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並不得書寫、畫記、作答。


國立清華大學 114 學年度碩士班考試入學試題

系所班組別：外國語文學系
甲組(外國文學組)

科目代碼：4003

考試科目：文本分析

—作答注意事項—

1. 請核對答案卷(卡)上之准考證號、科目名稱是否正確。
2. 考試開始後，請於作答前先翻閱整份試題，是否有污損或試題印刷不清，得舉手請監試人員處理，但不得要求解釋題意。
3. 考生限在答案卷上標記「由此開始作答」區內作答，且不可書寫姓名、准考證號或與作答無關之其他文字或符號。
4. 答案卷用盡不得要求加頁。
5. 答案卷可用任何書寫工具作答，惟為方便閱卷辨識，請儘量使用藍色或黑色書寫；答案卡限用 2B 鉛筆畫記；如畫記不清(含未依範例畫記)致光學閱讀機無法辨識答案者，其後果一律由考生自行負責。
6. 其他應考規則、違規處理及扣分方式，請自行詳閱准考證明上「國立清華大學試場規則及違規處理辦法」，無法因本試題封面作答注意事項中未列明而稱未知悉。

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Read the following excerpt from Michael Hardt and Antonio Negri's 2017 book *Assembly*:

Today's commonsense, popular understanding of property remains remarkably close to the eighteenth-century definitions of classical liberalism. "[O]wnership [*dominium*]," writes Hugo Grotius, "connotes possession of something peculiarly one's own" to the exclusion of other parties. William Blackstone's definition echoes this view with added poetic flourish: "There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." Property grants a monopoly of access and decision-making to an individual owner to the exclusion of others.

First-year law students are often taught, however, contrary to the classical definitions, that property denotes a plural set of social interests: a bundle of rights. This line of reasoning, which is developed in the United States by the legal realists in the late nineteenth and early twentieth centuries, accepts fully the rule of property but, by undermining the grounds of exclusion and thus introducing plurality, transforms property from the inside. "[P]rivate property as we know it," writes Felix Cohen in explicit response to Blackstone's notion of exclusion, "is always subject to limitations based on the rights of other individuals in the universe." The legal realists argue, in effect, that the exaggerated individualism and the focus on exclusion in the classical definitions of private property are profoundly antisocial, that is, they fail to account for the fact that we live in society and the actions and property of each have effects on others. The argument, in other words, effectively socializes property by, first, recognizing that property is always already social, affecting others in the universe, and, second, creating a basis for those others to express their rights. Being affected is a basis for having a right. Since a coal-burning factory, for example, affects both those living around it and the workers inside, they, in addition to the owner, have rights with regard to that property. This conception preserves the rights of individual property owners, as we said, but also embeds them in a larger, plural field of often-conflicting, unequal social rights. The rights that this notion of a bundle introduces are really counterrights empowered to operate as balances or challenges within property.

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The legal realists' conception of property rights is particularly powerful because it combines the pluralism of the notion of a bundle with the claim that property implies sovereignty, a form of domination that is equally political and economic. "There can be no doubt," writes Morris Cohen, "that our property laws do confer sovereign power on our captains of industry and even more so on our captains of finance." Today's captains of industry and finance, whose power has grown exponentially since 1927, the year in which Morris Cohen wrote, exert authority based on their property without even the thinnest claims to representation. The legal realists' argument not only demonstrates how deeply economics and politics are interrelated but also blurs the traditional division of legal thought and practice between civil law and public law, bridging the gap, which stretches back to Roman law, between *dominium* (an individual's rule over things) and *imperium* (the sovereign's rule over society): "We must not overlook the actual fact," Cohen cautions, "that dominion over things is also *imperium* over our fellow beings. The extent of the power over the life of others which the legal order confers on those called owners is not fully appreciated by those who think of law as merely protecting men in their possessions." Property is thus a sovereign power, not so much in the sense that it repeats the functions of sovereignty on an individual scale—I have sovereign authority over my things—but insofar as property has sovereign effects on a social scale.

For the legal realists one important political consequence of conceiving property as both a bundle of rights and a sovereign power is that it counters the liberal, laissez-faire arguments for property rights free from state intervention. Coercion is always mobilized by property rights in order to regulate and suppress the rights of others, even (and especially) when classical liberal, laissez-faire advocates sing the praises of freedom. On one hand, as a sovereign power, property owners exert political coercion over those around them that is equivalent to forms of state coercion. On the other hand, the protection of property rights and the "freedom" of laissez-faire liberals require the state to wield coercive force. "In protecting property," Robert Hale argues, "the government is doing something quite apart from merely keeping the peace. It is exerting coercion wherever that is necessary to protect each owner, not merely from violence, but also from peaceful infringement of his sole right to employ the thing owned." One might argue on the basis of the two primary elements of the legal realists' argument—the recognition that property always involves economic and political coercion and the affirmation of plural social rights—that property should be abolished and a more democratic, equal management of social wealth established, something like what we call the common. The legal realists, however, do not go that route. They mobilize the

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fact that coercion and state are always already involved in property rights, which undermines laissez-faire claims to freedom, in order to legitimate the actions of the state to address and protect the full plurality of other social actors whose rights are part of the bundle. It is easy to recognize how this line of reasoning paves the way a little later in the twentieth century for some of the basic tenets of the New Deal.

1. How is the legal realists' notion of property different from that of classical liberalism? Elaborate in under six sentences. (50%)

2. Write a reflect-and-respond essay on this passage from any perspective that you wish. You may illustrate your point with real-life or imaginary examples. (50%)