is full capitalist ownership. This seems to be true in the case of a shareholder; all of Honore's standard incidents do seem to apply to the relation between shareholder and share. But the objection cannot be generalized. For example, the board of directors of a company have most of the rights to manage the company's assets. These are the rights which are missing from the shareholder's bundle. The board collectively has a type of property right (the right to manage) to the company's assets. But its right to this right is less than full ownership. The board members cannot, for example, sell the right to manage the company in return for an income to themselves. This might be construed as embezzlement. So the board's ownership of the right to manage the company is not full capitalist ownership. In general, there is no reason that the second order right to a property right should be full ownership. The existence of second order property rights simply adds another layer of complexity to the possibilities of fragmentation in the ownership of things.

Honore's catalogue of eleven standard incidents of ownership is a list of the various types of rights an owner can have in a thing. But this does not give us a full accounting of the ways in which ownership can be fragmented because it is still possible to particularize each type of right in various ways. When, under the heading of a sort of right, say the right to manage, there come various particular rights appropriate to the thing being managed, these particular rights can be specified and divided up. For example, a union contract may give union members certain rights vis-à-vis who shall be hired and fired. Management may protest against such a contract clause on the basis that it interferes with their "management rights". But rights to manage various aspects of a thing can be divided up, bargained for and contracted away, just the same as any other property right. As well as being particularized, property
rights can be limited in scope, as when a lease ends after a fixed number of years or a trustee is limited in the power to alienate property by a requirement that he or she maintain the value of the trust capital. Property rights can also be conditional rather than absolute in nature. An important example of this is the fiduciary duty that a trustee has to the beneficiary of a trust fund. The trustee has full management rights over the fund, subject to the condition that these be exercised for the benefit of the beneficiary and not for the benefit of the trustee. The board of directors of a corporation exercise their management powers subject to a fiduciary duty not, as one might expect, to the shareholders, but to the corporation itself.

Seeing the components of private ownership spread out, as it were, on paper can be a liberating experience for the imagination. The fragments allow a conveyancer to mix and match collections of rights to achieve the ends of his or her clients and could allow a democratic socialist to do something similar to achieve democratic control of the means of production within the present legal system. All that is required is a different mixture of the same elements distributed to different people (the present employees). Potentially this can be done in such a way as to minimize the disturbance caused by the transition.

The common law thus permits the total fragmentation of the seemingly unitary notion of private ownership. In this it differs from the civil law found in much of Europe. Common law is descended in a messy and never systematized fashion from early feudal law, whereas civil codes were intellectual creations of the nineteenth century, systematized on the basis of Roman law in a climate very sympathetic to capitalism. Consequently, in addition to the various incidents distinguished by Honore, there is a separate right of ownership. Merryman describes the difference in the following metaphor:

Romanic ownership can be thought of as a box with the word "ownership" written on it. Whoever has the box is the "owner". In the case of complete, unencumbered ownership, the box contains certain rights, including that of use and occupancy, that to the fruits or income, and the power of alienation. The owner can, however, open the box and remove one or more such rights and transfer them to others. But as long as he keeps the
box, he still has the ownership, even if the box is empty. The contrast with Anglo-American law of property is simple. There is no box. There are merely various sets of legal interests. One who has the fee simple absolute has the largest possible bundle of such sets of legal interests. When he conveys one or more of them to another person, a part of his bundle is gone.\textsuperscript{17}

Though there is no right of ownership as such in English descended law, it has been suggested that one of Honore's incidents, the right to the capital, would needs be included in any bundle of property rights.\textsuperscript{18} The right to the capital, which is included in the bundle, is not necessarily the first-order right to alienate, consume or destroy the thing itself, but can be just the second-order right to alienate the particular bundle of rights, prohibitions and liabilities that pertain to a less than full owner. While this suggestion may be true as a description of our present law of property, it is true for historical and not conceptual reasons. In a chapter entitled, “The Reconciliation of Fragmentation with the Needs of the Market” in his book, \textit{The Law of Property}, Lawson discusses the mechanisms whereby modern law has ensured that all interests in property should remain marketable.\textsuperscript{19} An example of particular importance for the transition from feudalism to capitalism is the story of how the family settlements of the aristocracy, which prevented the sale of family estates, were abolished and land thereby forced onto the market. Clearly the appearance of the right to the capital in every bundle is an historical feature of the capitalist system which can be changed, and indeed has been changed as the example of the non-marketability of the management rights of the board of directors of a company shows. It is also worth remarking that the law has been less tolerant of the fragmentation of interests in moveable property than it has been with regard to real estate. Again the explanation is historical rather than conceptual: the need of the capitalist market to keep together bundles of interests in chattels in order to facilitate their exchange as commodities.

\textbf{III} The last section should have made it clear that there is no good reason to identify private property with full capitalist ownership. The conceptual argument that because private property rights in a thing are exclusive, the possessor therefore
must have the right to exclude others from any rights in the thing at all, has been shown to be fallacious. Instead an owner has a collection of interests in a thing in which others may have different collections of interests. Nor, it has been argued, is the second-order ownership of an incomplete collection of interests necessarily full capitalist ownership. The tendency of the law to make saleable all collections of property interests in things is an historical feature of the tendency of the capitalist system to make commodities out of everything. Faced with the lawyer's sophisticated conception of private property, a socialist can no longer just call for private property's abolition. Full capitalist ownership, if it was ever more than a myth, has already been largely abolished by the growth of large corporations and the complexity of the contracts and conveyances into which they enter. But the fragmentation of full capitalist ownership has not brought about socialism. What it has done is provide the materials for the construction of a democratic system of control over the means of production. A distribution of private property rights in the means of production to the workers who utilize the means of production is a permissable, and perhaps even necessary step towards democratic control. The alternative types of property catalogued by Macpherson are inadequate for achieving this goal. To see this, let us examine them.

Macpherson's preferred alternative, that private property rights be replaced by a system of common property, is incomplete as it stands. It is easy to miss this because the incompleteness is hidden by a small bit of logical subtlety. While, as he emphasizes, common property is a right of an individual, the right of access to the means of production is not a right to any of the individual items in that category. In the formula, "Everyone has the right of access to the means of production", the term "means of production" carries its collective and not its distributive sense. The difference between the collective and distributive senses of a term can be illustrated by an example. From the true sentence,

(1) Canadians are human beings,

one can conclude that Pierre, who is a Canadian, is a human being. Sentence (1) says of each and every Canadian that he or she is a human being. But now consider the sentence,

(2) Canadians are speaking less French.
Even if sentence (2) is true, one cannot conclude from it that Pierre, the unilingual Francophone proprietor of a small grocery store in Quebec city, is speaking any less French than usual. Sentence (2) says of Canadians collectively, but not individually, that they are speaking less French. To try to argue from the general case in (2) to the particular is to commit some form of the fallacy of decomposition. Similarly, the right of access to the means of production is a right exercised on the means of production in the collective sense. It does not mean that every individual has the right of access to each and every individual item making up the means of production (the distributive sense). It means that individuals have claims on the collective means of production. This is a laudable general principle of distribution, but it does not tell us anything about people's property rights with respect to individual items within the category "means of production".

A complete system of property can be expected to regulate the behaviour of persons with respect to things in the world. To accomplish this, the notion of common property requires supplementation with a socially enforced system of rights of persons over individual things. One can miss this if one focuses, as does Macpherson, on present day examples of common property: common lands; public parks; city streets; and, highways. These examples have one misleading feature in common. They all can be used at the same time by a multitude of people. Because of this, relatively unspecific rules are needed (the Highway code, for example) to govern their use. In comparison, making a thing which can have only one user at a time into common property, a hammer say, fails to provide an adequate system of rules for its use. If two or more people want to use the hammer at the same time, common property provides no resolution of the conflict. A system of common property says only that everyone has the right of access to things. But for things that can be used or managed by fewer people than the number who would like to have access, a system of common property is little better than no system of property at all. In such cases, there is no distinction between physical possession and common ownership because there are no rules for excluding anyone from possession at any time.

The means of production are more like hammers and less like parks. It is not enough to declare the means of production
common property; it cannot be permissible for anyone who so wishes to go wandering round the shop floor pushing buttons. Complex organizations of things require complex rules of organization. These rules must grant rights over things to people, and further, the rights granted must be exclusive rights, that is, private property rights. To see this, imagine that under democratic socialism, the management of a firm is organized in the following way. Each individual worker has a management right consisting of the right to one vote at the Workers' Council. The Workers' Council meets frequently, appoints a director to make decisions between meetings, and has ultimate authority over all management decisions. Whether or not this is the appropriate model for the democratic control of a firm, consider the individual worker's right of management: his or her vote. To make things definite, suppose that at the beginning of a meeting workers receive a ballot book which contains dated and coloured ballots to be used in secret balloting during the meeting. It seems obvious that for this system to make any sense at all, each worker's right to vote is an exclusive right. He or she has the right to mark his or her ballot, and the right to exclude others from doing so. Each person must have some means of enforcing this exclusion and preventing others from falsely exercising this right if the system is to be democratic within any meaning of the term. So a democratic system of organization for the means of production must give workers private property rights in the means of production.

There is a theoretical reason why the system of rights that organizes the utilization of the means of production must be a system of exclusive individual rights. Any system of rights must be, in Steiner's sense, "compossible". The rights of an individual define a set of actions that the person is free to perform. For a system of rights to be compossible, it must be possible for any individual to perform any action from the set of actions they are free to perform, without infringing on the freedom of another individual to do likewise. But a system that gave more than one person the right to mark the same ballot on the same vote would not be a compossible system. To prevent such situations, any distribution of rights over things must be a distribution of private rights.
This simple example of voting rights at a Workers' Council is potentially misleading. The notion of voting immediately makes one think of a political democracy, and suggests that maybe the rights distributed in the scheme discussed above are not private property rights but political rights or the rights of citizens. Though citizens wield economic power over state property based on their exclusive or private right to vote, we would not call this a private property right. But private voting rights are not necessarily political rights. The voting rights of common stockholders at the general meetings of corporations are prized and valuable property rights, which are protected by the by-laws of the corporation. The reason we would still call these property rights is that voting is only a part of the shareholder's bundle of property rights. Importantly, the shareholder also has a right to a share of the income of the corporation. Likewise, a voting right at the Workers' Council is only a part of the worker's bundle of rights to means of production. He or she would also have limited rights of possession, use and enjoyment of the facilities of the firm, as well as a right to a share in the firm's income, and some immunity from expropriation, with no definite term implied. In the larger context, it is easier to see why the worker's voting right is a property right and not a political right. However, it should be noted that there is coming to be a fair amount of overlap between political and property rights. Charles Reich, for example, has suggested that the claims of individuals to benefits from the state should be seen as a type of property right. As citizens acquire stronger income and management rights against the state, the distinction between state and private property breaks down.

Against this picture of democratic rights as property rights, one could urge either of two competing models. One could propose that the means of production of the firm become the collective property of the workers (i.e., the private property of the group, though not of the individuals—"state property" in Macpherson's scheme) and that the governance of the firm be determined either by a system of contracts between the group and the individuals, or by a system of consensus. In the first case, that of contracts, it is important to remember that one of the major uses of contracts is to convey property rights. So even if the history of the firm consisted of collectivization
followed by the signing of contracts, this would not by itself show that private property rights have not been conveyed to the workers. (Of course, the major moral of this essay is that such initial collectivization is not conceptually necessary to the attainment of democratic control.) The difference between a contract which conveys property, and one which merely creates a contractual obligation, is that the former creates general rights in the recipient which are enforceable against all the world, whereas the latter creates special rights enforceable only against the party which grants them. To return to our example of the Workers' Council, let this be a case of democratic control by contractual obligation. Then if a worker felt his or her voting rights had been infringed by someone else, he or she would have to seek recourse against the collectivity to enforce these rights, and not directly against the person doing the infringing. On the other hand, if the Workers' Council were a case of property-based democracy rather than contract-based democracy, so that property rights had been conveyed to the workers, the worker with a grievance could seek recourse directly against the perpetrator. Now it is interesting to consider why anyone might prefer contract-based democracy to property-based democracy. Why not convey rights to workers and allow them to enforce their rights directly against the rest of the world? The only obvious reason would be to introduce the possibility of collective discretion into the enforcement of the worker's rights. If workers can only proceed indirectly, through their special, contractual rights against the collectivity, it remains possible for the collectivity to choose not to proceed against the one who infringes. Depending on the specifics of the contract, this imposes a hurdle, if not a barrier, to the enforcement of the worker's democratic rights. This is not a consequence to be preferred; it is not desirable that anyone's right to participate in a process of democratic control should be itself the object of democratic control. Thus the only reason for preferring contract-based democracy to property-based democracy is a bad one.

The other proposed alternative to property-based democracy is consensus-based democracy. One can imagine that the workers at a firm, as a group, come to have exclusive ownership of the means of production, and that instead of governing through a system of votes, by-laws and Robert's rules of order,
they institute a system of forming a consensus through extended discussion of decisions to be made. Leaving aside practical considerations around obtaining a unanimous consensus, there is no doubt that such a system conforms better to one's ideals of democracy. It seems that in the absence of scarcity, under conditions which permitted the development of a cooperative, non-egotistical human nature, consensual democracy might work. But even under perfect conditions, there is a reason to be suspicious of purely consensus-based democracy. This has to do with a potential confusion between the subjects and the objects of democratic control. Under conditions of abundance, the main productive activity of persons will likely be their participation in the democratic, collective control of the productive process. In other words, the democratic process will become a larger and larger part of the productive process. By assumption, the productive process is the object of control by the consensus-based democratic process, so this latter will itself become the object of democratic control. But now the status of the decisions of the individual workers participating in the democratic process is unclear. On one side, the decisions are the free, conscious, productive activity of the workers themselves; but on the other, as part of the productive process, decisions are subject to determination by the consensus. This is the sort of impasse that a clear set of rules which distributes rights to individuals can avoid. By the argument of the last paragraph, these rights should be property rights, not contract rights. However, a consideration of the attractions of consensus-based democracy does suggest how an assignment of rights, while necessary, may not be sufficient for full democratic control. The democratic process is in itself a collective good whose flourishing may require from participants duties of care and consideration toward others over and above just a respect for their rights.

There is reason, then, for democratic socialism to reconsider the place of a system of private property rights in the democratic organization of society. This system would contain many of the same components of the system we have now, though of course in a different distribution. It need not invoke a new property system, such as one of common or state property. A system of private property rights is likely to be necessary to the attainment of a fully democratic organization.
of society. This may cause some surprise for liberal-democrats who have thought of private property as defining an area of individual control and thus as a defence against democracy. It may also come as a surprise to socialists who have accepted this liberal-democratic claim and called for the abolition of private property in the interests of democracy.

Notes


2. Marx puts it this way, "The justice of transactions between agents of production consists in the fact that these transactions arise from the relations of production as their natural consequence. The legal forms in which these economic transactions appear as voluntary actions of the participants, as the expressions of their common will and as contracts that can be enforced on the parties concerned by the power of the state, are merely forms that cannot themselves determine this content. They simply express it. The content is just so long as it corresponds to the mode of production and is adequate to it. It is unjust as soon as it contradicts it." Capital Vol. III, trans. D. Fernbach (New York, 1981), pp. 460-461. For a thorough discussion, see A.W. Wood, "The Marxist Critique of Justice," Philosophy and Public Affairs 1 (1971-72), pp. 244-282.

3. In "On the Jewish Question" Marx says, "Let us notice first of all that the so-called rights of man...are simply the rights of a member of civil society, that is, of egoistic man, of man separated from other men and from the community." And, more particularly, of property rights he says, "The right of property is, therefore, the right to enjoy one's fortune and to dispose of it as one will; without regard for other men and independently of society. It is the right of self-interest. This individual liberty, and its application, form the basis of civil society. It leads every man to see in other men, not the realisation, but rather the limitation of his own liberty." In The Marx-Engels Reader, ed. R.C. Tucker, (New York, 1978), p. 42. For a discussion of this criticism of rights see, A.E. Buchanan, "The Marxian Critique of Justice and Rights," Canadian Journal of Philosophy Supp. Vol. VII (1981), pp. 269-306.


5. Ibid., pp. 4-6.

6. Ibid.


11. There is a similar diagnosis of the rhetorical source of this confusion about private property in Ackerman, Private, p. 27. (See n. 8, above.)


13. Ibid., p. 108.

14. It is interesting to compare this with Marx's remarks in Capital Vol. III, trans. D. Fernbach (New York, 1981): "Formation of joint-stock companies. This involves...the abolition of capital as private property within the confines of the capitalist mode of production itself... Transformation of the actual functioning capitalist into a mere manager, in charge of other people's capital, and of the capital owner into a mere owner, a mere money capitalist." (p. 567) "This result of capitalist production in its highest development is a necessary point of transition towards the transformation of capital back into the property of the producers, but rather as their property as associated producers, as directly social property." (p. 568) Of course, joint-stock companies only abolish private property understood as full, unfragmented ownership. The present essay contends that the property of associated producers will be fragmented private property.


16. For more details see Grey, "The Disintegration of Property." (See n. 1, above.)


19. Lawson and Rudden, The Law of Property, pp.105-113. (See n. 15, above.)


21. I am indebted to Steve Burns for this example.


24. In his essay, "The New Property," Yale Law Review 73 (1964), pp. 733-787, which is abridged in Macpherson's collection, Property, cited above, Charles Reich says, "The valuables dispensed by government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth—forms which are held as private property." (p. 179) "The concept of right is most needed with respect to benefits like unemployment compensation, public assistance, and old age insurance... Only by making such benefits into rights can the welfare state achieve its goal of providing a secure minimum basis for individual well-being and dignity in a society where each man cannot be wholly the master of his own destiny." (pp. 196-197)

25. This argument is developed in more detail in my manuscript, "Property and Personality," in the context of a further discussion of Macpherson's views.
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26. I would like to acknowledge the financial support of the Social Sciences and Humanities Research Council of Canada and the hospitality of the department of philosophy of the University of Toronto during the period in which this essay was written. I would like to thank many people for helpful comments on an earlier version of this essay, including Bill Blackburn, Bob Bright, Steve Burns, Frank Cunningham, Reg Whitaker and the referees of Studies in Political Economy, and the anonymous referees of the SSHRCC.