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After Hegel: Rethinking Personhood for the Collective

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After Hegel: Rethinking Personhood for the Collective

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Abstract

The work of GWF Hegel has been important in expanding property theory, particularly beyond inquiries into the instrumental relationships between property-owning subjects and their proprietary objects. For modern legal interpreters, particularly Margaret Radin, Hegel's *Philosophy of Right* grounds arguments that property is crucial in the construction of identity, self-expression, and community. Focusing on those modern interpretations, we begin with an overview of the property theory outlined in *Philosophy of Right*. We then turn to Radin who, writing against the then-dominant market-oriented theories, used Hegel to argue that private property rights should be regulated so as to reflect (and support) their contributions to individual identity and development. Radin has been enormously influential, and contemporary scholars continue to use personhood to examine how and why property is and could be constructed. As the scope of those examinations expands, we conclude by troubling personhood theory, drawing on ethnographic examples to illuminate questions raised in collective contexts.

Introduction

Hegelian property theory provides an important reminder that property is about more than instrumental relationships between property-owning subjects and their proprietary objects. Hegel's modern interpreters—most famously Margaret Radin—argue that property plays a constitutive role in identity, self-expression, and community. In this chapter, we begin with a brief overview of Hegel's argument, particularly as it has been interpreted by legal scholars, in which private property is conceived as the first element of a more expansive theory outlined in his 1820 text, *Philosophy of Right*. We then turn to Margaret Radin who, in 1982, interpreted Hegel's theory of property to argue that a modern liberal state should differentially regulate private property rights based on how they contribute to individual self-definition and human development. Finally, we describe a contemporary turn among legal scholars who ask whether collective property might produce group identity in ways analogous to how Radin reasoned an individual is formed through private property. We conclude by suggesting that asking this question, how collective property itself enables forms of personhood, leads to a set of questions that anthropologists have been tackling for decades—questions that confound key presuppositions embedded in the property-for-personhood theory that Radin derived from Hegel.

Private Property and Individual Personhood: Hegel

“Not until he has property does the person exist as reason.”¹

¹ Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right* (Allen W Wood and Hugh Barr Nisbet eds, Cambridge University Press 2011) s 41.

In many legal scholars' interpretations, for Hegel, the core function of property is not the production of wealth, the rational pursuit of self-interest, or the utilitarian satisfaction of needs. Rather, Hegel argued that property is necessary to develop human personality and freedom. In Hegel's theory, people develop their wills by relating to the natural and social worlds, and in this process, they develop themselves and their capacity to act as part of a community. In this reading of Hegel, he posits property as the first step in a much larger philosophical project about social and ethical life.

This interpretation is largely based on Hegel's arguments in *Philosophy of Right*, where the right to property is the initial right and the logical starting point for Hegel's political theory. Hegel in this book begins with "abstract right." As Peter Stillman explains, abstract right is a logical concept.² People in the realm of abstract right "are logical abstractions from humans."³ Such people are aware of their subjectivity and self-conscious of their free will; they have desires, needs, drives and preferences; and they have the capacity to hold rights, but these are abstract. People actualize themselves as free beings when they transform their abstract and infinite wills into determinate and externally grounded practices and meanings. It is through property, Hegel insisted, that a person can act to give himself such a reality. As Hegel's student, Eduard Gans, explains: "The rational aspect of property is to be found not in the satisfaction of needs but in the superseding of mere subjectivity of personality. Not until he has property does the person exist as reason."⁴

Property alchemizes the abstract and subjective into the concrete and objective: by enabling individuals to act upon the external world, property allows people to embody their wills, quite literally, in "objective" form. People come to see themselves in the objects that they own, use, and exchange.⁵ And, in so doing, they "translat[e] into *actuality* what one is in terms of one's concept (as *possibility*, capacity [*Vermögen*], or predisposition). By this means, what one is in concept is posited for the first time as one's own, and also as an object [*Gegenstand*] distinct from simple self-consciousness."⁶ Through the process of claiming property, Hegel's owner thus constitutes the self and the object of ownership.

Significantly, Hegel argued that *private* property was uniquely capable of producing selfhood in this way. Gans explains:

² Peter G Stillman, 'Property, Freedom and Individuality in Hegel's and Marx's Political Thought' in J Roland Pennock and John W Chapman (eds), *Property* (New York University Press 1980) 133.

³ *ibid.*

⁴ Eduard Gans in Hegel (n 1), addition (H) after s 41. To be sure, Hegel's abstract reasoning has prompted criticism, "Marx and Engels, while accepting Hegel's version of history as a process with its own inner logic, thought that his philosophy was misconceived in that it moved from ideal to real, rather than the other way around". Margaret Davies, *Property: Meanings, Histories and Theories* (Routledge-Cavendish 2007) 100. In his preface to the second edition of *Capital*, Marx writes: "My dialectical method is, in its foundations, not only different from the Hegelian, but exactly opposite to it. For Hegel, the process of thinking, which he even transforms into an independent subject, under the name of 'the Idea', is the creator of the real world, and the real world is only the external appearance of the idea. With me the reverse is true: the ideal is nothing but the material world reflected in the mind of man, and translated into forms of thought." Karl Marx, *Capital: A Critique of Political Economy* (Ben Fowkes tr, Penguin Books in association with New Left Review 1981) 102.

⁵ Peter G Stillman (n 2) 137.

⁶ Hegel (n 1) s 57. Emphasis in original.

In property, my will is personal, but the person is a specific entity [*ein Dieses*]; thus, property becomes the personal aspect of this specific will. Since I give my will existence [*Dasein*] through property, property must also have the determination of being this specific entity, of being mine. This the important doctrine of the necessity of *private property*.⁷

A person can express herself through claiming property as “mine,” because, for Hegel, human beings have an absolute right of appropriation over all things. Superficially, Hegel’s right of appropriation appears similar to the reasoning underpinning Locke’s labour-based theory. Yet where private property for Locke was necessary to enable men to benefit from the fruits of the commons, Hegel sees property in less instrumental terms: “property, as the first *existence* [*Dasein*] of freedom, is an essential end for itself.”⁸ This difference shapes both the justification and the means of appropriation for private property.

Locke begins with the premise that God gave the world to all (men) in common, and also gave men “reason to make use of it to the best advantage of life, and convenience.”⁹ Accordingly, there must be a means to appropriate the fruits of nature so that they can be of use and benefit to particular men. The solution, Locke argued, derives from the property that every man has in his own person and the work of his body (something Locke took to be self-evident and did not explain). By picking up acorns from under an oak or gathering apples from trees in the wood, Locke claimed, “that labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done, and so they became his private right.”¹⁰ Thus when it comes to acquisition, Locke’s owner puts himself into the object through the process of labor. For Locke, the labour of the *already*-propertied owner converts *already*-owned things from common to private property.

By contrast, for Hegel, the transformation is more fundamental. Hegel begins with all things as unowned, available for appropriation because of their lack of subjectivity. Gans explains:

All things [*Dinge*] can become the property of human beings, because the human being is free will and, and, as such, exists in and for himself, whereas that which confronts him does not have this quality.

... Thus to appropriate something means basically only to manifest the supremacy of my will in relation to the thing [*Sache*] and to demonstrate that the latter does not have being in and for itself and is not an end in itself.¹¹

Hegel’s constitutive theory of property—dependent upon how people express their will on external objects—in turn, shapes how he understands the nature of private property entitlements. Lockean rights endure indefinitely. Locke’s theory was intended to endow property rights with permanent validity, a project now generally understood (and critiqued) as deeply implicated in

⁷ Gans in Hegel (n 1), addition (H) after s 46. Emphasis in original.

⁸ Hegel (n 1) s 45. Emphasis in original.

⁹ John Locke, ‘Of Property’ in CB Macpherson (ed), *Property, mainstream and critical positions* (University of Toronto Press 1978) 26.

¹⁰ *ibid* 28.

¹¹ Gans in Hegel (n 1), addition (H) after s 44. Emphasis in original.

the process of colonization.¹² Accordingly, the conversion from common to private property is a process that endures once the necessary labour is complete. By contrast, Hegelian property entitlements require ongoing occupancy. The will must continue to be expressed in the thing for property rights to continue. In this way, Hegelian personhood-based property, unlike Lockean labour-based property, “anticipate[s] a relation to others.”¹³

Thus although Hegel reasoned that private property is necessary for people to determine and differentiate themselves from others, he did not anticipate isolated or atomized property owners.¹⁴ To the contrary, he argued that the process of having one’s will – one’s property – recognised by others is critical; a person can become fully developed only in the context of a community of others: “This relation [*Beziehung*] of will to will is the true distinctive ground in which freedom has its *existence*.”¹⁵ Hence, Stillman summarizes: for Hegel, “private property is not only a privatization; equally, it is a socialization.”¹⁶ Through owning property, people continuously develop their personality by recognizing and negotiating “the reciprocal rights and duties existing between oneself and others.”¹⁷ Indeed, the relational nature of Hegelian property means it cannot be created and settled once and for all. Property instead requires ongoing interpersonal and social negotiations.¹⁸

Contract, in turn, is the medium through which these relationships of mutual recognition and negotiation of common rights and duties take place. It is through contracting, Hegel argues, that “parties *recognize* each other as persons and owners of property”.¹⁹ He writes:

A person, in distinguishing himself from himself, relates himself to *another person*, and indeed it is only as owners of property that the two have existence [*Dasein*] for each other. Their identity *in themselves* acquires existence [*Existenz*] though the transference

¹² Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Clarendon Press ; Oxford University Press 1996); David Armitage, ‘John Locke, Carolina, and the Two Treatises of Government’ (2004) 32 *Political Theory* 602; Margaret Davies, *Property: Meanings, Histories and Theories* (Routledge-Cavendish 2007).

¹³ Hegel (n 1) s 51. Scholars here often point to Berlin. See, e.g., Gregory S Alexander and Eduardo Moisés Peñalver, *An Introduction to Property Theory* (Cambridge University Press 2012) 58. As Isaiah Berlin famously explains, Lockean theory produces a particular kind of right: negative liberty. This is “freedom from”, an absence of impediments or constraints. Isaiah Berlin, *Two Concepts of Liberty* (Clarendon Press 1958). Hegel’s produces positive liberty: “freedom to”, an ability to control one’s own life and to experience self-realization. The Lockean owner thus has broad negative freedom regarding their property, a right to an individual sphere of non-interference. Hegel’s positive conception of liberty creates a more-socially based entitlement to external objects.

¹⁴ Hegel also recognises the dangers of private property, with its potential to produce both poverty and wealth and through these the corruption of civil society. As Hegel explained in his lectures of 1819-20, poverty and wealth lead to “mockery and shamelessness” and a “rabble mentality, the non-recognition of right”. Hegel (n 1) 453–454. The poor develop this mentality from their indignation, frustration and alienation, their “inward rebellion against the rich, against society, the government, etc” *ibid* 244; the rich from the arrogant belief they can buy anything *ibid* 454. Where others are treated as mere means to the ends of an individual, Hegel explains, that individual cannot accomplish the full extent of their ends, cannot enjoy the wider freedoms and spiritual advantages of civil society *ibid* 243.

¹⁵ Hegel (n 1) s 71. Emphasis in original.

¹⁶ Peter G Stillman (n 2) 143.

¹⁷ Alexander and Peñalver (n 13) 68.

¹⁸ Carol Rose, *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership* (Westview Press 1994); Nicholas Blomley, ‘Performing Property: Making the World’ (2013) XXVI *Canadian Journal of Law and Jurisprudence* 23; Amelia Thorpe, *Owning the Street: The Everyday Life of Property* (The MIT Press 2020).

¹⁹ Hegel (n 1) s 71.

of the property of the one to the other by common will and with due respect of the rights of both – that is, by *contract*.²⁰

Contractual recognition, moreover, facilitates the development of moral and ethical life at multiple levels of social organization and scale. The *Philosophy of Right* begins with property, but this makes up only around 30 of the book's 380 pages. The development from property to contract, through to morality, ethical life and the state, is the subject of the remaining 350 pages. Property facilitates and requires relationships with others spurring "movement toward high stages of ethical development that lead to membership in ethical communities – the family, then civil society, and eventually the state."²¹

Feminist property theorist Margaret Davies thus commends Hegel's "corrective to the Lockean notion that property and the person pre-exist social engagement... and his insistence that the individual and individual rights are – or ought to be – subsumed by the community".²² For similar reasons, Hegel has attracted criticism for his emphasis on social totalities. As Fred Dallmayr explains, Hegel is "often accused of harbouring total, if not totalitarian, political designs, to the detriment of individual, local or ethical freedom and diversity".²³

We wish to conclude this section by stressing a different point. Hegel conceived of private property rights as embedded in social relations and, as such, qualified by the interests of a common good.²⁴ But he reasoned that private property—and not common or public property—could create subjects capable of producing ethical communities and social wholes in this way. He writes:

Since my will, as personal and hence as the will of an individual [*des Einzelnen*], becomes objective in property, the latter takes on the character of *private property*; and common property, which may by its nature be owned by separate individuals, takes on the determination of an *inherently* [*an sich*] *dissolvable* community in which it is in itself [*für sich*] a matter [*Sache*] for the arbitrary will whether or not I retain my share in it.²⁵

He continues to explain that "[t]he utilization" of the elements of common property "is, by its nature, incapable of being particularized in the form of private possession."²⁶ This nature of common property presents a problem for Hegel because, as Alexander and Peñalver explain, he reasoned that "a world where all resources, including scarce resources, are owned in common . . . is a world of all wants and no duties; the self pays attention only to itself, which is unbounded and ill-defined. But in a world where scarce resources are privately owned, the self is bounded

²⁰ *ibid* 40. Emphasis in original.

²¹ Alexander and Peñalver (n 13) 64–65.

²² Davies (n 12) 100.

²³ Fred Dallmayr, *G.W.F. Hegel: Modernity and Politics* (Sage Publications 1993) 234.

²⁴ Michael Salter, 'Justifying Private Property Rights: A Message from Hegel's Jurisprudential Writings' (1987) 7 *Legal Studies* 245, 262.

²⁵ Hegel (n 1) s 46.

²⁶ *Ibid*.

and more clearly defined.”²⁷ The bounded self, he argued, is the more ethical self. As Michael Salter elaborates, for Hegel:

private property is a more ethical and truly superior form of ownership and personality than public ownership. The latter subverts genuine trust between owners and thus undermines the promise of a genuine sense of community. It is as if socialist practice cannot bring itself to rely upon the public spiritedness and communalism it claims characterises authentic, i.e. post-capitalist, human relationships.²⁸

In the following part, we illustrate how when Hegel hit modern legal consciousness through Margaret Radin’s influential readings, this emphasis on private property and bounded individuals became a linchpin of her theory.

Private Property and Individual Personhood: Radin

“In order to lead a normal life, there must be some continuity in relating to ‘things.’”²⁹

Interest in Hegelian theories of property, among English speaking property theorists at least, increased greatly after the publication of a series of articles on property and personhood by Margaret Radin. Writing in the 1980s, Margaret Radin drew on Hegel to propose what she called a third strand of liberal property theory as an alternative to the two approaches then dominant among North American property scholars: Lockean, labour-based approaches and utilitarian, economic welfare-maximising approaches.³⁰

Reading *Philosophy of Right*, she explains: “From the need to embody the person’s will to take free will from the abstract realm to the actual, Hegel concludes that the person becomes a real self only by engaging in a property relationship with something external.”³¹ Radin borrowed Hegel’s notion that the will is embodied in things, and so the entity we know as a person cannot exist without both differentiating itself from and maintaining relationships with the external world. In her words:

A person cannot be fully a person without a sense of continuity of self over time. To maintain that sense of continuity over time and to exercise one's liberty or autonomy, one must have an ongoing relationship with the external environment, consisting of both “things” and other people. One perceives the ongoing relationship to the environment as a set of individual relationships, corresponding to the way our perception separates the world into distinct “things.” ... In order to lead a normal life, there must be some continuity in relating to “things.”³²

²⁷ Alexander and Peñalver (n 13) 68. Here, Hegel might be read as providing the foundation for Garret Hardin’s claims two and a half centuries later. Garrett Hardin, ‘The Tragedy of the Commons’ (1968) 162 Science 1243.

²⁸ Salter (n 24) 262.

²⁹ Margaret Jane Radin, ‘Property and Personhood’ (1982) 34 Stanford Law Review 957, 1004.

³⁰ Radin, ‘Property and Personhood’ (n 28).

³¹ *ibid* 972.

³² *ibid* 1004.

Radin proceeded to combine elements of Hegelian theory with her own 'intuitive' view about the psychological significance of things.³³ She writes:

Most people possess certain objects they feel are almost part of themselves. These objects are closely bound up with personhood because they are part of the way we constitute ourselves as continuing entities in the world. They may be as different as people are different, but some common examples might be a wedding ring, a portrait, an heirloom, or a house.³⁴

From this Hegelian-inspired intuition, Radin derived two categories of private property: personal property, which is bound up with a person, and fungible property, which is held instrumentally. The two categories are not entirely separate, but rather exist at opposite ends of a continuum. At one end, there are things indispensable to someone's being; at the other, things wholly interchangeable with money. The position of a thing on this continuum may vary from person to person. A wedding ring, for example, will likely be fungible to a jeweller offering it for sale, but personal to its married wearer.

Radin then made a famous intervention in American property law and jurisprudence. Claims to personhood property, she argued, are morally stronger than claims to fungible property and should be granted greater protection by the state. Because a person can be bound up with an external thing in a constitutive sense, that person should be accorded broad liberty to control that thing.³⁵ She writes: "If an object you now control is bound up in your future plans or in your anticipation of your future self, and it is partly these plans for your own continuity that make you a person, then your personhood depends on the realization of these expectations."³⁶ She proposed to establish a hierarchy of property entitlements based on how they produce a continuity of personhood. Echoing Hegel, she reasoned that a person must continue to express their will in a thing for property rights to continue.³⁷ Where the thing claimed is not closely connected with personhood, she reasoned, the entitlement is weaker and the rights can more readily be overridden. As such, where a thing sits on a personal – fungible continuum can shift over time. The significance of a wedding ring to a spouse, for example, might change in the case of divorce.

Radin thus derived important insights from Hegel on which to justify a person-centred theory of private property. At the same time, she narrowed Hegel's theory of property in two ways. First, she was much less interested in articulating a theory of how property brings people into being.

³³ This intuition finds strong echoes in the literature on "psychological ownership", a separate field that has also developed since the 1980s. Jon L Pierce, Tatiana Kostova and Kurt T Dirks, 'The State of Psychological Ownership: Integrating and Extending a Century of Research.' (2003) 7 *Review of General Psychology* 84. See also Grant McCracken, 'Culture and Consumption: A Theoretical Account of the Structure and Movement of the Cultural Meaning of Consumer Goods' [1986] *Journal of consumer research* 71; Amitai Etzioni, 'The Socio-Economics of Property' (1991) 6 *Journal of Social Behavior and Personality* 465; Linn Van Dyne and Jon L Pierce, 'Psychological Ownership and Feelings of Possession: Three Field Studies Predicting Employee Attitudes and Organizational Citizenship Behavior' (2004) 25 *Journal of Organizational Behavior* 439.

³⁴ Radin, 'Property and Personhood' (n 28) 959. Internal citation omitted.

³⁵ This is positive liberty, "freedom to" rather than "freedom from" as Berlin explains. Berlin (n 13); Radin, 'Property and Personhood' (n 28) 961.

³⁶ Radin, 'Property and Personhood' (n 28) 968.

³⁷ *ibid* 977.

Her person already exists as a fully developed bounded individual prior to property, informed by liberal theories in which persons are conceptualised as right-holders, self-conscious, shaped by memories, plans for their future and their bodies. While noting the range of approaches to the person, and particularly communitarian critiques of liberal approaches, she confines her inquiry to “the types of the person posited by the more traditional, individual-oriented theories.”³⁸

Second, Radin was likewise much less interested in theorizing property as a foundation for the creation of ethical communities and the state. Her primary concern was instead with the everyday regulation of property and property rights and their role in enabling a person to “fully be a person” over time. Personhood, she explained, provides a cogent basis for revealing why certain types of property are and should be given more protection in law, and she proposed that a more explicit application of personhood theory could help to resolve recurrent problems in property law.

Radin elaborated this claim argument by surveying American case law and legislation. For example, she described cases where the US Supreme Court was clearly influenced “by an appreciation of our society’s traditional connection between one’s home and one’s sense of autonomy and personhood,”³⁹ such as *Stanley v Georgia* 394 U.S. 557 (1969), where the Court held that a state may not prosecute a person for possessing obscene materials in her home and cases declaring warrantless arrests unconstitutional if carried out in the suspect’s home. She also described increasing judicial and legislative protections for tenants’ rights, such as limiting evictions and imposing warranties of habitability. Radin reasoned that a personhood theory of property, with its hierarchy of entitlements, could provide a unified theory for government regulation and ‘taking’, clarifying a controversial area in which decision making has been ad hoc. She likewise argued that a personhood theory, with its requirements for “willful” occupancy,⁴⁰ could solve the utilitarian’s challenge in explaining adverse possession. In her words:

The title follows the will, or investment of personhood. If the old title-holder has withdrawn her will, and the new possessor has entered, a new title follows. Title is temporal because the state of relations between wills and objects changes. The result of this theory is to attach normative force, and not merely practical significance, to the bond developing between adverse possessor and object over time and to attach normative force, as well, to the “laches” of the title-holder who allows this to happen.⁴¹

In addition to clarifying and explaining jurisprudence in this way, Radin also used personhood to advance claims about how American property law should develop. In later work, Radin used the hierarchy of entitlements flowing from personhood to argue for a redistribution and redefinition of property rights against the market-oriented theories then dominating US property scholarship. For example, she suggested personhood provides a non-utilitarian argument for rent control, as a means not to improve the market but to protect the connection between tenants’ personhood and

³⁸ Radin, ‘Property and Personhood’ (n 28) 965.

³⁹ *ibid* 992.

⁴⁰ *ibid* 973–974.

⁴¹ Margaret Jane Radin, ‘Time, Possession, and Alienation’ (1986) 64 *Washington University Law Quarterly* 739, 745.

their homes,⁴² supporting, she argued, what most people think: that housing should not be treated in the same way as other market commodities. In her words, “preservation of one's home is a stronger claim than preservation of one's business, or that noncommercial personal use of an apartment as a home is morally entitled to more weight than purely commercial landlording.”⁴³ She also used personhood to limit alienation in other areas, particularly alienation of the female body. Personhood provides a basis to restrict trade in services such as adoption, surrogacy and prostitution.⁴⁴

Radin's ideas travelled widely, successfully establishing personhood as a third strand of contemporary property theory.⁴⁵ Indeed, Gregory S Alexander and Eduardo Moisés Peñalver suggest that Radin's personhood theory—with its buttressing in social psychology—“has perhaps greater salience for modern society than does Hegel's.”⁴⁶

At the same time, Radin's personhood theory raised several descriptive and normative challenges. Radin herself described what she called the problem of object fetishism. Her “hierarchy of entitlements” proposed to judge the significance of someone's relationship with an object by the kind of pain that would be occasioned by its loss. An object is closely related to one's personhood, she reasoned, if its loss causes pain that cannot be relieved by the object's replacement. And yet, Radin recognized that an intimate relationship between a person and object can be ‘bad’ or ‘unhealthy’ rather than necessary for ‘human flourishing.’⁴⁷ The relationship between a shoe fetishist and their shoe, for example, is not deserving of the same protection as the relationship between a spouse and their wedding ring. Hence, even though Radin argued that personhood property is intuitive and subjective, she also called for objective moral criteria to distinguish between ‘good’ and ‘bad’ object attachments—a distinction she found in social consensus and the values associated with ‘normal life’. As she explains:

In the context of property for personhood, then, a “thing” that someone claims to be bound up with nevertheless should not be treated as personal vis-à-vis other people's claimed rights and interests when there is an objective moral consensus that to be bound up with that category of “thing” is inconsistent with personhood or healthy self-constitution.⁴⁸

Not all her readers accepted this resolution, which separates social and moral norms from legal rules.⁴⁹ As Stephen Schnably argued, “the law can never simply implement some consensus regarding property and personhood. The social constitution of personhood is always at stake when issues of property and commodification are decided. A theory that brackets moral issues from legal ones overlooks the manner in which exercises of power help shape the consensual

⁴² Margaret Jane Radin, ‘Residential Rent Control’ (1986) 15 *Philosophy & Public Affairs* 350.

⁴³ *ibid* 360.

⁴⁴ Margaret Jane Radin, ‘Market Inalienability’ (1987) 100 *Harvard Law Review* 1849.

⁴⁵ Davies (n 12); Alexander and Peñalver (n 13).

⁴⁶ Alexander and Peñalver (n 13) 68–69.

⁴⁷ Radin, ‘Property and Personhood’ (n 28) 968–969.

⁴⁸ *ibid* 1004.

⁴⁹ Stephen J Schnably, ‘Property and Pragmatism: A Critique of Radin's Theory of Property and Personhood’ (1993) 45 *Stanford Law Review* 347.

norm that is supposedly being taken as a guide.”⁵⁰ For example, Radin’s emphasis on the private home as reflecting a normative consensus about how people express their personalities overlooks long running feminist and postcolonial critiques of the oppression the home has historically enabled.⁵¹ Likewise, her overarching emphasis on a form of identity that endures over time conflicts with feminist and postcolonial theorists unsettling constructions of a stable, continuous self.⁵²

Readers also argued that Radin’s particular reading of Hegel liberalized and individualized his more communitarian ethic.⁵³ For example, drawing on Hegel and Lacanian theory, Jane Schroeder assailed Radin’s conception of the person as impoverished: “the Radinian person remains *bound up* with *things*, whereas the Hegelian/Lacanian subject longs to become *bound to other persons*.”⁵⁴ Drawing on social republican and cooperative property theory (rather than Hegel), William Simon similarly observed how Radin primarily stresses property’s roles in producing self-identity and only secondarily in producing individual peoples’ connection to community.⁵⁵

And yet, we want to stress, Radin was writing in the 1980s and 1990s, a moment when American property law and legal debates were increasingly dominated by law and economics and its relentless calculations of individual efficiency. Fighting against the grain, she borrowed Hegel’s argument that private property is constitutive of personhood, and she used her translations to advance a normative justification for liberal capitalist states to regulate and redistribute some private property rights based on how these rights contribute to the development of people rather than to the development of markets. In her words: “when I wrote *Property and Personhood* I believed the best strategy for making gains for the less well-off, under the circumstances, was: (1) rather than attempting to disrupt the ideology of personhood, to appeal to the universality of the notion of personhood; and (2) rather than attempting to disrupt the ideology of property, to drive a wedge into the ideological justification of property.”⁵⁶

⁵⁰ *ibid* 353.

⁵¹ Simone de Beauvoir, *The Second Sex* (Vintage Books 1989); Luce Irigaray, *An Ethics of Sexual Difference* (Cornell University Press 1993); Dolores Hayden, *The Grand Domestic Revolution: A History of Feminist Designs for American Homes, Neighborhoods, and Cities* (MIT Press 1981); Bonnie Honig, ‘Difference, Dilemmas, and the Politics of Home’ (1994) 61 *Social Research* 563; Iris Marion Young, ‘House and Home: Feminist Variations on a Theme’ in Sarah Hardy and Caroline Wiedmer (eds), *Motherhood and Space* (Palgrave Macmillan US 2005) <<http://link.springer.com/10.1007/978-1-137-12103-5>> accessed 11 January 2023.

⁵² Judith Butler, *Bodies That Matter: On the Discursive Limits of ‘Sex’* (Routledge 1993); Honig (n 51); Jennifer Nedelsky, ‘Law, Boundaries and the Bounded Self’ (1990) 30 *Representations* 162; Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford University Press 2013); Seyla Benhabib and others (eds), *Feminist Contentions: A Philosophical Exchange* (Routledge 1995).

⁵³ Davies (n 12).

⁵⁴ Jeanne Schroeder, ‘Virgin Territory: Margaret Radin’s Imagery of Personal Property as the Inviolable Feminine Body’ (1994) 79 *Minnesota Law Review* 55, 66–67. For Schroeder, the feminist task is not to prevent the commodification and objectification of women as Radin proposes, but must involve a more fundamental search “for a way to subjectify and decommodify ourselves as women.” *ibid* 66.

⁵⁵ William H. Simon, ‘Social-Republican Property’ (1992) 38 *UCLA L. REV.* 1335, 1361. William H Simon, ‘Social-Republican Property’ (1992) 38 *UCLA Law Review* 1335, 1361.

⁵⁶ Margaret Radin, ‘Lacking a Transformative Social Theory: A Response’ (1993) 45 *Stanford Law Review* 409, 416-17.

Today, scholars continue to use personhood theories of property to ask how property helps constitute people and to advance visions of a social good. One of the present authors, for example, has explored the ongoing resonance of personhood theory in fieldwork on a range of activist interventions in public space.⁵⁷ Thorpe’s interlocutors echo Radin’s intuition as they discuss their engagements with property in gardens, carparks and other city sites. Ownership, they explain, is productive of agency, identity, and political voice, and the expression of that voice and identity works in turn to strengthen ownership. Personhood thus illuminates some of what is at stake for urban activists even as they also emphasise other factors when describing their property experiments: these include familiar Lockean labour-based themes, alongside celebratory stories about socially and, particularly, materially grounded relationships, as well as play, pleasure and even love. Personhood, Thorpe thus argues, is helpful in understanding how and why property is constructed, albeit not enough.

Others have developed personhood in different ways. As we sketch below, some contemporary scholars are increasingly interested in questions of common and public property and group identity, desirous of extending personhood theory beyond its Hegelian roots in private property and individual self-determination, raising new questions and complexities.

From Private Property and Individuals to Collective Property and Groups?

In 1997, Sarah Harding asked if Radin’s personhood theory could be “extended to the ownership of property owned by groups.”⁵⁸ “Is it the case,” she queried, “that some property is so vital to the well-being and preservation of a particular cultural community that it can be said to be constitutive of the identity of that cultural group?”

Radin herself planted the seeds prompting this question. In 1982, she reminded readers that Hegel had connected his argument--“that property is held by the unit to which one attributes autonomy”—to the idea of group development.⁵⁹ Radin suggested that if some people experience their personhood through group association, group belonging, and group cohesion then the nature and intensity of such associational connections may merit special state protection of particular kinds of property rights.⁶⁰ She ventured that “in a given social context certain groups are likely to be constitutive of their members in the sense that the members find self-determination only within the groups. This *might* have political consequences for claims of the group on certain resources of the external world (i.e., property).”⁶¹

⁵⁷ Thorpe n 20; Amelia Thorpe, ‘Hegel’s Hipsters: Claiming Ownership in the Contemporary City’ (2018) 27 *Social and Legal Studies* 25; Amelia Thorpe, ‘“This Land is Yours”: Ownership and Agency in the Sharing City’ (2018) 45 *Journal of Law and Society* 99; Amelia Thorpe, ‘Pop-up Property: Enacting ownership from San Francisco to Sydney’ (2018) 52 *Law and Society Review* 740.

⁵⁸ Sarah Harding, ‘Justifying Repatriation of Native American Cultural Property,’ (1997) 72 *Indiana Law Journal* 723, 725, 749-53.

⁵⁹ Radin, ‘Property and Personhood’ (n 28) 1004.

⁶⁰ *ibid* 1013.

⁶¹ *ibid* (emphasis added). She also pointed to “fragmentary evidence” in American jurisprudence that “suggests that *group* property rights, if connected with group autonomy or association, are given enhanced protection.” *ibid* 1006 (emphasis in original).

Building on this argument, Kristen Carpenter, Sonia Katyal and Angela Riley proposed that Radin's personhood model "offers a striking vehicle for bringing into legal discourse indigenous conceptions of property."⁶² But for the vehicle they wished to power, Radin's work was incomplete. Referencing her reliance on Hegel, they ventured that Radin's "work is somewhat limited by its explicit foundation in a philosophical tradition of individual personhood."⁶³ By contrast, Carpenter, Katyal and Riley posed a different kind of question. They asked how collective forms of property "advance the interests of the group itself" and do not act "merely as a vehicle or context for individual autonomy."⁶⁴ If collective property can shape group identity or peoplehood, they reasoned, then "as a matter of property theory and practice . . . indigenous peoples have a legitimate interest in exercising a duty of care or 'stewardship' over resources—intellectual, real, personal, and tribal properties—that express their collective identity or 'peoplehood.'"⁶⁵

Other scholars proposed to broaden Radin's personhood thesis in similar ways, albeit beyond indigenous contexts. For example, Lisa Austin ventured "a community-based version of Radin's personhood thesis."⁶⁶ "What is constitutive of the self," she argued, "is not a person-thing relationship but relationships with other people."⁶⁷ She reasoned that interpersonal relationships and social networks depend significantly on the kinds of interactions made possible in public spaces. Austin thus concluded that the ways public spaces constitute different communities provides a strong basis to argue for rights of access to them.

These and other scholars are working with a basic Hegelian/Radinian insight, at least when the insight is cast in general enough terms. They are interested in what property *does* to produce a sense of agency, identity, and relationships with other people in the world. But by thinking with collectivities, they are also asking how property practices and rights are not contained in one person but rather are varied and differentially allocated across the very collectives they help produce. To that end, Davina Cooper generatively proposed to enlarge personhood property from Radin's relationship between people and things to also include constitutive relationships of belonging. She described these property practices as relationships between parts and wholes, such as when a child "belongs" to a family or a garden "belongs" to a dwelling, and as relationships of proper attachment, as in "I belong here."⁶⁸ Drawing on fieldwork at an alternative residential school, Cooper illustrated how property relationships between people and things intertwine with property relationships between parts and wholes to shape "variegated socials" that together express what it means to belong in this school community.

⁶² Kristen A Carpenter, Sonia K Katyal and Angela R Riley, 'In Defense of Property' [2009] *The Yale Law Journal* 1022, 1048.

⁶³ *ibid* 1050.

⁶⁴ *ibid* 1051.

⁶⁵ Kristen A Carpenter, Sonia K Katyal and Angela R Riley, 'Clarifying Cultural Property' (2010) 17 *International Journal of Cultural Property* 581.

⁶⁶ Lisa M Austin, 'Person, Place or Thing? Property and the Structuring of Social Relations' (2010) 60 *University of Toronto Law Journal* 445.

⁶⁷ *ibid* 446.

⁶⁸ Davina Cooper, 'Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property' (2007) 32 *Law & Social Inquiry* 625; Davina Cooper, *Everyday Utopias: The Conceptual Life of Promising Spaces* (Duke University Press 2014).

These contemporary legal scholars are thus purposefully moving away from the conceptual clarity that Radin's focus on the individual's formation through private property enables. They are asking a new set of generative and political salient questions about collective identity and social life. In so doing, they are also potentially engaging dilemmas that anthropologists have documented for decades: namely, that collective ownership inevitably requires hierarchies and exclusions *and* that collectivities often govern these hierarchies and exclusions through their own processes and norms, in turn, giving rise to questions familiar to scholars of legal pluralism.

Let us conclude by using ethnographic examples from postsocialist countries to illuminate how these dilemmas can unfold in practice. We turn to the experiments in collective property in the aftermath of the fall of communism to illustrate how Radin's use of Hegel entailed particular assumptions. Radin borrowed Hegel's argument that there is a constitutive relationship between individuals and their things. When she used this argument to make normative claims about property rights and regulation, she could presuppose a single legal system grounded in a (liberal) state. Within this system, individuals may differ in their object attachments and profoundly in their object endowments. But they are all presumed to function like individuals.

Collectives, by contrast, may function quite differently from each other. By their very nature, collectives operate both to draw boundaries between us and them (not always the boundaries a state jurisdiction might wish to sustain), and to exclude some members (but not all) from exercising particular rights. But to say that all collective property regimes presume internal hierarchies is only the starting point. Collective property regimes can presume radically different hierarchies and forms of ownership—in turn, challenging how legal analysts may attempt to derive large scale definitions of personhood from these regimes *and* challenging attempts to theorize a singular set of property rules that function uniformly within a state system.

To clarify both these challenges, we describe two examples of changing collective property regimes in post-socialist countries – Katherine Verdery's ethnographic account of Romania and Caroline Humphrey's analysis of Buryatia.⁶⁹ In both cases, state governments urged land privatization in the decades after the fall of socialism, but farmers continued to practice forms of collectivization as they anticipated new risks and demands for the necessary resources to work the land. Yet the forms of collectivization that resulted in the post-socialist moment took fundamentally different directions. We first suggest that the differences between these two cases reveal how similar kinds of collective property regimes can help produce different forms of personhood. We then suggest that the Buryatia case reveals how collective property regimes may govern according to rules that shape how resources and patronage circulate within and between collectives, quite apart from the rules of the state.

In Romania, the socialist regime had transformed private ownership into a collective enterprise, so the fall of socialism allowed agriculturalists to imagine they were returning to a property regime familiar to them or to their parents. Romanians tended their own newly privatized fields, ones their families had traditionally owned prior to socialism, but also participated in a collective farm, known as the Association, structured along familiar Soviet principles. Their newly

⁶⁹ Katherine Verdery, 'The Obligations of Ownership: Restoring Rights to Land in Postsocialist Transylvania' in Katherine Verdery and Caroline Humphrey (eds), *Property in question: value transformation in the global economy* (Berg 2004); Caroline Humphrey, *Marx Went Away-But Karl Stayed Behind* (University of Michigan Press 1999).

privatized fields were not terribly profitable, they required considerable resources to cultivate, and these farmers often lacked the requisite access to markets for their produce. As a result, they would participate in collective farms organized by the Association as well, although they tended to donate the less desirable land to the Association. These farmers also “used the Association to cushion labor scarcity – a major problem – pulling land out when they had enough labor and putting it back in when they did not.”⁷⁰ They were offloading some, but by no means all, of the risks involved in farming on to the collective according to a principle of self-interest and, in so doing, undercutting any chance that the Association would flourish over the long run.

Some Romanian farmers also engaged in a different property form. They rented their land to what Verdery terms “super tenants,” people with the necessary ability to navigate the complexities of the newly introduced privatized marketplace. These farmers wanted to hold onto their property largely for social status, it was a sign that they were able to maintain a standing their family used to have—and much talk in the town Verdery studied was devoted to comparing how successful different villagers were at maintaining their fields. This desire for social standing, in turn, made it less than ideal to rent to super tenants, who made the fields too uniform, not allowing owners to generate the signals that would lead to forms of social recognition that the owners desired. Yet the costs of maintaining fields increasingly began to make renting to super tenants appear to be the only path forward that allowed people to keep their family’s land. Thus, instead of having a handful of landowners with many tenants, in post-socialist Romania there were many small owners with a few super-tenants.

Not so in Buryatia. In Buryatia, land had always been owned collectively according to indigenous Buryat principles; what the Soviet Union accomplished was to shift the ways in which this collective ownership was organized. In the post-socialist moment, farmers in Buryatia found the Soviet-style collective offered an organizational efficacy and a set of “indigenous/Soviet values” that they wanted to retain.⁷¹ Yet they simultaneously developed alternative forms for pooling together newly privatized property – several families might come together to work land, or people came together through a trust-based contractual scheme governed by a “plan” or set of rules to share and distribute labor and income, plans that operated along different principles than the Soviet-style collective. As in the Romanian case, this allowed farmers to circulate resources such as labor, equipment, and seed. Although unlike in the Romanian case, the directors of the retained Soviet-style collectives functioned far more often to distribute resources that only this kind of collective had access to – providing newlyweds with apartments, and so on.

Farmers also juggled different types of commitments to the multiple collectives they participated in, allowing resources to flow between them in patterned ways that readers unfamiliar with postsocialist understandings of what counts as public and what counts as private might find surprising.⁷² People tended to view the Soviet-style collectives as public resources equally available to anyone who worked on them. Those who worked on these lands felt free to remove fences or other equipment, re-purposing the lumber on their own farms, organized by different

⁷⁰ Verdery (n 69) 146.

⁷¹ Humphrey (n 69) 480.

⁷² For fuller explanation, see Susan Gal, ‘A Semiotics of the Public Private Distinction’ (2002) 13 *Differences: A Journal of Feminist Cultural Studies* 77.

collective principles among families and neighbors. In general, one form of collective was understood as more public, and thus more plunderable than another. This plunder strategy for circulating resources was unidirectional – from public collective to private collective. Humphreys evocatively writes about a researcher who overhears some young women working in an office lamenting that they weren't employed in any jobs that might allow this form of repurposing – they wished they could be like nurses who might take medicine from hospitals in the same way that farmers might take tractors from their collective farms. These office workers wished they too could be such a conduit for resources.⁷³ Yet there were limits – people also realized that Soviet-style collectives had to continue functioning. People would stop removing resources at a certain point, and there would be answered open calls for resources in which everyone participating in Soviet style collectives would contribute to them, ensuring their continued success. Here it is also worth pointing out that not everyone had equal rights to participate in how resources circulated between collectives, just as in Romania, not everyone had access to family land.

These two examples illustrate how collective property takes multiple and varied forms. As people assess the yearly risks and debt obligations that agricultural forms of property entail, they sustain and move between different forms of collective property and, in some cases, private property. And yet the kinds of personhood and community that Romanians experience as they move between collective ownership and private ownership is distinct from the kinds of personhood and community available in Buryatia, despite the fact that in each case there is a similar form of collective property that lingers on from Soviet times.

The collective property regimes in Buryatia also govern according to an explicit set of community norms that manage questions of inclusions, exclusions, resources, and rights. Humphreys describes how in the indigenous language the term for landowner relates to the verb “to rule,” and she explains how the Soviet-style collectives rule “like a substitute for the state.” They support “all inhabitants, not just working members . . . [such as] pensioners and mothers whose benefits should actually come from the state.”⁷⁴ “It is therefore not surprising,” Humphreys continues, “that plans in rural areas include the establishing of new, mega-collectives as small self-governing ‘states’ and that kinship, shares, power (*vlast*), and hierarchy are their basis.”⁷⁵ Or to put this another way, in Buryatia collective property regimes comprise what Sally Falk Moore called a semi-autonomous social field, which is a community defined “by a processual characteristic, the fact that it can generate rules and coerce or induce compliance,” but whose rules almost always also interact with the rules of a dominant and typically state-based system.⁷⁶

Turning, then, to collective property opens the door to a variety of personhood and property regimes as well as a variety of legal regimes. Hegel avoided these conundrums by focusing on the relationship between the individual and private property, turning to a putatively standardized unit as the building block for property regimes within families, communities, and the state.

⁷³ Humphrey (n 69) 463.

⁷⁴ *ibid* 503.

⁷⁵ *ibid*.

⁷⁶ Sally Falk Moore, ‘Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study’ (1973) 7 *Law & Society Review* 719, 722.

Recall that he argued that “the utilization of *elementary* objects [common property] is, by its nature, incapable of being particularized in the form of private possession.”⁷⁷ And yet—and as all the scholars described in this section illustrate (not to mention a vast contemporary literature on the commons)—people *can* use elements of common property in specific, patterned, enduring, and responsibly negotiated ways, in turn, shaping their self-understandings and communal life.

But it is also the case that the constant avowal and negotiation of property rights that Hegel saw as so crucial to producing ethical communities becomes that much more complicated to unpack when they are heterogeneously and unequally distributed across a collective. Substituting a collective for the individual as a unit of analysis leads to a degree of variety that may only be easily resolved by committing to the fiction that one can treat collectives as if they are all structured in similar ways, say metaphorically structured along the lines of corporate personhood, or some analogous approach to making collective property seem more unified and homogenous. This, however, is a fiction that will be quickly unraveled by how collectives in fact govern and distribute property and property rights. When one opens up ownership, as Cooper encourages,⁷⁸ one begins to see the great variety in how collectives fracture and distribute property rights in patterned but uneven ways across a group, or determine through complex negotiations who has certain types of rights to property, and when.

Conclusion

In this handbook chapter, we have traced a fertile line of inquiry from Hegel to Radin that has given rise to ongoing, even commonsensical, work on the constitutive nature of property—work that helps to explain why property is desired, valued, accepted, and respected across multiple kinds of social contexts. In the 1980s, Radin popularized a version of Hegelian property theory, making personhood a rich analytical source over the past 40 years for scholars seeking to expand property theory beyond utilitarian, efficiency-maximizing accounts. Indeed, scholars and activists today often describe an intimate connection between property access and ownership, on the one hand, and human needs for self-expression and the development of identity and community, on the other hand, wholly apart from any reference to Hegelian theory.⁷⁹ We are thinking, for example, of recent studies of graffiti,⁸⁰ urban exploration,⁸¹ and urban gardening.⁸²

⁷⁷ Hegel (n 1) s 46.

⁷⁸ See Cooper, ‘Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property’ (n 68).

⁷⁹ Amelia Thorpe, ‘Hegel’s Hipsters: Claiming Ownership in the Contemporary City’ (2018) 27 *Social & Legal Studies* 25.

⁸⁰ Kurt Iveson, ‘Cities within the City: Do-It-Yourself Urbanism and the Right to the City’ (2013) 37 *International Journal of Urban and Regional Research* 941; Cameron McAuliffe and Kurt Iveson, ‘Art and Crime (and Other Things Besides ...): Conceptualising Graffiti in the City: Conceptualising Graffiti in the City’ (2011) 5 *Geography Compass* 128.

⁸¹ Bradley Garrett, ‘Undertaking Recreational Trespass: Urban Exploration and Infiltration’ (2014) 39 *Transactions of the Institute of British Geographers* 1; James Donald McRae, ‘Play City Life: Henri Lefebvre, Urban Exploration and Re-Imagined Possibilities for Urban Life’ <<http://qspace.library.queensu.ca/handle/1974/1046>> accessed 4 July 2015.

⁸² Efrat Eizenberg, *From the Ground up: Community Gardens in New York City and the Politics of Spatial Transformation* (Routledge 2016); Ellen van Holstein, ‘Transplanting, Plotting, Fencing: Relational Property Practices in Community Gardens’ (2016) 48 *Environment and Planning A* 2239; Nicholas Blomley, ‘Flowers in the

And yet while the connections between property, identity, and community may in many contexts appear commonsensical, this is not always the case. The explanatory and justificatory value of personhood – like any singular theory – has its limits. In particular, we described how Radin’s property-for-personhood thesis has prompted contemporary questions about whether a constitutive relationship between private property and individuals is analogous to a constitutive relationship between collective property and groups. We proposed that these contemporary questions generatively expand *and* simultaneously challenge the methodological and ideological presuppositions of Radin’s thesis.

More specifically, in thinking about how collective property itself enables forms of personhood, a new set of questions emerges, along with potential puzzles that law may (or may not) attempt to address. As in our ethnographic examples, how does one manage property rights distributions when people belong to more than one collective? We see in postsocialist ethnography that this ability to belong to multiple collectives enables some to have privileged access to move ideas and resources between collectives, but not everyone, leading potentially to patterned forms of inequality. Likewise what happens when individual claims to property based on human flourishing and identity contradict multiple kinds of collective claims. How does one adjudicate between these conflicting claims to property, and between the divergent understandings of property’s role in human flourishing which underpin them? This is, however, just the tip of the iceberg in terms of the social and legal conundrums that membership in multiple collectives could engender. In general, should laws safeguard collectives’ abilities to decide who can participate in the collective, to what degree, and how one exits a collective, with the attending potential reconfiguration of property rights? If this is not law’s role, then how can legal regimes best enable collectives to flourish when ethical principles around equity might clash, both with state assumptions and each other, without inscribing assumptions that collectives are functionally equivalent to individuals in the eyes of the law?