

Property and Freedom in Kant, Hegel, and Marx

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In this chapter, I criticize some common approaches to conceptualizing *property*, and I propose instead a more normatively attuned, historically situated framework for thinking about what it means to call something *mine*. Whereas many legal theorists are busy constructing elaborate doctrines for justifying the absolute supremacy of property rights (and, consequently, normalizing the status quo distribution of wealth), I am more interested in understanding the social bonds, normative expectations, and material constraints produced in property relations. I do this with the help of Kant, Hegel, and Marx, each of whom placed property in relation to the development and denial of human freedom. But first, I discuss my shirt.

My Shirt

This shirt is mine. I bought it at H&M one day with money that I earned by working at a bar. The money was given to me because that is what the job contract stated, that I would receive money in return for working. And I did. The money I earned came from the customers, who themselves could have acquired it from their jobs, families, friends, loans, or whatever. My boss took some money for herself and some for the bar, to buy the required goods a bar needs, drinks and glasses, and so on, and to pay the bar's rent, and maybe to invest the profit somewhere. Part of that money went to me, which I put into food, I mean, I gave it to someone working behind a counter who let me take food out of the store once I gave them money, and part of the money went to rent, that is, an online transfer to a bank account to someone I have never met, and part of it went to buy this shirt, or, went to a company that already bought the shirt from the producer and then sold it to me at a higher cost to cover the wages and overhead and earn a profit for their store. The shirt was made from fabrics and dyes whose origins are undoubtedly international, with the final labor of sewing it together perhaps the result of a machine and some horrendously cheap labor, that is, the hands of people who were paid low wages by others who owned the building, materials, and right to the product of labor. In the end, this shirt, which I bought with the money I earned from working

at the bar, is mine, and I have the right to do whatever I want with it. That is, I can wear it, tear it, paint it, rip it, cut it, burn it, sew it, give it away, throw it away, donate it, decorate it, and destroy it. What I do with it is my decision.

There are some limits to what I can do with it. I cannot strangle someone with this shirt, or better, I can strangle someone with it, but then I am subject to the legal ramifications of committing a criminally wrong deed, which includes arrest, trial, conviction, and, most probably, jail-time. The shirt is still mine when I do it even though what I did with it is wrong. The court may take the shirt away from me as evidence, but perhaps I can get it back later. Yet this prohibition not to harm another with my property is not actually a limit internal to the idea of property, but rather a general moral constraint on social action as such in a civil community.¹ Not harming one another is a constraint on all sorts of social relations, and the property relation is just one of these. So, given the general background constraints on action in general, there is nothing limiting my particular dominion over this shirt. I am free, unconstrained, comfortable, at home with myself and others in my shirt. It is mine.

How did this web of social and material relations, crystallized in the shirt I'm wearing, end up at my disposal? What grants authority to me to do whatever I please with this object, to have a realm of freedom in which I can utilize this shirt for any purpose? What, in the last instance, makes this shirt truly mine? It is neither its substance nor origin, use nor qualities, form nor function. Since all things mine are different in those senses, we cannot use any one of those criteria to explain what is, in fact, mine. Any appeal to facts will not help here, for we cannot find the fact of 'mineness' attached to my shirt. Sometimes, we do find a sign that says, 'Stay off! This is mine!' But unfortunately, such a sign is not ubiquitous. And even if it were, what would convince us to believe it? How can we trust the sign? Would we need not another sign, pointing to the first sign and saying that this sign does in fact belong to the owner, and that it is supposed to be exactly where it is? But why should we believe that second sign? Maybe very clever thieves put those signs up in order to deflect any suspicion away from them, so that they could claim something that was not theirs.

But let us just say that the signs were real, and accurate. They willfully expressed the belief of an alleged owner over something they thought was theirs. Well, what if we came across something that was claimed by two different owners, something that had contradicting signs. Both said 'Mine!' How would we decide on the rightful owners? Do we ask them questions to define the thing at hand? To see who knows the thing better? Do we get references? Documents? Stories? If we have stepped outside the boundaries of physical identification, then we have already left behind the realm of empirical facts, and have entered something else, the realm of social, political, legal, and ethical reason. But what are the criteria within the space of reasons that can definitively prove why something is mine, and not yours? Again, this does not seem to be a natural scientific question, with clearly demarcated procedures for testing hypotheses that provide falsifiable results and allow for certain amounts of prediction. This is a normative question, a question of *right*.

Normatively speaking then, there are two standard *reasons* that justify why something is mine and not yours: Either I rightfully *acquired* something that was

previously unowned, however one determines the procedure of rightful acquisition, or, the ownership of something was rightfully *transferred* to me, however one determines the process of rightful transfer.² With these two principles in place, the mess of property relations can be legitimately and legally solved. What is mine and what is yours is ideally fixed in principle. All that is left to do is create a set of institutions for managing this in reality: a police for enforcing property boundaries, courts to impartially judge the cases of wrongful violation, governments to determine the laws according to which the courts can make legal decisions, lawyers to prosecute or defend those who bring claims forward about property violations, and a system of justice to devise ways to punish those at fault or compensate those who are wronged. This is all technical work, best left to experts and administrators. The task of the philosopher interested in this field is then to provide rigorous arguments, clear distinctions and functional categories that can help lawyers, judges, police, civil servants, and governments better adjudicate over property claims. By doing this, the philosopher contributes to the general good, to justice and to freedom.

But that is not the task of a critical theory of property, and that is not what I intend to do. For that way of approaching the problem of *mineness* takes for granted the object which needs to be explained: property itself. The question is not how to best determine what is mine and yours, but what it means to structure the world in terms of mine and yours in general. This initial formulation of the problem is still too abstract because it is unclear *what* is doing the structuring here, but let us leave that to one side for now. What is important is that the strange quality of something being 'mine' is not illuminated by deriving principles to justify how certain things can become mine or yours. Although this is a common strategy, it just buries the problem deeper. Starting with a diversity of cases that have something in common, the fact of mineness, and building up a theory to explain what binds the experiences together has created a vast literature on bundles of rights, taxonomies of claims, categories of contracts, theories of desert, and principles of utility.³ Yet property is not a concept that can be understood just by looking at how the word is used in various contexts, because the various contexts themselves are contentious.⁴ If we want to go deeper than just reaffirming what appears, then another strategy will be needed.

Bundles of Property Theory

The fact of property does not give us the right to property. But what would it mean for something to 'give us' a right to property? Property *already is* a right, and some even claim that all rights are just forms of property, individual possessions we carry around with us wherever we go. If this is correct, then trying to ground a right *to* property is like searching for an original right to rights, an original possession of possessions. This circular game has led many philosophers to posit a state of nature in which the entire earth was either originally possessed in common by all or possessed by no one, and then introduce a factor (e.g., scarcity, conflict, greed, labor) which upsets the balance, bringing private property into the world as such.⁵

When philosophers begin to look beneath the positive laws of legal ownership, property rights, and forms of possession, and to ask the more fundamental question of what the function and meaning of property is *as such*, we tend to get the following kinds of answers:

- property is a natural right that protects the valuable interests of individuals
- property is the just desert of labor
- property is a social convention that promotes benefits and welfare for the advantage of all
- property is a set of rules for determining the allocation of material resources in a situation of scarcity

Along with these natural rights, libertarian, utilitarian, and economic kinds of answers, usually a reference to the ‘market’ is made, a reference that further confuses the problem. Markets are sometimes taken to be the necessary condition for property rights, and the free market especially is taken to be the final rational form for the realization of property as such. However, although markets are intrinsically tied up with property, as a form in which property can be distributed, property is not intrinsically bound to markets. Property comes into being in these various accounts for a host of interesting but implausible reasons: It is in human nature to divide the world into mine and yours; it is a result of greed; it is an efficient way of distributing land; it is necessary for everyone to avoid violence.

All of these theories have been debated, refined, and perfected by the acolytes who subscribe to them.⁶ The reason why they are so unhelpful in getting to the core of the problem is that they are lacking on two fronts: normatively and historically. On the one side, these theories fail to explain the value of property in itself, always reducing it to a good *for* some other interest or need. In this sense, property is only instrumentally valuable, never justified as such. If other contingent circumstances change—for example, natural, political, or economic conditions—then the form of property might just disappear as a relic of history. In this sense then, property itself is neither explained nor justified, but rather only accounted for as a side effect of other, more fundamental phenomena.

On the other side, these accounts naturalize the emergence of property when it is precisely its unnaturalness and historical specificity that needs to be explained. Whereas many theories of property try to explain just how normal it is that we own things according to complex set of rules that change over time but are somehow still considered sacred, a critical theory of property should emphasize its uniqueness as a social institution, its distinctiveness within the manifold of life’s activities and human relations. Not only that, but the limits of property, the conflicts and antagonisms within it, should also be brought into focus here, and not just as irrational, contingent affairs, but as crucial elements of this complex phenomenon.

Taking these factors into account will allow us to answer the following two questions. First, what is the normative status of property, and second, what is its historical role? To grasp the normative status of property would require showing how property is indispensable for the development of our own self-conception as modern

free individuals. To understand the historical role of property would be to make sense of the determinate function that different property relations play in materially constituting our relations to ourselves, each other, and our world, irrespective of our reflections on it.

By keeping in mind both ways of understanding property, a more unified picture of its place in our modern world can emerge, one which allows us to broach the more general worries that hang in the background: What does it mean to *own* something at all? What does it do to us, and what does it do to the world? There is a legacy of philosophical investigations that has taken these kinds of systematic questions seriously: the strange line that cuts across German idealism and materialism extending from Kant through Fichte and Hegel to Marx and the young Hegelians. These thinkers grappled with the emergence of modernity on a philosophical level, directly confronting the challenge of explaining the new kinds of subjects, values, institutions, and social relations that were emerging in the post-revolutionary world. Despite their different judgments, they all shared an understanding of private property as a modern right bound up with the historical emergence of the bourgeois state and a new normative order centered around individual freedom. The fact of private property was a historical challenge to the old regimes of feudal ownership and absolute monarchies, and this called for rethinking the fundamental categories of social life. In their different versions, private property either expresses, conditions, secures, limits, or deforms the freedom of modern individuals. In their various narratives, private property enters the world as a rational duty, civil contract, positive law, individual act, or economic relation.

Here, I am interested in two different argumentative strategies for understanding what makes something *mine* in this world. First are those normative, ideal arguments which start with a general theory of freedom, and then claim that securing or realizing said freedom requires the existence of a particular social relation, that is, private property. These arguments consider the historical development of modern societies toward private property rights as *progress toward freedom*, although such progress is never completely fulfilled. Second are those materialist, non-ideal arguments that start with a descriptive account of modern society, and then show how different forms of property emerge in accordance with changes in the economic and social relations that bind society together. On the first reading, a kind of free will is initially posited, and depending on one's interpretation of what constitutes the specific *freedom* of this will, certain social and material conditions will be required to make such freedom actual, effective, universal, and secure. Kant's deduction of intelligible possession in the *Doctrine of Right* is the paradigm case for this strategy.⁷ On the second reading, a kind of social property relation is initially posited, and depending on one's interpretation of what constitutes the specific *constraints* of this relation, certain freedoms and wills emerge to make it actual, effective, universal and secure. Marx's analysis of social forms of property relations in *The German Ideology* and the *Grundrisse* are the classic examples here. Between these readings stands Hegel with one foot in both, for in the *Philosophy of Right*, he infers the necessity of private property as an indispensable element for the development of free personality, while at the same time locating the conditions of possibility for private property within a historically specific social form of modern ethical life.

Although these approaches appear to be contradictory, they can in fact be complimentary. The form of freedom that emerges through the transformation of social property relations can be exactly that kind which a rational theory of freedom claims is secured only through a certain form of property. The question I will be pursuing is whether or not this is in fact the case, whether or not the freedoms we need and the freedoms we get converge in our modern relation to property. In fact, what I hope to show is how both approaches, while insufficient on their own terms, require each other; what is lacking in one is made up for in the other. The idealist account of property helps us grasp the normative consequences of conceiving individuals to be irreducibly free. This analysis, however, is not necessarily connected to the world in which we live. Since rights to property crystallize a particular way of organizing the material reproduction of society, they require a materialist explanation as well. But materialist theories ignore the normative dimension of property as a form of recognition, freedom, and right. Hence, such theories cannot really critique or evaluate property other than in functional terms. They do, however, help us to grasp the tectonic shifts that human beings go through when property relations change.

Now this is all still very abstract, and it does not say much about any particular cases, rules, relations, or rights that make up the content of a determinate property system, especially a system of private property. The point so far is just to pose the more general question of what it means to even conceptualize property, and then to figure out the ways in which our conceptions of it have determinate consequences for our understanding of freedom, our world and ourselves. As I hope to show, the consequences will be stark. I will claim, following Marx, that given a certain understanding of the modern form of property relations under which we live, *either* we have to reject Kant and Hegel's normative conception of property as a condition of individual freedom *or* we have to reject the modern form of property relations itself in market society. The first path leads us to abandon the project of realizing the forms of freedom that Kant and Hegel defend as necessary for human flourishing, resigning us to accept the unfreedom of modern property relations, while the second path holds open the possibility of attaining that ideal of freedom after all. To get there, I will now turn to the theories of property and freedom in Kant, Hegel, and Marx.

Kant

For Kant, external freedom means the formal capacity for rational beings to act purposively in the world in relation to others.⁸ This entails the ability to formulate ends and choose means to pursue those ends, independently of coercion. The basic normative requirement for the existence of external freedom is the distinction between *mine and yours*. Without this distinction, such freedom cannot even get off the ground, for how could I act purposively, that is, how could I choose the means for accomplishing my purposes if I am not allowed to determine when and how to use objects of my choice as means at all? Being able to determine when and how to use certain objects for my purposes is just another way of saying that something is *mine* and *not yours*.

According to Kant, what makes something ‘mine’ is that my possession, use, and claiming of it can rightfully coexist with the freedom of everyone else, that is, it does not interfere with the freedom of others to act and choose objects for their own purposes. But, pushing further, this cannot be the reason for *why* these specific things are mine, but rather only the effect of them already being mine. It is the effect of a certain social arrangement *that* something is mine, that my use of it does not interfere with your use of things, and vice versa. So, we are back to the beginning: We need to know why *these* things are mine at all, not what does it mean for them to be mine or how can I properly act within the normative boundaries of ‘mineness’ and ‘yourness’. For Kant, these things are mine because, at some point, I acquired them in conformity with the universal principle of right and the postulate of practical reason. That is, since there is no *a priori* law of reason preventing the exclusive use of external things for my own ends, I am authorized to take possession, use, and dispose of things, as long as my taking possession does not conflict with another’s claim on the object, and my use of the object does not interfere with the external freedom of everyone else.⁹

To call something mine is not, for Kant, a relation between the object and myself. Rather it is an interpersonal relation between you and me that says, *do not interfere!* Non-interference from others in using my object is the content of claiming something as mine; in fact, Kant’s *Doctrine of Right* begins only with the possibility that someone else *can* wrong me by interfering with my use of something. In other words, without the possibility of wrong, Kant’s theory of right is empty. The system of rules and duties that guarantees each person’s independence from another is called Right [*Recht*], and the particular duties that can be coercively enforced in accordance with this system are called rights. Property—as the right to intelligible possession of objects of choice, the right to use what is mine, and the right to forcibly exclude others from interfering with it—is the foundational right in the system of Right. Without the right to possess, own, and distinguish between mine and yours, according to Kant, individuals are denied the possibility of using their innate freedom in the external world.¹⁰

Hegel

For Hegel, property is the minimal condition for individuals to know themselves as free.¹¹ To claim something as one’s own is to express one’s will in the objective world, a will that needs to recognize itself as capable of freely disposing over the constraints of nature. To say that the will ‘needs’ to recognize itself in this way, and furthermore that it ‘needs’ to be recognized by others in this way, means that such recognition is required for it to be considered as *free*. To be free here means to be a free *person* and not just a bundle of natural characteristics, genetic data, or animal instincts. A person can ‘negate’ its given characteristics by acting in the world such that its own self-determined purposes become essential for it.¹² This ability is not a natural fact but a normative achievement, and owning property is the thinnest layer of proving this achievement to oneself and others. In possessing something, one sees the efficacy of one’s own will in bringing about changes in the circumstances of the world. This

action, as expressed in the uses one makes of one's property, individualizes the will, and separates oneself out as a distinctly rational being in the world of things.

Taking possession, using, and alienating objects as property are the primary ways in which this abstract freedom of the will is exercised. Yet the world consists not only of things, but other wills. Normative relations between persons as free wills begins with the mutual recognition of one another's property, for only through property is each person's freedom made *objective* to one another. To recognize one another's property in contracts is another key moment in the ethical development of individuals, for such recognition produces a common will that can transcend individual interests and legitimize political authority. If freedom consists in recognizing one's own efficacy as an agent over nature, and in being recognized as an agent in just that way, then property relations are the pure realm of freedom on this earth.¹³

But that is not all freedom consists in. As the elementary form of expression for individual agency and the first medium of mutual recognition between persons, property is a necessary, but insufficient, condition for individual and social freedom to be realized. Rights to property provide rules for the exercise of individual freedom of choice, but such rules do not provide the normative resources for determining what to pursue. The content of freedom itself must be freely determined and not a given; this content emerges for Hegel from morally grounded social institutions. Beyond rights to property then, freedom requires a system of interlocking institutions—for example, family, civil society, and the state—which Hegel collectively names *Sittlichkeit*, or ethical life. The institutions of ethical life mediate the individual will, moral values, and social roles in a self-reflective, but holistically satisfying, manner. The sphere of civil society and the laws of the state constitute the background conditions within which individuals can rightfully and freely interact as private persons with rights to property. To be free is to be more than a private person; it includes one's duties, roles, choices, values, and entire form of life. But without property, that is, without having an external sphere upon which my will can impose itself and create new purposes, I do not even recognize myself as free. One can have property without being fully free, but no one can ever be fully free without owning property.¹⁴

Hegel regards property not instrumentally, as a means, but rationally, as an end in itself. To see property only as a means to an end is to reduce it to an economic standpoint of particular needs and wants; to see property as an end is to treat it normatively from the standpoint of universal freedom and right. "If emphasis is placed on my needs", Hegel states, "then the possession of property appears as a means to their satisfaction, but the true position is that, from the standpoint of freedom, property is the first existence of freedom and so is in itself a substantial end."¹⁵ Having possessions does, of course, satisfy needs, but that is *incidental* to its essence. From the normative standpoint, to own property is to carve out a space of freedom in the world upon which the individual will can act according to its own reasons. "The rationale of property", Hegel claims, "is to be found not in the satisfaction of needs but in the supersession of the pure subjectivity of personality. In his property a person exists for the first time as reason."¹⁶ In owning property, the individual relates to itself as self-determining. It separates itself from its immediate drives and reflects on itself through the object it possesses as its own.

When Hegel locates the bearer of abstract right in the *person*, he makes it clear that the content of right “is not a matter of particular interests, of my advantage or my welfare, any more than of the particular motive behind my volition, of insight and intention.”¹⁷ Right concerns *freedom*, abstract right deals with freedom of the person, and freedom of the person manifests itself objectively in the freedom to own property. This objective freedom, however, is buttressed by a subjective, particular aspect, albeit one not rational. “The particular aspect of the matter, the fact that I make something my own as a result of my natural need, impulse, and caprice, is the particular interest satisfied by possession.”¹⁸ This “subjective” aspect is, properly speaking, called *possession*, but “the true and rightful factor in possession”, where “I as free will am an object to myself in what I possess and thereby also for the first time am an actual will” is called *property*.¹⁹ Since the rational, formal element of property is separable from the subjective, material element of possession, the question of what, why, or how much I own is irrelevant here.²⁰

In other words, the realm of freedom over which abstract right presides, the domain of the property-owning person, begins in the contingent desires and needs motivating someone to possess things. These ‘external circumstances’ are not the basis of freedom; rather, they are just triggers for the possible transformation of ‘mere possession’ into property. The rational aspect of property is the recognition of one’s own individual freedom in the power over the thing—not anyone’s freedom but *my* freedom. Only one form of property has this power of reflecting the *uniqueness* of my will to others and myself: private property. In the *Zusatz* to §46, Hegel makes this clear: “Since property is the means whereby I give my will existence, property must also have the character of being ‘this’ or ‘mine’. This is the important doctrine of the necessity of private property.”²¹ The irreducible *mineness* of freedom becomes concrete when I have the absolute power to dispose of things around me, when all things become private property for me. In external property, I see my internal agency reflected back to me in material form. In the property of others, I see their freedom as well. To make contracts with others concerning my property, that is, for us to alienate our property to each other in exchange, is the highest form of freedom that abstract right can recognize. For there, the freedom of one is achieved only through the freedom of another. Freedom, as the condition of being at home in another, finds its first refuge in commerce.

So far, I have tried to show how Kant and Hegel explain the essence of property by taking it to be fundamentally a rational form in which individual freedom is either secured or expressed in the world. Although the kinds of freedom differ in their accounts—Kant’s external freedom of choice does not exactly align with Hegel’s personal freedom of the will—they both make it exceptionally clear that they are not concerned with anything like the ‘material’ causes for the existence of property, such as the particular needs, desires, or welfare of individuals or groups to possess certain things for sustenance, luxury, pleasure, or any purpose whatsoever. To see property that way is not to treat it *rationally*, as an end in itself, but instrumentally, or economically, dependent on contingencies of nature and whim. Property is not a fact of nature or a convenience of society, but a normative accomplishment in the development of freedom.

Marx

Against this stands Marx. Submerged in the filth of material life, Marx begins from exactly the opposite of freedom: need, raw need.²² Here, property is not anything like a coercive right based on the demands which practical reason places on all rational beings who share the earth together to live in equal freedom. Nor is it anything like the mode by which the free will stamps its uniqueness on external things for the purpose of demonstrating its own minimal freedom, and in so doing, demands that others recognize its freedom as well. Marx takes property to be fundamentally a form of fulfilling historically determined material needs, not a norm for regulating free, individual action. But unlike Kant and Hegel, these needs are not individual, natural, or contingent—the main complaints waged against them—rather they are social, artificial, and necessary. The first premise of history that Marx lays out in *The German Ideology* is the production of means to satisfy the material needs of life; the second premise is that the satisfaction of the first need by the production of means leads to the creation of new needs.²³ The way these needs are created and fulfilled is not simply natural but is a socially specific mode of appropriation and distribution of nature. To categorize the different forms in which such appropriation takes place in history is to conceptualize relations of *property*. In this account, property, emerging from material conditions of life, is an economic *means* for satisfying needs, not a juridical *end* based on norms of the free will.

By refusing to naturalize or individualize the content of such needs, Marx evades Kant and Hegel's criticisms of treating property as simply a means. Property is still conceived as universal and necessary, for it is a universal and necessary condition of all life that material needs be satisfied in some way.²⁴ But the ways in which such needs are born and met is socially constrained, historically dependent, and contingently accomplished. To think of property this way is to think of it less as an individual relation to a thing mediated by others, and more as *rules for reproduction* of society as a whole.²⁵

Such rules for reproduction have normative consequences and, for Marx, such consequences are most important when they concern the freedom of the individual. Contrary to many interpreters, Marx's lifelong obsession with the question of private property and capital is motivated by the desire to understand how it is possible for individuals to be truly free, and to recognize themselves in their freedom as well. Freedom for Marx encapsulates both the independence that Kant's legal subject finds in a condition of right and the satisfaction that Hegel's recognition-desiring agent discovers in social roles, but it also includes more: Freedom for Marx also entails the socially achieved capacity to freely dispose over one's own *time*. The conditions of possibility for this freedom are inextricably tied to the development of capitalist private property; the actuality of this freedom, however, is ultimately bound to its abolition.²⁶

Private Property, Freedom, and Capitalism

Kant grounds property in the individual's innate right to freedom.²⁷ Rights to property enable individuals to freely pursue their own ends among other such individuals without interfering with their freedom; this right is conditioned by the fact that human

beings share space together on a limited planet and must find ways to coexist together in harmony.²⁸ Hegel takes property to be the expression of the individual will in things by means of one's activity or labor over it. Any form of property that does not reflect the freedom of the individual will is distorted, partial, and, in Hegel's terms, untrue. For Marx, Kant is right to see property as a kind of rule for living together, and Hegel is right to see property as an expression of individuality. For contemporary readers, Kant and Hegel are usually taken as preemptively defending the institution of private property against Marx's communist alternative.²⁹ But is this really the case? In my reading, Marx does not present an alternative to Kant or Hegel's normative visions of property, but rather questions the very idea that private property can fulfil these ideals of freedom in a modern capitalist world.

To put it together, I am making two claims. First, private property *is* a rule for living together, but this rule is in no way rational, free, or desirable. For in modern market societies, it is a rule imposed on the wills of all not for the purpose of protecting freedom, but for coercing individuals to work for others to meet their basic needs. And second, private property *is* an expression of the individual will, but one that is in no way rational, free, or desirable. For in modern market societies, the individual will appears detached from the social relations that gives it content, and thus, it becomes distorted beyond recognition.

What was just written depends on an argument about what modern market societies are, and why private property within them is *different* than the forms of private property that Kant, Hegel, and most other commentators describe. As previously said, for Marx, all societies have forms of property that regulate their metabolism with nature and their own internal reproduction. Each kind of property is not simply a technique for distributing resources, but a form of membership within a community. As Marx argues in the *Grundrisse*, different property relations mark different ways in which individuals relate to a social totality which they collectively compose. In describing the individuals of pre-capitalist social relations, Marx calls them all *proprietors*. A proprietor relates to his natural conditions as his *own*, "mediated by his natural membership of a community."³⁰ To bring the point home, Marx directly compares this to the use of language: "With regard to the individual, for instance, it is evident that he himself relates to his language as *his own* only as the natural member of a human community. Language as the product of an individual is an absurdity. But this is equally true of property."³¹ On these terms, property is a form of social mediation specified by the particular ways in which the individual relates to his own conditions of life, or rather, his own freedom.

Private property, on this reading, is *not* the distinguishing feature of modern society. It is rather a still too general category of property that exists across many epochs. In fact, Marx describes the advance of feudalism exactly in the forms of *individual private property* that come to predominate. He is not talking about modern legal rights but about the underlying economic form. For Marx, and a certain brand of Marxists that follow him here, pre-capitalist forms of property share a single trait: Direct producers have immediate access to their means of subsistence; or, everyone who directly produces the necessities of life also controls the means for reproducing themselves.³² Individual private property in this sense means the right to permanently access and use one's own means of reproduction, a condition which both peasants (in relation to

their land) and artisans (in relation to their tools) shared in the pre-capitalist world.³³ To have this right of access to land and tools means having the ability to control one's conditions of reproduction. Now this is not the same as ownership in the form of modern property rights, for it does not grant one the legal right to sell something, but only to access and live off it. Yet, Marx still calls this 'individual private property' because individuals are not separated from it, but rather have immediate 'private' access to it. Seen from a contemporary perspective, this form of property can be said to provide a buffer of independence from the abstract domination of the market, for one's life is not dependent on the contingencies of market prices, but rather on one's own land and labor. When one controls one's own conditions of reproduction—tools, land, etc.—then domination occurs through *extra-economic coercion*: political force and violent oppression. The class of those who do *not* directly produce their own means of existence—the class of nobles, lords, and so on—can only exist by means of appropriating the surplus from the direct producers, that is, the peasants and farmers, artisans and serfs. For this surplus appropriation to function, a whole world of social norms and material structures is required: noble privilege and divine birthright, fortified castles and massive armies, ubiquitous enemies, and incessant taxes. The 'class of exploiters' lives off a portion of the property of the direct producers, a portion that is usually taken by force as a tax.³⁴

Both Kant and Hegel vehemently opposed the idea that someone could own the 'value' of land, but not the land itself. In this sense, their accounts of private property were resolutely anti-feudalist, placing land and its value in the hands of those who work it; but this does not mean that their theories were henceforth *capitalist*. This is where all the confusion lies. For Marx, the transition from a feudal world—in which individuals *de facto* own their means of reproduction but must give up portions of their surplus at the will of a master or lord—to a capitalist world is not simply one in which people now fully own their property without the interference of other individuals (an ideal condition that Kant seeks to defend in his account). The modern form of private property that divides history into a pre-capitalist and capitalist epoch is one defined by *separation* of individuals from their means of reproduction. Capitalism does not make everyone into universal property-owners; on the contrary, it tries to make everyone essentially *property-less*.

This is the stunning inversion that Marx wracks his head on. Whereas the ideologists of the modern era defend capitalism as the true Elysium of private property and freedom, the fact is that this is the first era in which the fundamental norm is to be without property and forced into work for survival. The specific form of social mediation between individuals and their community, and between individuals and their own reproduction is the *market*, or, as Hegel calls it, *civil society*. But the modern market is not the result of free individuals bringing a portion of their surplus product to exchange for the goods of another; it is not an 'opportunity' to take up at one's will, but a form of compulsion over our lives.³⁵ The market is the presupposition of even having private property at all, the basic starting point which structures the way in which individuals relate to each other and themselves. When the basic elements of life are determined through market mechanisms of competition, then a new form of property has entered the world, the form of *absolute* private property, or *capitalist* private property.³⁶

Capitalist private property is a social form whose rules for reproduction are *market-dependent*: To meet the social needs of material life, all appropriation and distribution of nature must be subjected to market constraints. Consequently, “this distinct system of market-dependence means that the requirements of competition and profit-maximisation are the fundamental rules of life.”³⁷ These rules require constant innovation in the methods of production, a ceaseless drive to improve the productivity of labor, the impulse to specialize both the kind of product and type of labor, and the imperative to expand the market of sale.³⁸ For these are the only mechanisms by which one can produce and sell at a profitable rate of return. Because satisfying all of one’s basic needs are mediated by how such needs are produced and alienated competitively, these rules for reproduction are not merely individual choices, but structural imperatives for survival. These rules mean that everyone *must* produce and/or acquire private property through the market for their own sustenance. But this presumes that one has already lost direct access to the ‘individual private property’ that Marx describes as the norm of pre-capitalist existence. This dissolution of individual private property by those who directly produce is one of the great preconditions of capitalism, a precondition that is simultaneous with the transformation of property relations into relations of market-dependency. Near the end of *Capital*, Marx describes this process in normatively soaked language:

The expropriation of the direct producers was accomplished by means of the most merciless barbarism, and under the stimulus of the most infamous, the most sordid, the most petty and the most odious of passions. Private property which is personally earned, i.e., which is based, as it were, on the fusing together of the isolated, independent working individual with the conditions of his labour, is supplanted by capitalist private property, which rests on the exploitation of alien, but formally free labour.³⁹

The fact that individuals are now formally ‘free’ to sell their capacity to labor on the market to meet their needs causes all sorts of confusion concerning the nature of freedom, property, labor, and the market. Formally speaking, it appears as if separate individuals meet on the market and engage in contracts as equals to exchange their private property, contracts that are coercively binding and authorized by the rule of law. Kant’s principle of right appears to be fulfilled, for the independence of each actor is secured against interference since each one engages in consensual, contractual relations. Hegel’s standard of abstract freedom also appears validated, for individuals must first place their will into an object; that is, they must labor, for them to have any private property with which to exchange. In terms of the content of the exchange, however, it is anything but free or equal. What one exchanges on the market (labor for wages), what one produces (commodities for capitalists), and how one does it (in competition with other firms) fundamentally constrain the possibility of individual freedom in both Kant and Hegel’s sense.⁴⁰ This brings us back to the problem of abstracting from the *matter* of property to look purely at its form. Formally, the conditions of right are satisfied, while materially they are denied. The freedom to use objects of choice for pursuing one’s ends without the interference of others, the right to property in Kant, is now possible only by making oneself constantly dependent on the choices of

others, choices which are not even *their* own, but constrained by others, and others, *ad infinitum*. The hope of universal independence has become the reality of generalized interference. The power to determine the fate of external things so as to make one's freedom objective to oneself and others, the right to property in Hegel, is now the power to be determined by external things, making one's alienation objective to oneself and others. The appropriation of freedom has become the expropriation of life.⁴¹

Conclusion

Where does this leave us? Are property relations rules for maintaining the total economic reproduction of society, or are they norms for ensuring individual coexistence according to autonomy and non-interference? Are property relations a set of natural constraints on social survival or do they express the individual liberation from natural constraints of scarcity? Is property a right of coercive protection against others or a realm for the development of individual, free personality? Is the market a presupposition for the emergence of property relations or is it the outcome of the interaction of individual proprietors? Is it possible to have it both ways? And what about my shirt? Are we any closer to understanding why it is mine? Perhaps by going back to my shirt, we can illuminate some of the questions floating around.

For Kant, this shirt is mine because I am authorized by reason to acquire things as my property in order to pursue my ends independently of the interference of others. This authorization is grounded in my one innate right, the inalienable right to freedom, but my owning and using of this shirt must not conflict with the freedom of anyone else. It is my rational duty to own things so as to preserve the formal structure of freedom between individuals who share space together. When realizing this concept of ownership is made untenable due to contingent social conditions, then there is a duty to change those conditions so as to make a world of property the norm. This shirt I own, and all the myriad property relations that mediated its acquisition, serve this one ultimate purpose: to allow me to be me through doing whatever it is I choose to do with it. As an object, this shirt is nothing, and I am merely a body that it covers. As property, this shirt is mine, and I am the soul which gives it life.

For Hegel, this shirt is mine because in owning it, my will is reflected back to me as free from any natural constraints, and free to determine itself as it may. This shirt shows others and myself that I am irreducibly unique; for only I have the power and authority to do whatever it is that I want with it. In so doing, I bind myself to my property, forming my freedom through it, though never being subject to it. Recognizing that this shirt is mine binds others to me in the mutual constitution of our freedom as equal persons. More than that, I am bound to all the people whose free activity brought this shirt to me in a web of respect that provides the basic foundation for modern ethical life.

For Marx, this shirt is not the source of my freedom, but the crystallized result of all the coercion that led to my acquiring it. What makes it mine is that I happened to have enough money to exchange for its value, an exchange determined by the market-dependent choices of others. I acquired this money by adapting my life to the rule for

reproduction for how to acquire means to pursue one's end in this society: by selling my time to work for others, work that I found only because of the market-determined requirements of others; these means for which I labored sufficed only due to the market-dependent needs of my employers; their 'needs' do not have anything to do with their individual motives, but are the needs of maintaining a competitive business. All the elements that went into bringing the shirt to me, and all the elements that brought me to the shirt, were filtered at every point by a form of property that grants dominance to market-imperatives which regulate the lives of all. Succumbing to the market is my only possibility for staying alive, and owning this shirt is nothing but the minimal recognition that my existence is not yet worthless. To call this freedom is an assault on all those who fought in the word's name.

When presented with Marx's account of modern property relations, reactions usually follow the same path as the five stages of grieving: first denial, then anger, bargaining, depression, and, finally, acceptance. What is so shocking about Marx's explanation of capitalist property relations is how banal it is today. Of course we live in a capitalist society where all needs are subordinated to market requirements; of course we live in a world where no one has any guarantee to own property unless they work on the market in return for a wage; of course we live on a planet structured by the telos of productivity, competition, and growth above all. Any businessman can confirm Marx now. What is harder to grasp is what this means for individual freedom.

If we take Marx's analysis seriously, then either Kant and Hegel are right about property, but we need a non-capitalist world to realize it, or they are wrong, and property has nothing to do with freedom at all. The easy option would be to go for the latter, arguing that property systems are just amoral, economic schemes for the distribution of scarce resources, and that freedom is something completely different. But, if we take concrete freedom to mean, on the one hand, the capacity to pursue one's ends free of domination, and, on the other hand, the ability to express oneself by disposing over individual things according to one's will, then the form of capitalist private property that mediates both individual action and social membership in market-dependent societies is incompatible with the essence of freedom.

In the *Doctrine of Right*, Kant states that if you cannot live together with others in a state of nature without harming others, then you have the duty to leave that state and enter a civil condition, a condition of law and justice where the property of each can be secured.⁴² This is not a social contract argument based on self-interest, avoiding violence, or maximizing efficiency; it is a demand of practical reason itself. Only when property is secured, enforced, and authorized by the will of all in accordance with the principle of right, does individual freedom reign. Furthermore, Hegel's entire philosophy of spirit, including his *Philosophy of Right*, can in fact be read as one long story about leaving the state of nature behind and finding ourselves at home with each other instead.

What is the state of nature? A situation where no one has secure property, where anything can be taken away at any moment due to the wills of others. But is this not the state of capitalism, where anyone's property can be immediately rendered valueless depending on the contingent choices of others, as reflected in the market?⁴³ Where no one has any secure property but his or her own laboring body? Even one's own laboring

body can be rendered useless and disposable when the market conditions are not right, and then there is nothing left to do but beg, steal, and plunder. If this is the state of capitalism, then according to Kant and Hegel, we have a duty to leave it.⁴⁴

Notes

- 1 On not including this prohibition within the concept of property, see Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon, 1988), 32–3.
- 2 Classically, these are Nozick's entitlement principles of acquisition and transfer. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic, 1974).
- 3 For the classic bundle, see Anthony M. Honoré, "Ownership," in *Oxford Essays in Jurisprudence*, ed. A.G. Guest (Oxford: Oxford University Press, 1961), 107–47. On a pluralist account that tries to incorporate all these principles into one theory, see Stephen Munzer, *A Theory of Property* (Cambridge: Cambridge University Press, 1990). Most accounts reduce property to one or two principles, usually gleaned from Locke or Bentham.
- 4 See Waldron (*The Right to Private Property*, 51–2) on property as an "essentially contested concept." To get around this, Waldron separates the *concept* of property (its essence) from its many contested *conceptions* (its practical realizations). Although this is helpful in seeing the diversity of forms of property that can exist, it is not helpful in understanding why property exists.
- 5 Variations on this theme appear in Grotius, Hobbes, Locke, Rousseau, and Kant.
- 6 For a good overview, see Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge University Press, 2007).
- 7 See sections §1–9 of Kant's *Doctrine of Right*, collected in: Immanuel Kant, *Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996).
- 8 The focus here is on Kant's *Doctrine of Right*. For helpful guides, see Arthur Ripstein, *Force and Freedom* (Cambridge: Harvard University Press, 2009); Robert Pippin, "Mine and Thine: The Kantian State," in *The Cambridge Companion to Kant and Modern Philosophy*, ed. Paul Guyer (Cambridge: Cambridge University Press 2006), 416–46; Wolfgang Kersting, "Politics, Freedom and Order," in *The Cambridge Companion to Kant*, ed. Paul Guyer, 342–66; Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2004); Mary Gregor, "Kant's theory of property," *The Review of Metaphysics* 41, no. 4 (1988): 757–87; B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010).
- 9 See the Postulate of Practical Reason and the Permissive Law in Kant's *Doctrine of Right*, 6:246–247.
- 10 The core of the *Doctrine of Right*, from §1 to 18, concerns how legal possession can be (rationally) possible and (normatively) justified. The second half of the *Doctrine of Right* argues that coercive rights to property can only be permanently authorized in a civil condition based on public right. Until then, all claims of possessions are only *provisionally rightful*.
- 11 My focus here is only on property as an "abstract right" in Hegel's *Philosophy of Right*. See Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right*, ed. Wood (Cambridge: Cambridge University Press, 1991). For helpful texts on Hegel's theory of property, see Joachim Ritter, "Person and Property in Hegel's Philosophy of Right

- (§§34–81),” in *Hegel on Ethics and Politics*, ed. Robert B. Pippin and Ottfried Höffe (Cambridge: Cambridge University Press, 2004), 101–23; Alan Patten, *Hegel’s Idea of Freedom* (Oxford: Oxford University Press, 1999), ch. 5; Margaret Jane Radin, “Property and Personhood,” *Stanford Law Review* 34, no. 5 (1982): 957–1015; Paul Thomas, “Property’s Properties: From Hegel to Locke,” *Representations* 84, no. 1 (2003): 30–43; Peter G. Stillman, “Property, Freedom, and Individuality in Hegel’s and Marx’s Political Thought,” in *Nomos XXII: Property*, ed. J. Roland Pennock (New York: New York University Press, 1980), 130–67.
- 12 On Hegel’s theory of the freedom of the will, see the introduction to the *Philosophy of Right*, §1–33, and on the concept of the person and personality, see the beginning of the section on “Abstract Right,” §34–40. It should be noted that Hegel’s claim that the efficacy of the will can be objectively recognized in property overlaps greatly with Fichte’s theory of property. See Johann Gottlieb Fichte *Foundations of Natural Right*, ed. Frederick Neuhouser (Cambridge: Cambridge University Press, 2000).
- 13 See Hegel, *Philosophy of Right*, §44–77.
- 14 The rabble [*Pöbel*] is Hegel’s name for the figure of the propertyless will. See §244–7 in the *Philosophy of Right*. For more on this, see Frank Ruda, *Hegel’s Rabble: An Investigation into Hegel’s Philosophy of Right* (London: Continuum, 2011), and my review, Jacob Blumenfeld, “Hegel’s Rabble by Frank Ruda,” *Bulletin of the Hegel Society of Great Britain* 34, no. 2 (2013): 280–5.
- 15 Hegel, *Philosophy of Right*, §45R.
- 16 *Ibid.*, §41A.
- 17 *Ibid.*, §37.
- 18 *Ibid.*, §45.
- 19 *Ibid.*
- 20 See §49 of the *Philosophy of Right*, where Hegel drives the point home once more: “In relation to external things, the rational aspect is that I possess property, but the particular aspect comprises subjective aims, needs, arbitrariness, abilities, external circumstances, and so forth (see §45). On these mere possession as such depends, but this particular aspect has in this sphere of abstract personality not yet been posited as identical with freedom. What and how much I possess, therefore, is a matter of indifference so far as rights are concerned.”
- 21 *Ibid.*, §46A.
- 22 One could also add Nietzsche and Freud to this line of thinking.
- 23 Karl Marx and Friedrich Engels, *The German Ideology* (Amherst, NY: Prometheus, 1998), 47–8.
- 24 It is tempting to interpret Marx’s object as empirical *possession* and not legal *property*. But Marx treats the juridical category of property as emerging from the economic practices of possession, labor, and exchange, and *not* from some independent institutional authority.
- 25 My reading of property relations in Marx is indebted to Robert Brenner and Ellen Meiksins Wood. See Robert Brenner, “Social Basis of Economic Development,” in *Analytical Marxism*, ed. John Roemer (Cambridge: Cambridge University Press, 1986), 23–53, and Ellen Meiksins Wood, *The Origin of Capitalism: A Longer View* (London: Verso, 2002).
- 26 On freedom as the ownership of time in Marx, see Jacob Blumenfeld, “The Abolition of Time in Hegel’s ‘Absolute Knowing’ (and its Relevance for Marx),” *Idealistic Studies* 43, no. 1 (2013): 111–9.
- 27 Kant, *Doctrine of Right*: “There is only one innate right,” 6:231.

- 28 Ripstein and Flikschuh take Kant's thinking of space and the shape of the earth very seriously as the material precondition for the normative theory of right.
- 29 Concerning Kant, see Kersting, "Politics, Freedom and Order." For Hegel, see Patten, *Hegel's Idea of Freedom*.
- 30 Karl Marx, "Outlines of the Critique of Political Economy," in *Marx & Engels Collected Works* (MECW), Vol. 28 (New York: Lawrence & Wishart, 2010), 414.
- 31 Marx continues: "Language itself is just as much the product of a community as in another respect it is the being of the community, its articulate being, as it were." (Ibid.)
- 32 In Brenner's terms: "The direct producers held direct (i.e. non-market) access to their full means of subsistence, that is the tools and land needed to maintain themselves" (Brenner, "Social Basis of Economic Development," 27).
- 33 See Karl Marx, *Capital I* (London: Penguin Classics, 1990), 927.
- 34 See Brenner "Social Basis of Economic Development," and Wood, *Origins of Capitalism*.
- 35 See the *Ellen Meiksins Wood Reader*, ed. Larry Patriquin (Leiden: Brill, 2012), 39–40, where Wood demystifies the conventional view of the market as being an 'opportunity' instead of being a form of compulsion.
- 36 Marx calls this capitalist private property; Ellen Meiksins Wood calls it absolute private property.
- 37 Ibid., 37.
- 38 "The specific precondition of capitalism is a transformation of social-property relations that generates capitalist 'laws of motion': the *imperatives* of competition and profit-maximisation, a *compulsion* to reinvest surpluses, and a systematic and relentless *need* to improve labour-productivity and develop the forces of production." (Ibid., 43)
- 39 Karl Marx, *Capital I*, 928.
- 40 "The relation of exchange between capitalist and workers becomes a mere semblance belonging only to the process of circulation, it becomes a mere form, which is alien to the content of the transaction itself, and merely mystifies it. The constant sale and purchase of labour-power is the form; the content is the constant appropriation by the capitalist, without equivalent, of a portion of the labour of others which has already been objectified, and his repeated exchange of this labour for a greater quantity of the living labour of others." (Ibid., 729)
- 41 The very last line of Marx's *Capital* reiterates this point: "The capitalist mode of production and accumulation, and therefore capitalist private property as well, have for their fundamental condition the annihilation of that private property which rests on the labour of the individual himself; in other words, the expropriation of the worker." (Ibid., 940)
- 42 See the third Ulpian formula in Kant's *Doctrine of Right*, 6:237, as well as paragraphs 41–2, the Transition from Private Right to Public Right. On this demand, see Pippin, "Mine and Thine."
- 43 Even Hegel remarks on the "remnants of the state of nature" in civil society. See *Philosophy of Right*, §200R.
- 44 Thanks to Matt Congdon, John Clegg, and the members of Rahel Jaeggi's *Sozialphilosophie* Colloquium at Humboldt-Universität zu Berlin for helpful comments.