

# THE ABUSE OF PROPERTY

**DANIEL LOICK**

TRANSLATED BY JACOB BLUMENFELD



# THE ABUSE OF PROPERTY

## UNTIMELY MEDITATIONS

1. *THE AGONY OF EROS*, Byung-Chul Han
2. *ON HITLER'S MEIN KAMPF: THE POETICS OF NATIONAL SOCIALISM*, Albrecht Koschorke
3. *IN THE SWARM: DIGITAL PROSPECTS*, Byung-Chul Han
4. *THE TERROR OF EVIDENCE*, Marcus Steinweg
5. *ALL AND NOTHING: A DIGITAL APOCALYPSE*, Martin Burckhardt and Dirk Höfer
6. *POSITIVE NIHILISM: MY CONFRONTATION WITH HEIDEGGER*, Hartmut Lange
7. *INCONSISTENCIES*, Marcus Steinweg
8. *SHANZHAI: DECONSTRUCTION IN CHINESE*, Byung-Chul Han
9. *TOPOLOGY OF VIOLENCE*, Byung-Chul Han
10. *THE RADICAL FOOL OF CAPITALISM: ON JEREMY BENTHAM, THE PANOPTICON, AND THE AUTO-ICON*, Christian Welzbacher
11. *GERMAN PHILOSOPHY: A DIALOGUE*, Alain Badiou and Jean-Luc Nancy
12. *PORTRAIT OF THE MANAGER AS A YOUNG AUTHOR: ON STORYTELLING, BUSINESS, AND LITERATURE*, Philipp Schönthaler
13. *WASTE: A NEW MEDIA PRIMER*, Roberto Simanowski
14. *THE DEATH ALGORITHM AND OTHER DIGITAL DILEMMAS*, Roberto Simanowski
15. *LAW AS REFUGE OF ANARCHY: SOCIETIES WITHOUT HEGEMONY OR STATE*, Hermann Amborn
16. *ENLIVENMENT: TOWARD A POETICS FOR THE ANTHROPOCENE*, Andreas Weber
17. *AGAINST NATURE*, Lorraine Daston
18. *GOOD ENTERTAINMENT: A DECONSTRUCTION OF THE WESTERN PASSION NARRATIVE*, Byung-Chul Han
19. *THE ABUSE OF PROPERTY*, Daniel Loick

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# CONTENTS

**BETTER SQUAT THAN ROT ix**

- 1 THE USE OF PROPERTY 1  
The Liberal Justification of Property 2  
The Ontological Justification of Property 20
  
- 2 THE ABUSE OF PROPERTY 39  
The Social Critique of Property 42  
The Ethical Critique of Property 53  
The Political Critique of Property 70

**EPILOGUE: NOT BEING AT HOME IN  
ONE'S HOME 85**

**AFTERWORD TO THE ENGLISH EDITION:  
FROM OCCUPY TO ABOLITION 87**

**ACKNOWLEDGMENTS 99**

**NOTES 101**



## BETTER SQUAT THAN ROT

The German squatters' movement of the 1970s coined a slogan still in use today: *better squat than rot*.<sup>1</sup> This rallying cry opposes the widespread practice of homeowners leaving apartments and buildings empty in order to speculate on real estate prices and drive up rents. Vacancy often has the effect of damaging the buildings or letting them fall into disrepair. The squatters, in contrast, put the empty houses to use and start renovating them (as long as the police let them, of course).

The meaning of the squatters' call goes beyond its agitational use in concrete housing struggles; namely it directly refutes the basic dogma of property theory, according to which the use of a thing presupposes ownership of it. The practice of repairing through squatting [*Instandbesetzen*] denies this connection, and on the contrary, assumes that property is not a *condition* but rather an *obstacle* to use. The expression *destroying through owning* [*Kaputtbesitzen*] indicates that something is being damaged through property—that it produces not use but instead abuse.

The following reflections are an attempt to systematically explain this form of property critique. This should be understood in a more general and radical sense, not only concerning homeownership, but every form of property. Accordingly, it is not just about an excess of private

property in the hands of a few individuals but rather about every property-like relation between human beings and the world. The abuse of property is thereby interpreted from an objective and subjective side: the legal institution of property deprives objects of their usability by human beings, and deforms human beings themselves in such a way that they are no longer capable of meaningfully using objects.

Just as the phrase *destroying through owning* is detached from its concrete context and interpreted in a more general sense, the expression *repairing through squatting* is meant to not only refer to the specific activity of occupying houses but also function more generally as an umbrella term for various forms of action that practically critique property. Occupying has always been one of the most important weapons in the repertoire of social movements, from the factory occupations of the workers' movement to the tree occupations of environmentalists and land occupations by Indigenous activists, to the more recent occupations in Tahrir Square, Zuccotti Park, Syntagma Square, or Puerta del Sol. These occupations were not simply about appropriating and taking possession of space; an occupation is not an annexation. Occupations are rather the opposite: the revision of the abuse in property, or ex-appropriations. They make the occupied place usable again in new, no longer property-like ways; in this respect, every occupation is an act of repair. There is thus no reason to reserve this term only for physical presence in a particular place. Denying the legitimacy of the prevailing property rights can take many different forms. For example, the establishment of

alternative modes of production, circulation, and forms of consumption through location-independent, immaterial, and nonproprietary practices, such as commoning, cracking, or file sharing, can also be seen as forms of reparative occupying. Squatting is particularly emblematic, but by no means the only kind of repairing through occupying. All the above-mentioned repair-occupations have both an objective and subjective side. They effectively revoke the ownership of a thing from individuals (or a collective) and return it to general usability; in the act of occupying, they also mobilize affects, attitudes, and insights that can, at best, cure the proprietary deformation of subjectivity.

This book hopes to contribute to the theoretical reflection of real social struggles. On the one hand, this means that it *reconstructs* the goals of a particular political practice, but *intervenes* in them philosophically too, such as by highlighting the shortcomings and problems of certain types of property critique, and the promises and advantages of others. On the other hand, it is a plea *for praxis* as well—that is, for the critical theory of society to reconnect to the “real movement which abolishes the present state of things.”<sup>2</sup> This call for practical relevance arises from insight into the extent of inequality and injustice, obscenity of consumption, and threat of ecological destruction that the current global property regime has created, given the viable alternatives and political actors pressing for change existing here and now. Yet the practical dimension also already emerges from the very structure of the form of property critique developed below. Only a *political critique of property*—a critique whose

relation to practice is irreducible from the outset—will be able to keep the transgressive, polemical, and conflictual dimension of repair-squatting alive, and therefore escape the bourgeois paradigm of appropriation.

*Better squat than rot*—the premises, implications, and consequences of this demand will be explored in two stages: first, through a critical reading of classical justifications of property, and second, by reconstructing the various critiques of property along with their respective status and limits.

The *first part* is devoted to the two most important bourgeois strategies of argumentation: the *liberal* and *ontological* justifications of property. Liberal justifications of property revolve around the legitimacy of the privatization of property—that is, the transfer of a thing from original common ownership to an individual's power of disposal; the key figure here is John Locke. Ontological justifications of property attempt to prove the indispensability of a specific relation to self and world produced by property; Georg Wilhelm Friedrich Hegel provides the paradigm case here. Both strategies of justification presuppose, in their own ways, the bourgeois assumption of the reciprocal implication between ownership and use. A critical reading, however, shows that bourgeois theories are forced to legitimize various forms of abuse alongside the right to property: either, as with liberal theories, by justifying exploitation, colonialism, and ecological destruction, or as with the ontological theory, by defending a subjectivity that can only relate to its inner and outer nature as something to be dominated.

In the *second part*, two classic critiques of property are reconstructed that respond to the bourgeois justifications of property. First is the social critique of property, formulated above all by Karl Marx, and second, the ethical critique of property, expressed by the Franciscans of the thirteenth and fourteenth centuries, and revitalized more recently by Giorgio Agamben. While the social critique of property scandalizes the withdrawal of usable objects from society through their private disposal, the ethical critique shows the damage that property causes to human subjectivity and intersubjectivity. Having demonstrated the importance but also limitations of these two critiques of property, a third alternative, the political critique of property, is discussed, integrating the strengths of the two previous approaches without, however, adopting their weaknesses. This perspective begins from the practice of squatting, but expands through a reflection on the commons and the real practices emerging therein. Finally, drawing on a feminist critique, the practice of commoning makes it clear that the attempt to overcome the bourgeois property regime must start with the *oikos*, the house—which gives new meaning to the idea of occupying the home.



## 1 THE USE OF PROPERTY

It is a commonly shared axiom in bourgeois political philosophy that use presupposes ownership: in order to legitimately use a thing, the power to exclude all others from it is necessary. For Immanuel Kant, the exclusivity of property determines the legitimacy of right as such. Since human freedom is inconceivable without the use of external objects (if only because people would then starve), it must be possible to have an external object as one's *own*. For this very reason, everyone is entitled to the establishment of a universally binding system of rights, first and foremost exclusive property rights. "If it must be legally possible to have an external object as one's own," writes Kant in the *Metaphysics of Morals*, "the subject must also be permitted to *constrain* everyone else with whom he comes into conflict about whether an external object is his or another's to enter along with him into a civil constitution."<sup>1</sup>

The mainstream philosophical discourse on property revolves around the question of how exactly to ground the connection between use and ownership. Here we can distinguish between two different strategies. On the one hand, the liberal justification of property argues on the basis of individual rights. Freedom can thus only be realized through the individual's right to use certain things—a right that may not be contested by others. The ontological justification of

property, on the other hand, argues for the indispensability of a relation to self and world characterized by property. According to this view, it is first property that enables the very emergence of autonomous individuals with a free will.

In the following, the key steps of both contentions will be presented on the basis of their main representatives: the liberal approach on the basis of Locke's theory of property, and the ontological approach on the basis of Hegel. By linking the use of things to the establishment of exclusive property, both strategies are forced, as will be shown, to introduce various *obstacles* to use, or *losses* of it. These obstacles are *objective* in Locke's case and *subjective* in Hegel's: the bourgeois market society justified by Locke is based on the exclusion of English proletarians as well as Indigenous populations affected by European colonization from the possibility of using the social means of production and leads to an ecologically unsustainable way of cultivating land; in Hegel's case, the subjectivity constituted by property turns out to be dominating, the intersubjectivity atomistic, and the society exploitative.

## THE LIBERAL JUSTIFICATION OF PROPERTY

Liberal political theories assume a primacy of individual rights. The state and society, in contrast, have a derivative status, and serve only to provide and protect individual liberties. The right to property is a core tenet of liberalism not only because the capacity to legally possess external objects is itself an elementary freedom but because it is the material precondition for the exercise of all other formal

## Notes

### BETTER SQUAT THAN ROT

1. [Translators note: The German phrase is *Lieber Instandbesetzen als Kaputtbesitzen*, or literally, “It’s better to repair through squatting than to damage through owning.” The word *Instandbesetzen* is a portmanteau of *Instandsetzen* (to renovate, repair, maintain) and *besetzen* (to occupy, squat). I will translate it in the text as *repair-squatting* or *repair-occupying*.] Historically, these repair-squatters (as opposed to the Autonomen) represented the less radical and also less political wing of the German squatters’ movement. This is not about taking sides with a current within this historical front but instead about a systematic interpretation of the quoted slogan.
2. Karl Marx and Friedrich Engels, *Marx and Engels Collected Works* (London: Lawrence and Wishart, 1975–2004), 5:49.

### CHAPTER 1

1. Immanuel Kant, *The Metaphysics of Morals*, in *Practical Philosophy: The Cambridge Edition of the Works of Immanuel Kant*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1998), 256 (I, §8).
2. Karl Marx and Friedrich Engels, *Marx and Engels Collected Works* (London: Lawrence and Wishart, 1975–2004), 35:707 (hereafter cited as MECW).
3. With her book *Caliban and the Witch*, Silvia Federici makes a crucial addition and correction to Marx’s account of the emergence of capitalism. Federici succeeds in showing that capitalism was essentially a counterrevolution against the

communalist social movements of the Middle Ages, and could only prevail against them by introducing division and domination within the working class. The most important of these was a new sexual division of labor—the precondition for the modern organization of the relation between (unpaid) reproductive and (paid) productive labor. This process was based on the construction and annihilation of women as witches, corresponding with the identification of women as essentially reproductive subjects. See Silvia Federici, *Caliban and the Witch: Women, the Body, and Primal Accumulation* (New York: Autonomedia, 2004). For a fascinating analysis of the dismantling of the transatlantic commons, also necessary for the emergence of capitalism, see Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon Press, 2000).

4. In currently applicable international law, the idea of an original common ownership of the earth is expressed in the principle of the “common heritage of humanity,” according to which, for example, the high seas, Antarctica, and the moon represent a common heritage of humankind as a whole, and they may not be exploited by any nation and must be preserved for future generations. See, for example, Article 11 of the Moon Treaty (1979) and Article 136 of the UN Convention on the Law of the Sea (1982).
5. Although Locke wants to convert original common ownership into private property, the doctrine of an original communism plays a key role in his *political* theory. For this is the only way he can challenge competing theories that seek to derive royal sovereignty from divine right. For Locke, the earth was first given to humankind as a collective subject, *not* to Adam as the first monarch, and so its ownership title cannot have been passed down to the kings of modern times. Only with this presupposition does Locke’s later, contractualist theory of the state make any sense.

6. John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), 286f (2, §26).
7. It testifies to a peculiar, thoroughly juridified conception of human relations to consider the use of goods in a state with no scarcity of natural resources to be in need of justification at all. “No Body,” Locke writes, “could think himself injur’d by the drinking of another Man, though he took a good Draught, who had a whole River of the same Water left him to quench his thirst” (Locke, *Two Treatises*, 291 [2, §33]). By stating that there must be “a means to appropriate them some way or another,” Locke does not mean *factual* ways (like hunting or gathering) but instead *legal* ones: there must be some way to *legitimately* appropriate them.
8. Locke, *Two Treatises*, 290 (2, §31).
9. The perplexing idea of establishing ownership over one’s own body rests on a category error. We do not “have” a body in the same way that we have a cell phone. This understanding of the body as property, as Marx has shown, always entails preparing it for sale.
10. For the most detailed systematic compilation of possible criticisms of Locke’s labor theory in the German context, see Manfred Brocker, *Arbeit und Eigentum: Der Paradigmenwechsel in der neuzeitlichen Eigentumstheorie* (Darmstadt: WBG, 1992), chap. 6.
11. Kant, *The Metaphysics of Morals*, 419f (I, §17).
12. Robert Nozick, *Anarchy, State, Utopia* (Oxford: Basic Books, 1974), 175.
13. Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon, 1989), 185.
14. Locke, *Two Treatises*, 286 (2, §26). Because the cultivation of the earth is not a right but rather a divine mandate, Locke holds that labor is compulsory. Accordingly, as a member of the Board of Trade, Locke formulated a catalog of political

measures that included the abolition of charitable support payments, establishment of “workhouses” for the poor, compulsory enlistment of the poor on royal merchant ships, and even compulsory work for small children in “working schools.” C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962), 223; Brocker, *Arbeit und Eigentum*, 193f.

15. Locke, *Two Treatises*, 291 (2, §32).
16. Locke, *Two Treatises*, 291 (2, §34).
17. The accumulation of goods that are not immediately used already presupposes a legal principle that Kant first developed systematically, namely the idea of “intelligible possession.” Kant defines property as that which another may not use without their consent. Unlike Locke, however, Kant (*The Metaphysics of Morals*, 401 [I, §1]) is discerning enough to recognize the challenge that the *disjunction of property and possession* poses to the justification of property: “But something *external* would be mine only if I may assume that I could be wronged by another’s use of a thing even though I am not in possession of it.” If there were no such thing as intelligible possession, then my rights could not be violated by someone else using my property that I am not currently using without my consent. The condition of possibility of property is therefore the nonuse of usable objects. Here it becomes clear that in the liberal justification of property, which after all supposedly originates from the anthropological necessity of our metabolism with nature, *the human need for use* never provides the ground of right. Rather, this need stands in opposition and contestation to the right to property, as expressed in the slogan of squatters, *The houses for those who need them!*
18. Locke, *Two Treatises*, 294 (2, §37). “But these arguments,” Federici (*Caliban and the Witch*, 70) writes, “do not hold. Land privatization and the commercialization of agriculture did not

- increase the food supply available to the common people, though more food was made available for the market and for export. For workers they inaugurated two centuries of starvation, in the same way as today, even in the most fertile areal of Africa, Asia, and Latin America, malnutrition is rampant due to the destruction of communal land-tenure [ . . . ].”
19. It is therefore too one-sided if, like Jeremy Waldron (*Right to Private Property*, passim), one understands Locke’s justification of property only as a theory of “historical entitlement.” The private property order indeed *empowers* owners, but only by *obliging* them to this (specific) empowerment: individuals gain power over their things only insofar as they follow the divine duty to subdue them. In this way, Locke’s theory is just as much a theory of *historical duty*.
  20. Locke, *Two Treatises*, 289 (2, §28). Cf. Macpherson, *Political Theory of Possessive Individualism*, 215ff.
  21. Cf. Locke, *Two Treatises*, 347f (2, §119).
  22. James Tully, “Rediscovering America: The Two Treatises and Aboriginal Rights,” in *An Approach in Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993), chap. 5. The significance of Locke’s property theory for colonialism and Locke’s involvement in the colonial enterprise has since been taken up by a number of other scholars, who have supplemented and partially corrected Tully’s analysis. See Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (New York: Clarendon Press, 1996); Chad Kautzer, “Colonialism, Natural Right, and the Problem of Jurisdiction: Modern Natural Law Theory and Hegel’s Critique” (PhD diss., Stony Brook University, 2008); Chad Kautzer, “The Missing History of European Colonialism and Modern Right in Hegel’s *Phenomenology*,” *Online Journal of Hegelian Studies* 12, no. 19 (2015): 81–114.
  23. Cf. Tully, *An Approach in Political Philosophy*, 140f.
  24. Locke, *Two Treatises*, 295 (2, §37).

25. Locke, *Two Treatises*, 293 (2, §45). Locke (*Two Treatises*, 293 [2, §36]) also writes, “But, on the contrary, the inhabitants think themselves beholden to him, who, by his industry on neglected, and consequently waste land, has increased the stock of corn, which they wanted.” Locke’s justification of colonialism is closely related to the theory of property acquisition through labor. Such a justification would not be possible, or at least would be more difficult, with the competing view of acquiring property through first possession since “industry” and “cultivation” do not play a legitimizing role. Accordingly, Kant (*Metaphysics of Morals*, 417 [I, §15]) strongly rejects Locke’s argument.
26. Locke, *Two Treatises*, 203f. (2, §7). Locke’s position on slavery is ambivalent and not without controversy. Strikingly, however, although for Locke (*Two Treatises*, 284 [2, §23]) every person has inviolable property rights in their person and body, there is *also* a justification of slavery in the second treatise: “Indeed, having by his fault forfeited his own life, by some act that deserves death; he, to whom he has forfeited it, may . . . delay to take it, and make use of him to his own service, and he does him no injury by it.” As seen above, Locke held that Native Americans were violating natural law by leaving the land fallow and hence may be lawfully killed. Consequently, it is not wrong to enslave them too. Accordingly, the Carolina Constitution, which Locke coauthored, permits slavery, and indeed Carolina engaged in the largest slave trade of any English colony.
27. For a now-classic, detailed legal-historical discussion of the connection, established in the colonies and still in effect today, between property and *whiteness*, which first developed through the violent expropriation and displacement of Indigenous land, see Cheryl Harris, “Whiteness as Property,” *Harvard Law Review* 8, no. 6 (1993): 1707–1791.
28. Cf. Tully, “Rediscovering America,” 151f.

29. Cf. Tully, "Rediscovering America," 160. Here it becomes clear that it is not enough to see the colonial project only as expropriation—that is, as disregard for property rights. Rather, it consists in the *establishment of a system of property rights that excludes other, nonproprietary modes of use* (cf. "The Ethical Critique of Property" in chapter 2 below).
30. Cf. Tully, "Rediscovering America," 163.
31. Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right* (Cambridge: Cambridge University Press, 1986), 73 (§41). Hegel believes that he can already deduce from the phenomenology of the human will why property as a freedom-guaranteeing institution can only exist as *private* property. Because humans in a biologically fundamental sense are individual beings, their respective will is a personal, not a collective, will: "Since my will, as personal and hence as the will of the individual, becomes objective in property, the latter takes on the character of *private property*" (Hegel, *Elements of the Philosophy of Right*, 77 [§ 46]). If, on the other hand, the bond of community is conceived of as "pious or friendly," as in Plato's communist ideal, this constitutes a "compulsory brotherhood of men" and hence a wrong against the person (Hegel, *Elements of the Philosophy of Right*, 77 [§46]). In addition, multiple people cannot rule over the same things; for if they try, contradictory intentions of use will inevitably lead to a will that is no longer intelligible and thus to a "madness of personality" (Hegel, *Elements of the Philosophy of Right*, 91 [§62]).
32. Hegel, *Elements of the Philosophy of Right*, 78 (§47).
33. Hegel, *Elements of the Philosophy of Right*, 89 (§59), 94 (§64).
34. Unlike Locke's prohibition on waste, Hegel's concept of prescription does not have a purely colonial function. Rather, prescription is the logical result of Hegel's axiom that a subject with a free will can only realize itself in a constant relation of appropriation; if the relation of the will to the thing falls away,

the legal basis of ownership also falls away. This does not mean, however, that a justification of colonialism is lacking in Hegel. Since Hegel's justification of property proceeds ontologically, the colonial dimension must be traced not in the legal constructs but instead in the relations to self and world produced by these legal constructs. The subject constituted by property is intrinsically marked by the urge to possess and annex the world. This urge is realized through world history, among other things, in the form of colonial imperialism. On colonialism, see Hegel, *Elements of the Philosophy of Right*, 269 (§248). Colonialism thus becomes the world-historical task of the European subject.

35. Hegel, *Elements of the Philosophy of Right*, 103 (§71).
36. Hegel, *Elements of the Philosophy of Right*, 264 (§240).
37. Hegel, *Elements of the Philosophy of Right*, 233 (§200), 80 (§49).
38. Hegel, *Elements of the Philosophy of Right*, 266 (§243).
39. Hegel, *Elements of the Philosophy of Right*, 89 (§59).
40. In contrast to Theodor W. Adorno's critique of Hegel's instrumental concept of labor, Jürgen Habermas and Axel Honneth read Hegel's account of "making oneself into a thing" by working on oneself in his *Phenomenology of Spirit* (1807) not affirmatively but instead already as a critique of ideology. See Jürgen Habermas, "Labor and Interaction: Remarks on Hegel's Jena Philosophy of Mind," in *Theory and Practice* (Boston: Beacon Press, 1974), 142–170; Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: MIT Press, 1996). These interpretations, however, are not entirely convincing given the central role that working on objects has for the freedom of the subject in Hegel.
41. Theodor W. Adorno, *Three Studies on Hegel* (Cambridge, MA: MIT Press, 1993), 20ff.

42. Theodor W. Adorno, *Negative Dialectics* (London: Continuum, 1973), 191.
43. See, for example, Michael Theunissen's influential essay, which brilliantly points out that Hegel conceives of property "not merely as individualistic, but also as solipsistic." Michael Theunissen, "The Repressed Intersubjectivity in Hegel's Philosophy of Right," in *Hegel and Legal Theory*, ed. Drucilla Cornell, Michel Rosenfeld, and David Carlson (New York: Routledge, 1991), 30.
44. Such atomism is bound to be surprising in the context of Hegel's practical philosophy. Hegel can only introduce his atomistic concept of property because he already has in mind an overall ethical arrangement in which the isolation created and permitted in right is again suspended at a higher level. The state as an agent of ethical life will therefore rein in the atomistic aspirations of the abstract legal subject (with its legally authorized, repellent individual will)—but must thereby be conceived of as unassailable and authoritarian. On this problem, see Daniel Loick, "'Expression of Contempt': Hegel's Critique of Legal Freedom," in *Law and Critique 2* (2015): 189–206.
45. MECW, 3:225 (translation modified).
46. MECW, 3:226.
47. Hegel, *Elements of the Philosophy of Right*, 63 (§33) (translation modified).
48. MECW, 3:300.
49. "But also when I am active *scientifically*, etc.," Marx explains in the *Economic and Philosophic Manuscripts*, "an activity which I can seldom perform in direct community with others—then my activity is *social*, because I perform it as a *man*. Not only is the material of my activity given to me as a social product (as is even the language in which the thinker is active): my *own* existence is social activity, and therefore that which I make of

myself, I make of myself for society and with the consciousness of myself as a social being" (MECW, 3:298).

50. For a lucid reconstruction of the connection between Hegel's and Marx's notion of recognition, see Andrew Chitty, "Recognition and Property in Hegel and the Early Marx," *Ethical Theory and Moral Practice* 16, no. 4 (2013): 685–697.
51. For more on this point, see Daniel Loick, *Juridismus: Konturen einer kritischen Theorie des Rechts* (Berlin: Suhrkamp, 2017), chap. 7.
52. MECW, 3:300.
53. Hegel, *Elements of the Philosophy of Right*, 266 (§244) (translation modified).
54. Hegel, *Elements of the Philosophy of Right*, 269 (§248).
55. Hegel, *Elements of the Philosophy of Right*, 267 (§244). For a detailed discussion of the central role played by the rabble in Hegel's *Philosophy of Right*, see Frank Ruda, *Hegel's Rabble: An Investigation into Hegel's Philosophy of Right* (London: Continuum, 2011).
56. Hegel, *Elements of the Philosophy of Right*, 155 (§127) (translation modified).
57. Hegel, *Elements of the Philosophy of Right*, 94 (§64) (translation modified).

## CHAPTER 2

1. Pierre-Joseph Proudhon, *What Is Property?* (Cambridge: Cambridge University Press, 1994), 35. The wording in the French original is even stronger: "En matière de propriété, l'usage et l'abus nécessairement se confondent." *Confondre* means not only that the boundaries between use and abuse are fluid but that they necessarily merge into one another too.
2. Proudhon, *What Is Property?*, 35. Analogously, the German Civil Code (BGB §903) states, "The owner of a thing may, to the extent that a statute or third-party rights do not conflict

- with this, deal with the thing at his discretion and exclude others from every influence.”
3. For a detailed and convincing critique of the use and abuse of Roman legal texts, especially in relation to the Civil Code, see Shael Herman, “The Uses and Abuses of Roman Law Texts,” in *American Journal of Comparative Law* 29, no. 4 (1981): 671–690. On Proudhon’s confusion and its reasons, see Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge: Cambridge University Press, 2007), 177f.
  4. Max Stirner, *The Unique and Its Property* (Berkeley: Ardent Press, 2018), 237.
  5. Marx uses the crypto-Proudhonian definition of property in his “Contribution to the Critique of Hegel’s Philosophy of Right” (1843): “The right of private property is the *jus utendi et abutendi*, the right to *do what one likes* with the object. The main interest of the Romans is to set forth *relations* and to determine which of them prove to be *abstract* relations of private property. The true basis of private property, *possession*, is a *fact*, an *inexplicable fact*, *not a right*. Only through the juridical attributes which society gives to factual possession does it acquire the quality of legal possession, of *private property*.” Karl Marx and Friedrich Engels, *Marx and Engels Collected Works* (London: Lawrence and Wishart, 1975–2004), 1:110 (hereafter cited as MECW).
  6. Already in *The Holy Family* (1844), Marx (cf. MECW, 4:45) explicitly quotes Proudhon and accuses him of lacking materialism. In *The German Ideology* (1845–1847), this critique is spelled out further, as Marx and Engels derive the emergence of modern legal relations from economic development. Marx and Engels (MECW, 5:90) assume here that private property as a formal legal institution had already developed some twelve to eighteen hundred years before capitalism, but that it only found the economic foundations suitable for it in bourgeois society: “Civil law develops simultaneously with

private property out of the disintegration of the natural community. With the Romans the development of private property and civil law had no further industrial and commercial consequences, because their whole mode of production did not alter." Precapitalist law was thus also already structurally atomizing, but this atomizing effect only acquired a *constitutive* significance in modern, bourgeois society in all of its spheres.

7. Marx's relativization of the possibility of private arbitrariness does not change the formal privatizing function of law. This is what Marx (MECW, 3:109) means by the thesis developed below of privilege as the "specific mode of existence" of private property.
8. MECW, 3:109.
9. The distinction between the three dimensions follows the proposal made in Rahel Jaeggi, "What (If Anything) Is Wrong with Capitalism? Three Approaches to the Critique of Capitalism," *Southern Journal of Philosophy* 54 (2016): 44–65. The long discussion of whether Marx's critique of capitalism contains any normative elements at all cannot be dealt with in detail here.
10. MECW, 3:273 (translation modified).
11. MECW, 37:248.
12. MECW, 3:274.
13. For Marx's account of precapitalist modes of production and the corresponding forms of property, see his reconstruction in the *Grundrisse* (MECW, 28:399–439). Insofar as nonproprietary modes of relation are historically unintelligible to Marx, he perpetuates the malaise of Hegel's philosophy of history.
14. MECW, 6:498 (author's emphasis).
15. Marx, *Capital: Volume 1* (London: Penguin, 1990), 929.
16. Quoted in Theodor W. Adorno, *Lectures on Negative Dialectics* (Cambridge, UK: Polity, 2008), 58.

17. MECW, 37:763 (translation modified).
18. See Paschal Robinson, *The Writings of St. Francis of Assisi* (Philadelphia: Dolphin, 1906), 68f.
19. See Annabel Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge: Cambridge University Press, 1997); Virpi Mäkinen, *Property Rights in the Medieval Discussion on Franciscan Poverty* (Leuven, Belgium: Peeters, 2001); Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150–1625* (Grand Rapids, MI: Eerdmans, 1997).
20. The premises of bourgeois theories of property are based on the repression of this possibility, embodied for the Franciscans in animals, of using and consuming things indifferently to law—that is, of a life without a property order. “He that is nourished by the Acorns he pickt up under an Oak,” writes Locke, for instance, “or the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself. No Body can deny but the nourishment is his.” John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), 288 (2, §28).
21. Cf. Garnsey, *Thinking about Property*, 104f.
22. Giorgio Agamben, *The Highest Poverty* (Stanford, CA: Stanford University Press, 2013), 110.
23. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1973), 296.
24. Werner Hamacher coined this phrase before Agamben’s rediscovery of the Franciscans. See Werner Hamacher, “The Right Not to Use Rights: Human Rights and the Structure of Judgments,” in *Political Theologies: Public Religions in a Post-Secular World*, ed. Hent de Vries and Lawrence E. Sullivan (New York: Fordham, 2006), 671–690.
25. Cf. Veena Das, “Subaltern as Perspective,” in *Subaltern Studies VI: Writings on South Asian History and Society*, ed. Ranajit Guha (Oxford: Oxford University Press, 1989), 310–324.

26. Brenna Bhandar has shown that the colonization of Australia took place through the imposition of a specific, racially structured logic of abstraction in which the preestablished concrete modes of existence were annihilated. Australia was initially defined as terra nullius, and then through the establishment of the “title by registration” procedure, it became possible to take possession of the land as a commodity, quite independently of its concrete characteristics. The “savage” was thereby constructed as the one who did not accept the Western property system. This delegitimized all Aboriginal claims to the use of the land that preceded colonial registration. Cf. Brenna Bhandar, “Title by Registration: Instituting Modern Property Law and Creating Racial Value in the Settler Colony,” *Journal of Law and Society* 42, no. 2 (2015): 253–283. For a similar point regarding the colonial dispossession of Indigenous peoples in Canada, see Brenna Bhandar, “Critical Legal Studies and the Politics of Property,” in *Property Law Review* 3 (2014): 186–194. For the US context, see Cheryl Harris, “Whiteness as Property,” *Harvard Law Review* 8, no. 6 (1993): 1707–1791.
27. Max Kaser, *Roman Private Law* (Pretoria: University of South Africa, 1984), 115.
28. Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), 10.
29. See Chad Kautzer, *Radical Philosophy: An Introduction* (London: Routledge, 2014), chap 4.
30. Martin Heidegger, *Nietzsche, Volumes I and II* (San Francisco: HarperCollins, 1991), 40. On Heidegger’s critique of the subjectivity of Roman private law, see Daniel Loick, “Caesarisches Sehen. Heideggers Kritik der Verrechtlichung von Wahrheit,” *Zeitschrift für philosophische Forschung* 4 (2014): 495–526.
31. Heidegger, *Nietzsche*, 136, passim. Arendt also points out that in ancient Greece, the phenomenon of the will in the modern

sense was unknown. Cf. Hannah Arendt, *The Life of the Mind* (New York: Harcourt, 1978), part 2, 2. Agamben takes up the critique of the will in *Opus Dei*, but defers the elaboration of “an ontology beyond operativity and command and an ethics and a politics entirely liberated from the concepts of duty and will.” Giorgio Agamben, *Opus Dei: An Archaeology of Duty* (Stanford, CA: Stanford University Press, 2013), 129.

32. In *The Use of Bodies*, Agamben gives three examples of things that are commonplace and intimate to us, but fundamentally impossible to appropriate: the body, language, and landscape. Giorgio Agamben, *The Use of Bodies* (Stanford, CA: Stanford University Press, 2015), 82ff.
33. Agamben, *Highest Poverty*, 136. Agamben’s ethical critique focuses on the imperial character of property. This dimension of critique, however, can certainly be extended in various directions. Jacques Derrida, for instance, has pointed to the structurally xenophobic feature of the Western metaphysics of the proper. See, for example, Jacques Derrida, “La parole soufflée,” in *Writing and Difference* (Chicago: University of Chicago Press, 1978), 169–195. With Roberto Esposito, the possessive individuality instantiated by the Roman legal property regime can be understood as an anticomunitarian immunization strategy against the obligations toward the other. Cf. esp. Roberto Esposito, *Bíos: Biopolitics and Philosophy* (Minneapolis: University of Minnesota Press 2008), 63ff. From a feminist perspective, the continued effects of the patriarchal nature of dominium can be seen in the ideal of the legal personality enshrined by modern property discourse. See, for example, Margaret Davies, “Feminist Appropriations: Law, Property and Personality,” *Social and Legal Studies* 3 (1994): 365–391. Postcolonial critics see the emergence of modern property as coconstitutive with the imperial appropriation of the world through European colonization as well as an expression and safeguard of white dominance. See, for example, Harris, “Whiteness as Property”; Brenna Bhandar,

- “Property, Law, and Race: Modes of Abstraction,” *UC Irvine Law Review* 4 (2014): 203–218. Consequently, relational, needs-based, and alterity-oriented ethics often take their cues from nonproprietary models of use such as the gift, usufruct, trusteeship, or theft. The idea developed of repairing through occupying is also located in this context.
34. Brett, *Liberty, Right and Nature*, 12.
  35. Arendt, *Life of the Mind*, part 2, 172ff. There is a remarkable convergence between Heidegger’s critique of the dominating character of property and Adorno’s critique of Hegel’s concept of labor. As shown in the previous chapter, Adorno also points to the precarious consequences of the domination of nature conditioned by private property, against which he too mobilizes figures of passivity.
  36. Cf. Agamben, *Highest Poverty*, 111, 125.
  37. Gilles Deleuze and Félix Guattari, *A Thousand Plateaus* (Minneapolis: University of Minnesota Press, 1987), 279f.
  38. Jacques Rancière, *Hatred of Democracy* (London: Verso, 2006), 41ff.
  39. Michael Hardt and Antonio Negri, *Commonwealth* (Cambridge, MA: Harvard University Press, 2009), 44. In *Commonwealth*, Hardt and Negri cite the Franciscans as forerunners of the idea of democracy as the government of the poor. In *Empire*, they also referred to Francis of Assisi as the prototype of a “communist militant” whose virtue lies primarily in the fact that he understood the biopolitical character of communism. Francis of Assisi lived in harmony with the animals, sun, moon, and stars precisely for this reason, thereby experiencing a “joy of being” because he does not appropriate them. See Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard University Press, 2000), 413. Here again, one can see theoretical points of contact to Adorno’s image of reconciliation with (inner and outer) nature.

40. Agamben, *Highest Poverty*, 129.
41. See Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (London: Routledge, 1992), 7.
42. See Agamben, *Highest Poverty*, 131.
43. Martin Heidegger, "Building Dwelling Thinking," in *Poetry Language Thought* (New York: HarperCollins, 1971), 147 (translation modified).
44. Cf. Giorgio Agamben, *The Time That Remains: A Commentary on the Letter to the Romans* (Stanford, CA: Stanford University Press, 2005), 24; Agamben, *Use of Bodies*, 56, 274.
45. Agamben, *Highest Poverty*, 144. In *The Time That Remains*, Agamben explicitly claims that Paul already contrasted the Roman dominium with a messianic *usus*. Amazingly, Agamben, who is otherwise so philologically clear-sighted, adopts the formula *ius utendi et abutendi* as a characterization of Roman law. See Agamben, *Time That Remains*, 26; Agamben, *Use of Bodies*, 57.
46. For a general overview, see Silke Helferich and David Bollier, eds., *The Wealth of the Commons: A World beyond Market and State* (Amherst, MA: Levellers Press, 2012). For an explicitly Marxist discussion, see Andreas Exner and Brigitte Kratzwald, *Solidarische Ökonomie und Commons* (Vienna: Mandelbaum, 2012).
47. Cf. Friederike Habermann, "We Are Not Born as Egoists," in *The Wealth of the Commons: A World beyond Market and State*, ed. Silke Helferich and David Bollier (Amherst, MA: Levellers Press, 2012), 13–18.
48. In its critique of copyright, the open-source movement can also invoke the entirety of premodern property theory. Classical property theory readily assumes that a violation of property rights only occurs when the owner's stock is minimized or damaged. In accordance with ancient tradition, Hugo Grotius thus postulates a right to harmless use, or what he calls

“innocent Profit.” Hugo Grotius, *The Rights of War and Peace* (1625), Vol. 2 (Book II) (Indianapolis: Liberty Fund, 2005), chap. 2, para. 11, 438f. File sharing, which minimizes one owner’s possession as little as lighting a branch minimizes another’s fire, would easily qualify as “innocent profit” in this sense. Only with the Kantian construction of “intelligible possession” can the nonabusive use of my property by another be understood as a violation of my rights.

49. For a convincing argument for transferring the principles of peer production to the material economy, see Christian Siefkes, *From Exchange to Contributions* (Berlin: Edition C, 2008). For a more critical perspective on the scope of open-source models, see Sabine Nuss, *Copyright and Copyriot: Aneignungskonflikte um geistiges Eigentum im informationellen Kapitalismus* (Münster: Westfälisches Dampfboot, 2006).
50. Cf. Peter Linebaugh, *The Magna Carta Manifesto. Liberties and Commons for All* (Berkeley: University of California Press, 2008).
51. Cf. Hardt and Negri, *Commonwealth*, passim.
52. Silvia Federici, “Feminism and the Politics of the Commons,” in *Re-enchanting the World: Feminism and the Politics of the Commons* (Oakland, CA: PM Press, 2018), 102–115.
53. Federici, “Feminism and the Politics of the Commons,” 112.
54. See Aijen Poo, *Organizing with Love: Lessons from the New York Domestic Workers Bill of Rights Campaign* (New York: Domestic Workers United, 2010).
55. Projects such as the Care Revolution ([www.care-revolution.org](http://www.care-revolution.org)) and the Radical Collective Care Project (<http://radicalcollectivecare.blogspot.co.at/>) have presented a more far-reaching program for political *care work*. The concept of *care* thus goes far beyond the realm of the household and ultimately calls into question the dominant modes of politics itself.

## EPILOGUE: NOT BEING AT HOME IN ONE'S HOME

1. Theodor W. Adorno, *Minima Moralia* (London: Verso, 2005), §18, 39.

## AFTERWORD TO THE ENGLISH EDITION: FROM OCCUPY TO ABOLITION

1. Karl Marx, *Letter to Arnold Ruge* (September 1843), in Karl Marx and Friedrich Engels, *Marx and Engels Collected Works* (London: Lawrence and Wishart, 1975–2004), 3:145 (translation modified).
2. Larry Buchanan, Quoc Trung Bui, and Jugal K. Patel, “Black Lives Matter May Be the Largest Movement in U.S. History,” *New York Times*, July 3, 2020, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>. For Eva von Redecker, the common denominator in these movements is that they are for life, and oppose the destructive effects of legal and phantom possession—of the planet, one’s race, and one’s gender. See Eva von Redecker, *Revolution für das Leben: Philosophie der neuen Protestformen* (Frankfurt am Main: Fischer, 2020).
3. Rinaldo Walcott, *On Property: Policing, Prisons, and the Call for Abolition* (Windsor: Biblioasis, 2021), 27.
4. W. E. B. Du Bois, *Black Reconstruction in America* (New York: Free Press, 1995), 700.
5. Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (Oxford: Oxford University Press, 1997), esp. chaps. 4–5.
6. See Nikhil Pal Singh, “The Whiteness of Police,” *American Quarterly* 66, no. 4 (December 2014): 1091–1099.
7. Hartman, *Scenes of Subjection*, 145. For an analysis of the criminalization of refugees that borrows from Du Bois and Hartman, see Daniel Loick, “Das Anrecht auf Grausamkeit. Recht und Affekt; Moria, abolitionistische Strategien,” *Kritische Justiz* 54, no. 3 (2021): 348–360.

8. Cf. Walcott, *On Property*, chap. 1.
9. Cf. Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham, NC: Duke University Press, 2018).
10. See Brenna Bhandar in conversation with Daniel Loick, "The Colonial Lives of Property, Abolitionist Struggles, and Alternative Imaginations," *Texte zur Kunst* 117 (March 2020), <https://www.textezurkunst.de/117/die-kolonialen-leben-des-eigentums-abolitionistische-kampfe-und-alternative-imaginierungen/>.
11. Robert Nichols, *Theft Is Property! Dispossession and Critical Theory* (Durham, NC: Duke University Press, 2019), chap. 4. His argument is that the dispossession of Indigenous lands takes place through the very act of establishing a property order. Nichols speaks here fittingly of "property-generating theft" (*Theft Is Property!*, 9).
12. Redecker, *Revolution für das Leben*, 28.
13. Eva von Redecker, "Ownership's Shadow: Neoauthoritarianism as Defense of Phantom Possession," *Critical Times* 3, no. 1 (2020): 33–67. See also already Wendy Brown, "Neoliberalism's Frankenstein: Authoritarian Freedom in Twenty-First Century 'Democracies,'" *Critical Times* 1, no. 1 (2018): 60–79.
14. The defense of legal and fictional property come together in the regular moral panics about the danger of *looting*. Racialized others, stigmatized as uncivilized, pose a threat to the power of disposal over both consumer goods and one's own whiteness. On this point, see Vicky Osterweil, *In Defense of Looting: A Riotous History of Uncivil Action* (New York: Bold Type Books, 2019); Kimberly Jones, "How Can We Win?," YouTube, 2020, <https://www.youtube.com/watch?v=llci8MVh8J4>.
15. Movement for Black Lives, "Vision for Black Lives," 2020, <https://m4bl.org/policy-platforms>.
16. Ruth Wilson Gilmore, "Making Abolition Geography in California's Central Valley," *Funambulist*, December 20, 2018,

<https://thefunambulist.net/magazine/21-space-activism/interview-making-abolition-geography-california-central-valley-ruth-wilson-gilmore>.

17. See Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017); Avery Gordon, *The Hawthorn Archive: Letters from the Utopian Margins* (New York: Fordham University Press, 2018); Dean Spade, *Mutual Aid: Building Solidarity during This Crisis (and the Next)* (London: Verso, 2020); Mariame Kaba, *We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice* (Chicago: Haymarket, 2021); Angela Y. Davis, Gina Dent, Erica R. Meiners, and Beth E. Richie, *Abolition. Feminism. Now.* (Chicago: Haymarket, 2022).
18. Bhandar, *Colonial Lives of Property*, 196.
19. Walcott, *On Property*, 2.
20. Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 12.
21. Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning and Black Study* (Wivenhoe, UK: Minor Compositions, 2013), 53.
22. Walter Benjamin, *Radio Benjamin* (New York: Verso, 2015), 155.