

Antoni Domènech: On Republicanism, Individual Liberty, and Rights*

Antoni Domènech: sobre republicanism, libertad individual y derechos

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ABSTRACT. Antoni Domènech (1952-2017) was one of Spain's most important political philosophers of the late twentieth and early twenty-first centuries. Known primarily as a scholar of republicanism, his work on the concepts of individual liberty and rights complicates standard liberal definitions, which he believed erred in defining these terms independent of institutional context, as pre-political attributes of the individual. He argued that republicanism corrected liberalism's abstraction by making one's actually being able to exercise liberty and rights depend on one's enjoying a sufficiently robust set of material conditions, or on having enough property so that one could always avoid unequal social relationships.

RESUMEN. Antoni Domènech (1952-2017) fue uno de los filósofos políticos más importantes de España de finales del siglo XX y principios del XXI. Conocido principalmente como estudioso del republicanismo, su trabajo sobre los conceptos de libertad y derechos individuales pone en cuestión las definiciones liberales estándar, que él creyó erradas al definir estos términos independientemente de su contexto institucional, como atributos pre-políticos del individuo. Sostuvo que el republicanismo corrige estas abstracciones liberales al hacer que la capacidad de ejercer realmente la libertad y los derechos dependa de que uno disfrute de unas condiciones materiales lo suficientemente sólidas, o de que tenga suficiente propiedad para poder evitar toda relación social desigual.

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*Introduction: Liberal and
Republican Concepts of Individual
Liberty and Rights*

Since his untimely death in 2017, two of Antoni Domènech's fellows, Daniel Raventós and César Rendueles, have praised him, respectively, as Spain's preeminent, "incorruptible republican philosopher," and the author of "probably the most important Spanish-language essay written yet in this century" (2017; 2019).¹ Yet, as if to demonstrate Joaquín Bartrina's famous punchline about Spaniards' invidious self-deprecation—"and if he speaks ill of Spain, he's a Spaniard"—when Domènech died, there was not a current edition of the great essay he had published in 2004: a historical reflection on how the modern world's attachment to the French Revolution's values of *liberté* and *égalité* meant an overshadowing of the third one, or an *Eclipse of Fraternity*.² Though a commemorative edition is now back in print, with a preface by Rendueles and an epilogue by Raventós (Domènech 2019), and though Domènech's oeuvre has inspired noteworthy recent publications, this important thinker deserves still more scholarly attention.³ This article aims to fill this void.

A republican theorist throughout his career, Domènech maintained, against a widely held view, that the concepts of individual liberty and rights were properly part of the republican (not the liberal) tradition, if these terms were defined according to a Greco-Roman idea of citi-

zenship or the "principle of fraternity" of Maximilien Robespierre and the Jacobins of France's First Republic, from which, Domènech argued, stemmed the later ideal of "revolutionary social democracy" of such progressive political figures as Marx, Engels, and Giuseppe Garibaldi, the left-libertarian hero of Italian independence (2004, 20).⁴ If liberals, who typically prioritize individual liberty and rights over social goods, and thus will defend primarily, with Samuel Warren and former U.S. Supreme Court Justice Louis Brandeis, an asocial "right to privacy," or "right to be let alone," Domènech understood this order of preference to impede the real exercise of liberty and rights, and so to be necessarily wrong (193). From a republican perspective (and here Robespierre's Jacobins are representative), Warren and Brandeis beg the question, by ignoring that to concern oneself with individuals' privacy is to presuppose that they possess the material means to exist independently in society. Rejecting this assumption, Domènech frequently alludes to Robespierre's position that "the primary social law" is not to let people alone, but to "[guarantee] the means of existence to all society's members" (Robespierre 1965, 53). The most important individual right is to exist, which should not be assumed, but (in a spirit of fraternal solidarity) legally guaranteed by ensuring that everyone possesses what Domènech, borrowing from one of Raventós's major

works, called “the material conditions of liberty,” the most important of which is property (2007).

Domènech claims that liberalism, due to its overriding commitment to the rights of property-owners to own property (rather than to individuals *per se*), has a checkered history in terms of defending individuals, and particularly those without property. His position resembles the proposition with which Marc Mulholland opens his book on this uniquely *Bourgeois Liberty*. Property-owners are “abstractly attached to civil and political liberty,” but “tend to become more illiberal in reaction to the rise of the working class” (1). However, Domènech’s argument rests not only on historical claims about the political actions of propertied classes, but on a logical implication of liberalism—if it is true, in accordance with Jan Narveson’s blunt, classical liberal claim, that “liberty is property,” or that, as Gerald Gaus wrote more subtly, “since at least the seventeenth century, liberals have not only understood liberty and property to be fundamental, but to be somehow intimately related or interwoven,” then the question of what liberals have to say about the liberty of all people, including, of course, the propertyless, has no obvious answer (66; 1994, 209). Challenging Narveson and Gaus, Domènech does not equate liberty and property, but holds that “freedom actually derives from property [or] from the material independence of individuals” (Domènech and Raventós 2007, 1). Thus, while Narveson and Gaus take liberty as granted and make the accumulation of property a rightful expression of it, Domènech’s liberty, though a fundamen-

tal right, can only be realized if one has enough property not to depend another. Advancing a specifically republican theory of rights and the preservation of individuals’ political liberties as tools for addressing such current challenges as economic inequality, Domènech, together with Raventós, has advocated for a universal basic income: a means of guaranteeing everyone’s right to existence, in what Domènech called Robespierre’s and the early-French Revolution’s “revolutionary-democratic tradition of 1792” (2004, 109).⁵

To more clearly distinguish Domènech from liberalism’s approach to individual rights, further clarification is needed, for it may seem strange to identify Domènech, a left-wing political thinker, with individual rights—often associated with liberal economic conservatism. Surely, Domènech is no (conservative or neoliberal) individualist, who might, like Margaret Thatcher, raise a copy of Friedrich Hayek’s *Constitution of Liberty* to accompany an extremely anti-social creed, such as the former British Prime Minister’s controversial claim that “there is no such thing as society,” only “individual men and women [and] families” (in Evans 86). For Domènech, Thatcher—in a way that is typical of liberalism and antithetical to republicanism—wrongly conceptualizes “individual men and women” as one, undifferentiated category, and thus says nothing of socio-politically relevant distinctions between them, such as their relative access to wealth, property, or, more abstractly, levers of economic or political influence. Thatcher’s omission invites a contrast with Marx and the republican tradition to which Marx was indebted. While the

individuality of Thatcher's "men and women" is to be understood, a-socially, as what Domènech calls—bringing to mind Martin Luther or, more recently, neoliberal Robert Nozick—an inwardly-focused 'self-ownership,' Domènech says that Marx made individuality, or "the development of individual personality" depend not on one's isolation from society, but on access to "a society's productive base" (1989, 332).⁶ This relative relationship between individual and society forces a conclusion that is opposite to Thatcher's: only the proper configuration of society can enable individuals to actually enjoy the right to personal development that liberalism asserts but fails materially to guarantee. In terms of Domènech's notion of republican individual rights, whether the social configuration is Marx's communist one is less important than the conceptual insight that reverses Thatcher's assumption about naturally self-sufficient individuals who, at least as far as their freedom is concerned, have no need of society.

Domènech often stressed Marx's debts to the republican tradition. Marx's idea that a society's prevailing mode of production will condition individuals' social lives was a radically democratic version of an originally conservative republican idea that dates to classical Greece. For Aristotle, one's having the means of social subsistence was a necessary condition for political virtue and, therefore, for the exercise of citizenship. His *Politics* distinguishes between (1) individuals with enough material wealth to live without working, whom he supposed to be the best citizens, and (2) those who, subject to the will of others because of their insufficient wealth, are unfit for citizenship. Aristotle did not

hide his scarce faith in the latter group's capacity for virtue; not having the wealth that is essential for full republican citizenship, they must work, or "perform necessary tasks for an individual," and, in so doing, are "slaves" (72-74). If they "perform [tasks] for the community," then Aristotle calls them, variously, "vulgar craftsmen" or "hired laborers," both of which categories, like that of slaves, entail a deficient capacity for virtue.⁷ Domènech generalizes this idea to encompass all ancient political philosophy, including "Roman law," which, in Domènech's words:

Never conceptually separated the 'abstract' or 'formal' problem of persons that are legally free or *sui iuris* (and of their capacity to develop civic virtues) from the, as it were, 'concrete' problem of the institutional and material bases on which their freedom, autonomy, and virtue as persons rested; that is, from the problem of property (both personal property and, most of all, landed property) (2004, 42).⁸

As Domènech argues, if "the essence" of republican liberty is that the individual should exhibit "no dependence [. . .] upon other persons," and if disparate access to what Domènech calls "personal" and "landed property" means property-owners can realistically aspire to classical republican liberty as independence, while the property-less cannot, then the republican tradition portrays society more accurately than liberalism, if liberalism is understood to assert an equality that, given the ubiquity of unequal social relations, does not really exist (1989, 332). For Domènech, this pref-

erence holds whether one refers to republicanism of a conservative (e.g. Aristotelian or Roman) sort, which relegates materially unprivileged individuals to inferior status, or of a democratic (Marxian) sort, where all should enjoy the material security necessary for citizenship. In defending democratic republicanism, Domènech does not share Aristotle's conservative normative position: that the property-less, given their incapacity for virtue, should be inferior. But he does agree with the related descriptive claim: that the possession of property enables the actual exercise of political rights and freedoms, while a lack of property, by forcing social dependence, renders them practically ineffective.

*The French Revolution:
A Politico-Philosophical Turning Point*

For Domènech, liberalism's theoretical edifice relies on a denial of the distinction between persons who are materially dependent and independent, which was basic to Greek and Roman theories of politics. This liberal tradition includes Thatcher, but Domènech traces its origins to the years following the French Revolution; first, to the Thermidorian Reaction of 1794, when mostly propertied counter-revolutionaries ended the rule of Robespierre and, with it, the first, more democratic phase of France's First Republic (1793-1794); second, to the Directory (1795-1799), so named for the five-man executive put in place by the Thermidorians; and third, to Napoleon Bonaparte's coup of 18 Brumaire (1799)—which ousted the Thermidorians—and the Napoleonic Code, which became law in 1804.

Domènech's analysis of the transition

from classical Greco-Roman, republican to liberal political-philosophical foundations that happened after the French Revolution is crucial for an understanding of his republicanism and his critique of liberalism. In short, he tells the story of an initial adherence to Greco-Roman presuppositions about the relationship between wealth and liberty during the First Republic's first, Jacobin phase, and a gradual abandonment of these assumptions. Ultimately, the Napoleonic Code collapsed the classically republican distinction and advanced what Domènech (alluding to free Romans' self-governing, or *sui iuris* status) cleverly called a "*fictio iuris*" (2004, 42), a juridical fiction that "broke with the republican tradition"—and that would reappear in twentieth-century liberal ideas of self-ownership, such as Nozick's—by stating that all people, including manual laborers, are by definition property-owners, because they own (in Domènech's Marx-inspired phrase) "their labor force" (2004, 94-95).⁹ If, notwithstanding Aristotle's position that they are politically inferior, workers are defined, however misleadingly, as property-owners, then they are free, according to republican principles and this new liberal framework. To quote Domènech's incredulous summary of this conceptual shift, in the new Napoleonic order, all persons suddenly became full citizens, because all, even the dispossessed, "owned something (namely, their labor force)," and so had sufficient "legal capacity to enter civil society as free persons, endowed with their highly peculiar sort of 'property'" (2004, 42).

Domènech shows that, before the consolidation of the Thermidorian, Napoleonic,

and later liberal juridical fiction, Robespierre and the pre-Thermidorian First Republic adopted the Greco-Roman dichotomy between free property-owners and the unfree without property, and added to it a democratic demand that society tend toward a universalization of propertied status. In a speech on food distribution in 1792, Louis Antoine de Saint-Just, one of Robespierre's closest allies, implied that one's not having property entailed a social disadvantage (that of moral corruption) which governments should alleviate, by "lift[ing] the people from a corrupting state of uncertainty and misery" (in Soboul 62). And when Robespierre said that "no man has a right to amass heaps of wheat alongside another man who is starving," he implied that each person's right to a basic level of subsistence takes precedence over individuals' property rights.

Domènech hears Greco-Roman echoes in the words of Robespierre, who understands deprivation as a state in which the "man who is starving" is dependent on he who might successfully claim "a right to amass heaps of wheat." Robespierre's response to such inequality was, unlike that of Aristotle's conservative republicanism, to favor individuals' increasing material independence. For Domènech, the realization of such independence demands the elimination of all relationships of domination, including the public, political power of monarchs over subjects and such private control as that exercised by patrons or patriarchs over employees or dependents. In practical terms, Domènech, as he interprets Robespierre, and drawing on a conceptual framework borrowed from Montesquieu, prescribes a transition from a society that is organized vertically (in

three tiers: political, civil, and familial) to another that, having but one tier, is organized horizontally, removing political and familial levels along with the domination that, in the form of unchecked powers, is inherent therein.

In broad terms, pre-French Revolution European societies had a generally unrivaled monarchical power at the top, followed by persons who were *sui iuris* by virtue of owning property, but who were above those who, without property, had to, in Domènech's words, "depend on others to subsist" (2004, 85). Domènech applauds Robespierre on two relevant and related accounts: first, for calling for the termination of the first and third tiers, which Domènech, using Montesquieu's original French, called, respectively, "loi politique" (or state power that is, in Domènech's words, "unbeholden and unaccountable to the people"), and "loi de famille" (or the private power of employers or domestic masters) (2015b, 76).¹⁰ In Domènech's estimation, Robespierre's second praiseworthy position was for the universalization of the second, property-owning tier, which, if realized, would make all persons citizens in the fullest, republican sense, and so, naturally, not subject to an unimpeachable political law, nor compelled to submit to private authority. All would be subject to the same 'loi civile' (Montesquieu) and enjoy the same social independence and equality typical of Greco-Roman citizenship. In Domènech's pithy formulation, in the Jacobin program, "everything is civil society" (2004, 87).

In a recent, controversial book, James Livesey challenges a view held by many, including Domènech. He disputes the idea

that the Thermidorian overthrow of Robespierre in 1794 was a counter-revolution that ended the Revolution's democratic phase and its effective commitment to universal human rights. Instead, Livesey argues that the Thermidorians put the Revolution back on a path toward what he calls, controversially, "democratic republicanism" (234). Despite Livesey's sloppy use of concepts (e.g. a constitutional order devoted explicitly to enshrining property rights against the possibility of popular expropriation is not democratic), his position is interesting because, if unwittingly, he makes one of Domènech's most important points: modern liberalism (of which the Directory, by virtually all accounts, is a foundational piece) claims unfoundedly to be committed to universal freedoms. In Livesey's sympathetic account, the Directory was committed to "all particular freedoms" (234). However, needing in practice to privilege the freedom of propertied elites, the Directory limited that of lower classes. Livesey, again unwittingly, demonstrates the importance of explaining this contradiction by committing a logical equivocation: "before [Thermidor], Jacobins and sans-culottes had tried, and failed, to create a polity in which universal rights did not corrode all particular freedoms" (138). It is unclear what differentiates "universal rights" and "all particular freedoms." Robespierre and Domènech would say nothing does; and if they are right, then Livesey's sentence would make more sense if it ended with a reference to the corrosion of *some* particular freedoms (notably, those of the coup's leaders), not *all* particular freedoms.

Why do Livesey, the Thermidorians, and liberals generally, claim to advance freedom for all if such a generalized liberty is apparently similar to the universal rights of the Jacobins, whom they oppose(d)? One explanation is, as Jon Cowans put it in *To Speak for the People*, that early liberals, to protect middle-class economic interests against royalists seeking a Bourbon monarchical restoration, shrewdly avoided undermining the principle of popular sovereignty, by coopting from truly popular movements, like Robespierre's, the idea that they represented the interests of all (155-57). Decades earlier, historian Albert Soboul proposed a similar theory: "The Thermidorian bourgeoisie could not attack the principle of popular sovereignty [. . .] without denying its own right to political power and thus playing into the hands of the divine right monarchists" (147). Understanding themselves as champions of the 1789 Declaration of Human Rights, which stated, in evidently universal terms, that "men are born and remain legally free and equal," early liberals, much like liberals today, studiously avoided acknowledging that, both in theory and reality, they, like monarchists, did not defend the interests of all, but only of some.

So, heeding the call of leading Thermidorian François Antoine de Boissy d'Anglas's *Preliminary Discourse* [*Discours préliminaire*], which stated that the French people should be "governed by the finest"—who were to be found primarily among "those who owned property"—and which sought the civic exclusion of materially dependent "men without property" (31-34), the Thermidorians simultaneously believed that most of France's inhabitants—including those who either did not

own property or earned a salary—were either unfit to govern or socially disadvantaged, and that, despite such disqualifications, the French people in general must be an essential part of the Republic, lest an undermining of the principle of popular sovereignty—an essential pillar of the Revolution that had enabled their rise to power—empower monarchists' ambitions. So the Thermidorians faced a hard political theoretical problem: how to incorporate into the national polity people they deemed ill-equipped for political life? In a classic article, Lynn Hunt, David Lansky, and Paul Hanson argue that the Directory's bourgeois leaders unsurprisingly failed to maintain an impossible balance between their theoretical commitment (consistent with the egalitarian Declaration of 1789) to all people's right to liberty and autonomous rule and their (clearly contradictory) determination to exclude some people from the sovereign body. On several occasions between 1795 and Napoleon's coup in 1799 (notably, the coups of 18 Fructidor Year V, Floréal Year VI, and Prairial Year VII), influential members of France's bourgeoisie—recognizing (in the words of Martyn Lyons) that “its power base was too narrow to prevent violent fluctuations in the balance of power”—resorted to authoritarian assertions of power when they believed that elements of civil society (such as political organization or electoral success) threatened their interests (1975, 215).¹¹ In their assessment of the Directory, Hunt, et al., in agreement with Lyons, make a point that is important to Domènech: whatever it might defend in theory, economic liberalism, which the Directory's leaders

sought to implement, has not been committed to liberty in practice. Considering the various bourgeois coups of the late 1790s, it is clear that, in 1799, when Napoleon unilaterally imposed his authority to quiet political agitation, he did not deviate from the usual practice of the Directory's bourgeois leaders, who had already tried several times to consolidate power. Napoleon did not betray liberal principles, at least not as these principles had actually manifested themselves. Rather, after several years of the Directory's trying to make liberalism prevail in France, Napoleon, a military dictator and later emperor, became the ultimate representative of France's middle class, or, as Hunt, et al. pointedly call him, “the ultimate Director” (759).

Writing ironically, Domènech summed up the Corsican general's achievement: “Napoleon put everything back in its place” (2004, 105). Napoleon is the product of the bourgeoisie's refusal to relinquish control over Montesquieu's *loi politique*, and—recalling Henry Heller's comment on bourgeois cynicism—“if the price [of control] was a more or less unconcealed military dictatorship, so be it” (125). According to Domènech, throughout the late-1790s, and finally with Napoleon, the bourgeoisie repeatedly refused to tolerate left-wing participation in the realm of the *loi civile*. Undoing a major element of Robespierre's legacy, the Directory effectively re-separated political and civil law, insisting, with Pierre Samuel du Pont de Nemours (a member of the Directory's Council of Five Hundred), that only property-owners—or “sovereigns by the grace of God”—should be entrusted with the responsibility of po-

litical rule (Du Pont 7). Thus, the middle class sought to rule unchallenged, and, in the process, created a remarkably unfree political landscape. Let us conclude this discussion by bringing together insights from Domènech and Hunt, et al. French political conditions in the wake of 18 Brumaire bore a resemblance to Montesquieu's multi-tiered society, particularly in that its executive power was not subject to popular will. In Domènech's words, executive power was separated from civil power, it was "uncivil" (2004, 92-93), and civilian power was governed by a *loi politique* that was "independent of civil society, and more or less impossible for civil society to control" (104). So, French politics was not an ideally liberal system, which is theoretically committed to liberty and popular sovereignty. As Hunt, et al. put it, France's propertied elite, preferring political power to the natural unpredictability of democratic government, undermined the pillars of liberal government: "the legislature was reduced to impotence, parties lost their function with the abolition of elections, and the executive ruled without opposition [. . .] politics per se was no longer a viable vocation. [. . .] As a consequence, the Revolution's internal mechanism—the mobilization of the political classes, however widely or narrowly defined—was finally destroyed" (759).

Not only did the French revolutionary era finally restore a distinction between Montesquieu's *loi politique* and *loi civile*. According to Domènech, in a further blow to Robespierre, it effected a complementary separation between *loi civile* and *loi de famille*. If the bourgeoisie, in the interest of the coherence of its position, needed to be faithful to the principle of civil equality, on

which its stance against legal privilege depended, then all persons—including, of course, the property-less non-bourgeois—had to be incorporated on some kind of egalitarian footing into any post-revolutionary society. Indeed, Montesquieu's *loi civile* had to be universalized. However, such a move was inconceivable, lest what Louis-Sébastien Mercier (a member of the Directory's legislature) called "vile sans-culotisme" gain political ascendancy (in Lefebvre 1951, 213). In his classic biography of Napoleon, George Lefebvre described the bourgeoisie's dilemma: "the Revolution" and "bourgeois ideals" were, at once, compatible and incompatible. They were compatible in that the revolutionary principle of civil equality justified the third estate's empowerment at the expense of the first (royal) and second (clerical) estates, but they were incompatible, because "bourgeois ideals," particularly those regarding the inviolability of private property, could not countenance some of the political demands—such as greater material equality—of certain sectors of civil society, particularly the sans-culottes (2010, 6). In short, the bourgeoisie had to confront the fact that, for better and for worse, "the Revolution [. . .] remained a revolution of civil equality"; not only the middle classes would want to benefit from the new political era it had ushered in.

Drawing on Marx, Domènech argues that early liberalism, which received legal expression in Napoleon's *Code Civil* (1804), effectively resolved this dilemma in two complementary ways. First, it acknowledged the equal rights of all men to enter contracts, regardless of material inequalities, or of whether, as Marx wrote, the only good one could exchange was one's

“labor force.” So, a kind of *loi civile* was extended to all men. But by recognizing not a (Jacobin) right to material equality, but a nearly absolute right to private property, the *Code* effectively ensured that contracting parties would encounter each other in economically unequal conditions. According to Domènech, the Revolution’s expressed ideal of equality was thus only “disingenuously fulfilled,” as it fostered conditions favorable to social dependence (and therefore inequality), where the economically weak relied on the powerful for their livelihood (2004, 108). From Aristotle to Montesquieu, one reads that social dependence and economic inferiority, by impeding one’s effective access to the citizenry, make impossible the practical exercise of citizenship. In Domènech’s words, Napoleon’s *Code* “decisively loosened the knot” that, during some two millennia in Western philosophy, “inextricably linked [. . .] the concept of free personhood to the social institution of property” (2004, 42). Far from a sincere effort to extend equality to all people, the *Code*, by making the poor compete with the rich as theoretical equals, effectively enacted what Domènech, still borrowing from Montesquieu, called a “new *loi de famille*,” or a new legal framework for private relations—which included, most importantly, the workplace—where those with fewer resources are compelled to subject themselves to the wealthy (2004, 96). Contrary to the *Code*’s assertion of civic equality, the existence of what amounted to a new family sphere, which tolerated private domination, was, in Domènech’s scheme, “uncivil,” or uncivilized. It was, in other words, the opposite of Domènech’s ideal Jacobin republic, where, as we have seen, “everything is civil soci-

ety,” or where power relations are not organized vertically, but horizontally into a single *loi civile*. Domènech rejected this Napoleonic innovation, whereby socially dependent and economically inferior persons are not told—harshly but honestly—that they are unworthy of complete civic recognition, but, falsely, that they are full and equal members of civil society.

The *Code* was thus only a partial concession from the bourgeoisie to less privileged classes, resolving the dilemma between conservative economic interests and the radical implications of the Revolution’s ideals so that the former received more careful attention. In a speech to the *Conseil d’État* that would become, with Napoleon’s authorization, the official version of the *Code*’s history, Jean Portalis outlined the new document’s provisions. In a tradition that included Boissy’s Thermidorian-era statement that “civil equality” was “all a reasonable person can demand,” Portalis, referring transparently to the presumably unreasonable expectation that, following the Revolution, equality would extend beyond that of social rank, chastised the “license” of those who, amid past tumult, had wanted to “equalize all fortunes” (299-300). He extolled the “more moderate ideas” of the *Code*, which sought only to “equalize social ranks.” As historian Ellen Meiksins Wood summed up this sort of post-Brumaire political moderation, citizenship—which was no longer associated with any tangible advantage (such as property)—would now only guarantee a formal equality of social standing. Recalling the bourgeois dilemma outlined by Lefebvre, we can make sense of one of Meiksins Wood’s conclusions: “If the extent of the citizen body could no longer

be restricted, the scope of citizenship could now be narrowly contained” (1995, 203).

Domènech dwells on the politics of revolutionary France because he saw in its ebb and flow—or what British Marxist historian Eric Hobsbawm called its “dramatic dialectical dance” of popular demands and countervailing impositions of order—a pattern that would recur repeatedly in the future (62). In the light of Thermidor and Napoleon, as Hobsbawm wrote in his *Age of Revolution*, “the main shape of French and all subsequent bourgeois revolutionary politics were [. . .] clearly visible.” For Domènech, up to and including contemporary neoliberalism—or, the late twentieth century’s revival of theoretical tenets of classical, *laissez-faire* liberalism—Thermidor has shown liberals how to appear to uphold individual freedom and rights, as they illiberally suppress them to secure class privilege. So liberals have contributed not to a horizontally-structured society—toward which political life should logically tend in the modern world, one of whose foundational events was the French Revolution’s successful challenge to legal privilege—but to a society that is organized vertically, where, as Domènech describes it, one finds (1) a consolidated *loi politique* at the top, where propertied classes wield power disproportionately, (2) a *loi civile* that effectively allows the perpetuation of inequality and complicates demands for egalitarian reform, and (3) many people who are members of this *loi civile* in theory, but are in effect subject to Domènech’s “new *loi de famille*,” because their material dependence exposes them to diverse forms of private domination.

Neoliberalism: “An Unacknowledged Policy Regime”

Neoliberalism is a policy model that transfers control of economic factors from the public to the private sector, shrinking the power of states and facilitating “the extension of competitive markets into all areas of life” (Springer 2). Neoliberals’ expressed opposition to illiberalism notwithstanding, unless privatization happens spontaneously, neoliberalism must rely illiberally on states to generalize and enforce the de-politicization of civil society. The claim that a kinship exists between neoliberalism (or market capitalism) and any sort of illiberal political theory is at odds with a popular, but misleading notion—advanced by neoliberals themselves—that neoliberalism is a theory of minimally-interventionist government and high degrees of individual liberty—a definition that fails accurately to describe what Loïc Wacquant calls “[actually existing neoliberalism]” (2012). In practice, market capitalists have demonstrated that the actual process of privatization demands not a minimal state, but, borrowing a term from the consciously illiberal political theorist Carl Schmitt, a “very strong state” (or what Domènech called, perhaps hyperbolically, “[a totalitarianism]”) that actively works with capitalists through pro-business legislation or, more perniciously from an anti-neoliberal perspective, the establishment of (state or supra-state) institutions, such as the U.S. Federal Reserve, the European Central Bank, or the International Monetary Fund (IMF), that, without having to answer to public opinion, can grant legal privilege to powerful market actors (in Cristi 221; Domènech 2005, 334-35).¹² So, as Marco

Briziarelli has argued, under neoliberalism, capitalist classes, effectively rejecting *laissez-faire*, do not seek to be left alone by the state, but to “instrumentalize” it as part of a “state-centric class project” to foster optimum conditions for their private economic activity (6).

Like Briziarelli, Domènech argues that, despite rhetoric in favor of the disempowerment of governments and self-regulation of markets, the idea that market capitalism has been accompanied by a retreat of state power masks the reality that, in Europe and the United States since at least the 1970s, markets have been “deeply regulated,” shaped by state policies designed to strengthen the positions of particular market agents (e.g. private investors and major employers [2010, 59]). Illustrating this point, David Harvey’s *Brief History of Neoliberalism* points (1) to so called revolving doors, whereby unelected private interests (including, as Domènech specifies, “people from Goldman Sachs [and] the private banking industry”) move in and out of government, presumably self-servingly influencing legislation, and generating what Domènech called an “invasive influence of plutocrats in political life” (2015b, 121; 2002, 42); (2) to the prohibitive costs for most of accessing civil courts, which make “class bias in decision-making within the judiciary [. . .] pervasive if not assured”; and (3) laws, such as those restricting picketing, that effectively frustrate labor’s organization (78). Harvey finally concludes that, despite its rhetoric about privatization, “neoliberalism does not make the state or particular institutions of the state [. . .] irrelevant,” but demands “a radical reconfiguration of state institu-

tions and practices.” Similarly, Tayyab Mahmud has argued that “neoliberalism did not displace the state as much as it reformulated it,” citing how states have tipped the (theoretically competitive) playing field toward the wealthy, actively (and illiberally) skewing market competition, by contributing (1) to lower real wages (through the manipulation of money supplies), (2) to higher private debt (through the adjustment of interest rates and inflation of asset values), and, consequently, (3) to workers’ weaker negotiating power relative to employers (13).

Like Mahmud, Domènech identifies the manipulation of wages and credit as an example of states’ acting as “instruments” (Briziarelli) of private interests, and thus also, in a practical contradiction of neoliberal theory, of their illiberally imposing an economic design on civil society. For Domènech, such a forceful imposition became politically necessary as neoliberalism, a pro-business theory, replaced Keynesianism—which addressed more directly workers’ concerns such as wage increases—as the economic paradigm in Europe and the United States during the second half of the twentieth century. The *de facto* post-war economic theory, Keynesianism was, in effect, a compromise between employers and workers, whereby the former allowed for better labor conditions (e.g. by agreeing to stricter governmental regulation of private enterprise and higher real wages for workers) and the latter (some revolutionary elements of which historically had resisted capitalism) gained a stake in the market economy. In the later transition from Keynesianism to neoliberalism, which marked the end of

this compromise, neoliberalism's proponents, while seeking to reduce workers' (naturally profit-draining) earnings and social protections, could nonetheless not allow purchasing power to fall in a way that might provoke the opposition of workers, who, enjoying unprecedented prosperity under the Keynesian compromise, were largely content. The solution—or, as Domènech more critically called it, “the trick”—was to facilitate workers' access to credit, enabling them, despite falling wages and rising job insecurity, to maintain high levels of consumption (2015a, par. 43). As Colin Crouch has written, the establishment of “credit markets for poor and middle-class people”—whereby “instead of government taking on debt to stimulate the economy, individuals did so”—served to “rescue the neo-liberal model from the instability that would otherwise have been its fate” (390).

For Domènech, by putting interest-generating debt in the place of wage income, this solution was both obviously less financially stable and, in conceptual terms, perhaps the clearest example of neoliberalism's practically disproving its assumed liberal foundations. Committed in theory to minimal government intervention in the economy, neoliberalism is, naturally, also committed to supply-side economics: the stimulation of economic growth through the government's withdrawing from the economy, lowering taxes and loosening regulations for entities, like businesses, that supply commodities. However, neoliberalism's encouragement of private debt is a tacit recognition that demand also must be managed, or that the neoliberal economy must resort to (inter-

ventionist and, ironically, Keynesian) demand-side economics: the stimulation of economic growth by encouraging demand for commodities. More than merely contradictory or ironic, however, by relying on debt to stimulate consumption, neoliberalism—or as Crouch cuttingly quipped, “privatized Keynesianism”—implicitly acknowledges that sweeping economic liberalization causes relative poverty (2009, 382). As Domènech reminds us, neoliberalism's response to poverty, “against all the assertions of ‘neoliberal’ propaganda,” is not liberal at all, but relies on a state that is “able to intervene administratively on a grand scale,” erecting what Crouch further called neoliberalism's “unacknowledged policy regime,” which fuels debt-driven consumption to perpetuate the system (2015a, par. 43; 2013a, par. 12).

In his discussions of neoliberalism, Domènech stresses that such self-proclaimed proponents of modernity's (or the Enlightenment's) ideal of a civil society of free individuals fail to fulfill this promise. Despite their rhetoric, they are what Marx once called the “opponents [of freedom],” who speak of freedom “while combating its reality,” “want[ing] to appropriate for themselves as a most precious ornament what they have rejected as an ornament of human nature” (1974, 23). They combat not freedom itself, but, again quoting Marx, “the freedom of others,” making it “a special privilege,” not “a universal right.” Determined, in Domènech's view, to “put the brakes on democracy” as a threat to their political power, they have acted not as true proponents, or “heirs of the Enlightenment,” but rather, “twisting and betraying it,” they have become, as

Domènech sarcastically remarked, the Enlightenment’s “[amenders]” (2006a, 357; López 287). By variously rationalizing the unjust (and remarkably un-enlightened, because irrational) power of one part of society over another—in the form of a financialized technocracy, which, through un-elected institutions, can muffle popular majorities—they have been faithless to the Enlightenment project.

Universal Basic Income, or the Freedom to Live without Permission

To secure the freedom that the liberal tradition has promised but not actualized, Domènech (arguing on republican grounds in collaboration with Raventós), strongly defended (as “one of the most interesting ideas for the left in recent years”) a universal basic income (UBI) (Suárez and Domènech 2005, par. 22). Domènech defined UBI as a proposal that, (1) by guaranteeing “a basic citizens’ income, which ensures minimum conditions of social existence [or] of material autonomy,” aims to achieve the material security (and, with it, the republican liberty, as defined from Aristotle to Boissy) of those who are insufficiently able to access the capital that, in a capitalist economy, is necessary for prosperity, and (2) applies not to specific social categories, but equally “to all society’s members, simply by virtue of their being such” (2006b, 295). For Domènech, a UBI would effectively fulfill a traditional promise of republican democracy: that all people might live without depending on anyone else. Suggesting that a UBI would be a modern-day version of fifth-century-Athens’ *mis-*

thon, a salary for the lowest class of citizens—the *thetes*—intended to enable their civic participation, Domènech looked forward, analogously, to the UBI’s ensuring that today’s *thetes*—the poor—“might not need to ask anyone’s permission to exist in society” (2013b, 20).¹³

To be sure, although Domènech considered UBI to be a politically ambitious counterbalance to the capitalist status quo, he saw it not as a radical, revolutionary break with capitalism that would, as Marx envisioned, “radically transform the [capitalist] mode of production” (Domènech and Raventós 2004). Rather, limited to the provision of economic security under capitalism, the UBI would be, at its most radical, in the words of two great advocates, Robert van der Veen and Philippe van Parijs, “a capitalist road to communism,” where “communism” refers not to historical examples of collectivist state bureaucracies (the Soviet Union) and autocracies (North Korea), but, however vaguely, to Marx’s definition of communism in *The Critique of the Gotha Program*, as the consciously non-capitalistic distribution of economic goods “to each according to his needs” (1994, 635). If UBI’s aim resembles Marx’s vision of material equality in this particular case, however, the UBI still departs from Marx, by repeating what Charles Fourier—one of the allegedly oversentimental “utopian socialists” lambasted in *The Communist Manifesto*—laid out in his *Theory of Universal Unity* as a necessary condition of an ideal society: “in this new order the common people must enjoy a guarantee of well-being, a minimum income sufficient for present and future needs,” a “guarantee [that] must free

them from all anxiety either for their own welfare or that of their dependents” (in Beecher 278). The UBI hews closer to this sort of moral enjoinder and to Fourier’s idealistic plea for *Universal Unity* than to Marx and Engels’s uncompromisingly scientific socialism, which referred less to morality than to historical processes that, regardless of ethics, would lead to a communist society.

To say nothing of communism or Marx, however, the UBI’s attention to the social implications (for citizenship, for example) of the economic security or the material autonomy of individuals makes it obviously akin, and for Domènech, “inextricably linked” to republicanism, at least as republicanism has been defined in this article: as that tradition for which, as Domènech and Raventós remind us, “freedom actually derives from property [or] from the material independence of individuals.” So, Domènech’s support of a UBI, thus informed by his concern for (a republican kind of) individual liberty as material self-sufficiency, recalls one of this article’s main claims: that Domènech repudiates the widespread notion that liberal, free market capitalism should be attractive to those for whom political liberty is a primary political value. Domènech always assumed a republican definition of liberty as possessing sufficient means for social independence, or, as in his definition of UBI, as having “minimum conditions of social existence,” and therefore thought it unconvincing to claim that liberal capitalism—a system that is possible only if some people do not have access to the most meaningful form of security; i.e. capital—is supportive of freedom. For Domènech, anyone committed to

individual freedom should be a republican, not a liberal.

Lest Domènech’s anti-capitalism be understood as unremarkable, because typical, left-wing dogma, it is instructive to consider, as Domènech does, that, in addition to the conceptual critique that capitalism is inimical to the freedom of individuals without capital, the idea that capitalism threatens the freedom of the economically disadvantaged has been considered seriously by (1) right-wing thinkers, and acknowledged straightforwardly by (2) powerful business leaders, who think that unprecedented degrees of inequality (and so of effective socio-political irrelevance) will obtain in the near future. Right-wing thinkers such as libertarian Charles Murray argued in the 1980s that, in terms of freedom and socio-economic opportunity, the poor were *Losing Ground* in America’s economy, and faced the following “Hobbesian state of affairs,” a nasty, brutish situation where “the tangle incentives that any society can realistically hold out to the poor youth of average abilities and average industriousness are mostly penalties, mostly disincentives,” where the poor are told: “do not study, and we will throw you out; commit crimes, and we will put you in jail; do not work, and we will make sure that your existence is so uncomfortable that any job will be preferable to it” (177). Also, for many years, and at least since a 1995 meeting of world business leaders in San Francisco’s Fairmont Hotel (USA), the world’s economic elites have transparently admitted that, given technological advances, human society will tend to need a smaller percentage of its members to make the global economy function, rendering a growing

percentage of persons economically obsolete—which obsolescence, in order to prevent an economically irrelevant majority from toppling the system, will predictably necessitate the curtailment of their opportunities to exercise political freedoms. In 1995 in San Francisco, famously, a ratio of 20% (useful) to 80% (useless) was discussed.¹⁴

Admittedly, the ideas of Murray and the Fairmont conference do not detract from the received notion that liberal, free market capitalism generally advances individual freedom. However, Domènech, ever the historically informed thinker, reminds us that Western economic elites used to admit more candidly that the prevailing economic system—based on private ownership of the means of production—was likely to appeal only to the wealthy, as it structurally relegated the property-less to second-class status. However, in the case of Du Pont de Nemours, whom we met in a previous section of this article, perhaps it was not candor, but self-interest that—as he attempted to justify a tax-based electorate after the Thermidorian Reaction—motivated him to reveal abiding truths about the systemic dependence, or the un-freedom of the poor in capitalist economies. According to Du Pont, property-owners deserved special political rights (e.g. voting rights) as exclusive “sovereigns by the grace of God”—a position they held, as he tellingly put it, because, having control over the economic levers of power, they could withhold from the rest of the population their permission, or “consent” to access vital resources, including shelter and food (7). In the light of Du Pont’s words, Marx

clearly did not advance a distinctively radical impeachment of class-based injustice when he wrote, many decades after Thermidor, that “the man who possesses no other property than his labor power must, in all conditions of society and culture, be the slave of other men who have made themselves the owners of the material conditions of labor,” and that this man “can only work with their permission, hence live only with their permission” (1994, 316). Marx seems, rather, to be advancing a reasonably consensual inter-class interpretation of social relations. In this regard, following Marx, and, if a bit more circuitously, Du Pont, Domènech would have us reject the idea that liberal capitalism is a theory about freedom, or at least about freedom for all. Instead, with the allusion to Marx that served as the title of the journal he edited until his death, Domènech urged his readers to embrace a proposal, the UBI, that would guarantee to all a degree of material security—or republican liberty—such that they could live not, as Marx feared, “only with [the] permission” of “the owners of the material conditions of labor,” but without the permission of any social better—that is, “*Sin Permiso*.”

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NOTAS

¹ Unless otherwise indicated, all translations are mine.

² Bartrina’s original line in Spanish was: “y si habla mal de España, es español.” Here I allude to Domènech’s most important book, *El eclipse de la fraternidad* (2004).

³ In 2018, the Spanish philosophical journal *Daimon* published an issue centered on the concept of fraternity, wherein a minority of contributors acknowledge Domènech’s essential relevance to any discussion of this topic—e.g. Vergés Gifra assumes Domènech’s diagnosis of fraternity’s decline, although, by defining fraternity as a subjective, interpersonal “attitude” or “disposition,” he ends up implicitly disputing Domènech’s position that fraternity means a legal guarantee that all citizens should be materially independent and, as such, never subject to domination (2018, 136-37). Muínelo Paz, for his part, follows Domènech more closely, drawing from Domènech’s conceptual analysis of fraternity to shine conceptual light on the political positions on the First International and what he calls Marx’s “republican turn” (2018). However, considering that *Daimon*’s issue was thematically organized around the same concept, fraternity, as the most important essay of such a towering intellectual figure as Domènech, it is remarkable that most of its contributions do not mention him, excepting the aforementioned, together with Bertomeu’s posthumous tribute—which

reminds readers that Domènech’s work “has opened a broad conceptual pathway” for future research (2018, 11)—and Puyol’s cogent, but necessarily cursory introduction—which praises Domènech as “the [Spanish] philosopher who has done most to analyze and reclaim the political concept of fraternity” (2018, 5).

⁴ I prefer to cite Domènech’s original 2004 edition of *El eclipse de la fraternidad*. The more recent edition (2019) has not altered Domènech’s text, save for adding Rendueles’s preface and Raventós’s epilogue.

⁵ For recent scholarship on Domènech’s discussion of the relationship between republican liberty and economic equality, see Vázquez García 2017a and 2017b. Lain also cites Domènech, together with other Spanish thinkers such as Raventós and David Casassas, as a key advocate for the idea that holding property is a necessary condition for the reality of (republican) liberty (11). However, Lain may mislead readers when, in defining republican liberty, he jointly references Philip Pettit—who traces this concept to the first-century-BCE Republican Rome of Cicero and Livy—and Domènech—who harkens further to Ephialtes’s Athens and Aristotle’s *Politics*—without making this crucial distinction. To be sure, Mulvad and Stahl establish this contrast clearly, coining the label “Barcelona School” to refer principally to Domènech, Raventós, Casassas, and María Julia Bertomeu’s “challenge

[to Pettit's] mainstream neo-republicanism," which consists of the Spanish theorists' arguing (1) that "the roots of republican thought predate the Roman republican and are found in the Athenian experience" and, revealing the controversial nature of the aforementioned link between the security of property-ownership and the actual exercise of liberty, (2) that Pettit's republicanism "is too philosophically abstract and should be analyzed in concrete material and institutional terms, related to the distribution of property" (594).

⁶ My reference to Martin Luther is to his invitation that each Christian should be firstly an "inward man" (12), experiencing the *Freedom of a Christian* insofar as he alone has faith in and is justified by Christ.

⁷ I state here that, in Aristotle's preferred political scheme, the wealthy are the best citizens, although, in Book III of the *Politics*, Aristotle recognizes, if with reservations, that "the many, who are not as individuals excellent men, nevertheless can, when they have come together, be better than the few best people, not individually but collectively" (82-83). Aristotle does, however, immediately qualify this position: "whether this superiority of the many to the few excellent people can exist in the case of every people and every multitude is not clear [. . .] it is clear that in some of them it cannot possibly do so" (83). This qualification notwithstanding, in a separate passage, Aristotle unequivocally prescribes an inferior status for those who, not owning anything themselves, must work for (and so depend on) others: "The best city-state will not confer citizenship on vulgar craftsmen" (74).

⁸ A relevant distinction in the *Institutes* of the Roman/Byzantine Emperor Justinian is made thus: "Some persons are in their own power, some are subject to the power of others, such as slaves, who are in the power of their masters" / "quaedam personae sui iuris sunt, quaedam alieno iuri subiectae sunt" (in Thomas I, VI, 1, 36).

⁹ For Marx on workers owning only their "labor force," see Marx 1976, 273.

¹⁰ Domènech draws on Montesquieu's three-tiered conceptual framework—*loi politique*, *loi civile*, and *loi de famille*—not because he agrees with his hierarchical vision of society, but because he provides a useful descriptive tool for analyzing the real distribution of social power. Montesquieu does not argue, as Robespierre and Domènech do, that these three tiers should be reduced to one. Rather, like conservative republican predecessors, he accepts unequal power distribution, and discusses proper relationships between social estates. For example, in Book XXVI, Chapter XVI of *L'esprit des lois*, Montesquieu focuses on the decisions appropriate, respectively, to the "droit politique" (or political law) of the state and the "droit civil" (or civil law) of the people (54). Those laws which address "the interests of individuals," (or of full citizens in a republican sense) are the proper business of civil law, while those having to do with "the well-being and preservation of the state" are properly part of political law (55). As for the private "loi de famille," which concerns the relations between masters and dependents, Montesquieu is consistent with conservative republican tradition, which recognizes the authority of full, propertied citizens over domestic subordinates. The latter are not part of, or "in society" and, so, "the *loi civile* does not apply to them," and they are legally under their masters' control (28).

¹¹ Domènech often references the *muscadins*—middle-class gangs in 1790s France, who, in François Gendron's largely dispassionate analysis, "[were] used by the Thermidorians to start and sustain reactionary political action" (327-28)—believing them to be (proto)typical examples of bourgeois violence against popular political movements: a pattern in European history whereby, Domènech argues, repression is actively tolerated by governments, instances of which include twentieth century fascism: "the Italian Fascists between 1918-1922, whose punitive criminal incursions in *ateneos*, labor unions, socialist and anarchist presses and meeting places, ne-

arly managed to completely undo workers' organization [. . .] and paved the way for Mussolini's March on Rome" (2004, 156).

¹² In a 2003 interview with the magazine *Rebelión*, Domènech proposed the democratization of the IMF as a means of reducing the problem of unaccountability inherent in this and similar supra-state institutions (López 305-06).

¹³ Commenting on this aspect of Domènech's thought, Vázquez García writes: "a basic income [is the] veritable equivalent of the salary paid for public positions that was established in the Athens of Ephialtes" (2017b, 154).

¹⁴ For a well-known account of this meeting, see Martín and Schumann.