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# Property in the World: On Collective Hosting and the 'Ownership' of Communal Goods

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## **Abstract**

Law is typically located at the scale of the nation state and, as a result, discussions about law and hospitality have tended to emphasise issues of national sovereignty, national identity, and relationships to noncitizen others. However, what remains a fundamental part of hospitality theory is the philosophical emphasis on hospitality as a dimension of the individual owner’s ethical responsibilities to the visitor as well as the constitutive reciprocity between host and guest. In Levinas, moreover, hospitality is a very personal matter – it is about opening the self to the other, as well as the home or the dwelling. Debates about hospitality always seem to contain an unresolved surplus of connections and disjunctions between these scales of nation, home, and subject. Movement between the frames of house/home and national territory, owner and sovereign, or ethics and politics seem theoretically routine, yet always suggestive that there is something unspoken or missing in the transition from self, to home, and to nation.

# **Property in the World: On Collective Hosting and the 'Ownership' of Communal Goods**

**Rhys Aston and Margaret Davies**

## **1 Introduction**

Law is typically located at the scale of the nation state and, as a result, discussions about law and hospitality have tended to emphasise issues of national sovereignty, national identity, and relationships to non-citizen others. However, what remains a fundamental part of hospitality theory is the philosophical emphasis on hospitality as a dimension of the individual owner's ethical responsibilities to the visitor as well as the constitutive reciprocity between host and guest. In Levinas, moreover, hospitality is a very personal matter – it is about opening the self to the other, as well as the home or the dwelling. Debates about hospitality always seem to contain an unresolved surplus of connections and disjunctions between these scales of nation, home, and subject. Movement between the frames of house/home and national territory, owner and sovereign, or ethics and politics seem theoretically routine, yet always suggestive that there is something unspoken or missing in the transition from self, to home, and to nation.

This article endeavours to explore some of these issues about the framing of hospitality by reference to the idea of property, which so often underpins the individual host's ability to welcome a guest. In particular, we explore the ways in which the community enters into property discourse as the foundation for property rights and as an interest-bearer in a complex regulatory world. We argue that thinking

about hospitality from this angle opens up a number of unexplored questions about the interplay of self, other, and object in a social context.

## **2 Property and Hospitality**

Property is essentially a private power (or private sovereignty) to exclude the other from use, access or enjoyment of a resource (Cohen 1927; Gray 1991). In this sense, property appears to fit easily within the contours of a simple hospitality. The proprietor is always-already an owner in this dynamic, and is simply positioned as host, while others seeking access or use are positioned as guests. The relationship between proprietor-host and guest, and the implications of this relationship for their ethically-inflected identity, are foundational to the issue of hospitality.

However, when we look more closely at theory concerning hospitality, as well as the legal notion of property, the situation becomes more complex because the concept of *law*, with all of its ambiguities, is never far from the recognition of property. In particular, the relationship between an owner and an object of property (such as a home) is normally a secondary relationship, an effect of the network of relationships between legal subjects. Recognition of subjects and the norms subsisting between subjects is prior to recognition of their nature as proprietors. In other words, there is never a pre-existing owner who has the capacity to show hospitality but rather (arguably) a person who already owes their status as owner to their relationship with others. As we will see, Derrida's work on hospitality makes the reliance of the host on the guest particularly clear. However Derrida's emphasis is on identity and relationality to the other as a person rather than as a basis for ownership. A variation on this dynamic is to be found in Hegel (1952), for whom recognition of the subject is co-extensive with recognition of her or his status as owner. Beyond the relationships between self and other, however, property theory now goes much further by accepting the *social* basis of ownership (Gray 2010: 192-193; Alexander and Penalver 2010). In sum, property is a tripartite dynamic of self, other, and object in the context of others at large, specifically,

the world against whom an *in rem* right is held.

The social nature of ownership makes possible another feature of its contemporary form, which is that property is increasingly regarded as a compromise between competing interests, namely the interests of private individuals and the community (Underkuffler 1990; Holder and Flessas 2008; Alexander and Peñalver 2009). This stands in contrast to the more usual idea of property as a unidirectional right held by a person to exclude others from the use of a thing. A good example of these competing interests are to be found in environmental and heritage law where the ‘rights’ of the proprietor are shaped by community interests in preservation of historical, aesthetic and ecological amenity. The public domain in intellectual property law, the open software and creative commons movements (Lessig 2002; 2004), and the developing consciousness about cultural heritage provide other examples where community and private rights remain in perpetual tension.

In this article we will reconsider the dynamics of hospitality in the light of these two structural features of property – that is, its social foundations and its balancing of community and private interests. First, we will consider what an emphasis on the tripartite and social basis of ownership adds to the conceptualisation of hospitality. Does the fact that property (for instance the home and the sense of self which goes along with it) is in a sense *given* by the political community and sustained by law, practice, and social values, alter the exchange between guest and host? Second, we will ask what the ethical limits of hospitality are when the *other* is not an individual guest but rather the world at large (or at least some significant portion of it). Equally problematically, what if the ‘guest’ already has a quasi-legal stake in the host’s domain? And what happens to the notion of hospitality if we view the community as host and private interests as the guest (the granting of proprietary rights being a form of ‘accommodation’ given by the community to the individual) as the concept of stewardship seems to imply? What do these changing constructs mean for the identity of the owner and the owner-object dyad?

Finally, we should note that the ‘welcome’ of hospitality generally

engages the relationship between host and guest, but it is also a welcome *to* something, such as a home or a nation. Yet to speak of hospitality in relation to a house or a home, as if it were essentially a physical place consisting of bricks and furniture controlled by a singular owner, obscures its constitutive elements and the relationships between them. These elements comprise its owner, and all human and non-human residents including (in pre-contemporary times) slaves, servants, agricultural animals and so forth. The relationships surface more strongly if we use the term 'household'.

Importantly, the Greek term *oikos* refers to house *and* household, and appears in modern English as the prefix 'eco' – as in economy and ecology. Both of these words refer to dynamic relationships of mutual reliance; an 'ecology' consists of connected organisms and micro-organisms relating in a variety of ways (for instance as competitors, predators, parasites, scavengers, or mutual beneficiaries). Ecologies also have reciprocal host-guest (or non-reciprocal host-parasite) relationships which are not intentional – for instance, the whale has its barnacles, the human body has its gut flora, the tree has its possums, honeyeaters, and geckos. Thus, relatedness and hosting arise not only in the context of the social basis for owning a thing, or in the community interests which may be recognized as part of owning, but also in the nature of the thing to which the guest is being welcomed: intrinsically, it may be a web of relationships (like a nation) or ecology, rather than just a geo-political place or building. We will return to this point at the very end of the article because in some contexts these connections appear to bypass and render marginal any anthropocentric host-guest dynamic.

There is perhaps no entirely satisfactory method of sorting through or synthesizing all of these complexities and we do not aim to do so here. Rather, the purpose of the article is to open up the theory of both hospitality and property by considering them side by side. In particular, we explore some aspects of hospitality theory which are in our view under-emphasised. These include the nature of the host's right over the object (home, self, nation) which is being opened to the guest, as well as the impact of recognising the interests that the community has

in private ownership. At the same time, we will also reflect on what hospitality discourse can offer to property theory, especially how it may provide a language and framework through which the collective-individual and right-duty tensions can be explored.

### 3 Hospitality

The concept of hospitality has been a central trope in western thought circulating throughout religion, culture and philosophy. Phrases such as ‘welcome’, ‘come in’ and ‘make yourself at home’ are familiar to all. To welcome a stranger into one’s home, to provide shelter, food, and protection has long been viewed as an important, if not fundamental, religious and ethical obligation. However, it is also a complicated idea and one which carries deep contradictions. Narratives about hospitality centrally concern the relationship between host and guest. This relationship manifests in the ethical, as well as the political and legal, obligations and responsibilities subsisting between these two players. The relationship is also characterised by the existence of a number of tensions and risks which are not always possible to reconcile. The key to much of the theory, as well as to the stories of hospitality which underpin it, is that the identities of host and guest are mutually constitutive; there is both recognition and reciprocity involved in the exchange which leads to a mutual empowerment for host and guest, as well as a more troublesome expression of the host’s power over the guest, and vice-versa. This is evident in several features of hospitality – that it concerns an act of welcome, that the host opens his or her home to the guest, and that the guest recognises the host as such and bears the responsibility of not over-reaching in a way which would undermine the host.

Much has been written about the relationship between host and guest. Our purpose is not to engage in this literature in detail but rather bring it into an engagement with property theory. Before getting to this point we need to briefly introduce a few key points, starting with Benveniste’s well-known etymological analysis (Benveniste 1973; cf McNulty 2007: viii-xii). As Benveniste explains, hospitality is derived

from a Latin term *hospes* which in turn is a compound of the more ancient inferred terms *hostis* and *potis*. These terms are each complex in their own way; Benveniste explains that *potis* is present in Sanskrit as ‘master’ and ‘husband’, it is also present in Greek as ‘master’, appearing eventually as ‘despot’. As a term it is essentially indicative of power, but it also in other contexts means identity, oneself, himself. As Benveniste asks ‘Under what conditions can a word denoting ‘master’ end up by signifying ‘identity’? (1973: 73). (In this context we should note that the terms ‘proper’ and ‘property’ carry an overlapping set of significations including sameness, identity, propriety and right.) *Hostis* is also a complicated term, according to Benveniste’s analysis. It can refer to both the guest or ‘favourable stranger’ (1973: 75) as well as the enemy or hostile stranger. Eventually, Benveniste says, the term *hostis* ‘assumed a ‘hostile’ flavour’ (1973: 78). While this is not necessarily evident in the term ‘hospitality’, as subsequent theory has illustrated, there can nonetheless be an element of danger or risk buried in its dynamics.

Tracy McNulty summarises the etymological relationship between the two roots in the following way:

When we put together these two roots – *hostis* and *potis* – we find that the institution of hospitality implies the union of two somewhat contradictory notions: a social or legal relationship defined by reciprocity and exchange, and despotic power, mastery, and personal identity. The ... relationship between them is far from stable and can develop in two fundamentally different directions. One way can result in a feeling of recognition and respect between host and guest, a reciprocal relationship of power and a mutual confirmation of one another’s mastery that is guaranteed by relations of debt and obligation.... The linking of *hostis* and *potis* suggests that hospitality implies not only the power of mastery, but power *over* the guest, by virtue of his debt or obligation to the host. For this very reason, the juxtaposition of the notions of reciprocity or exchange and mastery or power can have a very different result. It can be a source of anxiety, rivalry, or hostility, in which the host’s power over the guest is conceived in a threatening manner, or in which the guest threatens to overtake the host’s place as master by usurping his home, personal property, or social position (McNulty 2007: xi).



Thus, in its etymological resonances, the term 'hospitality' conveys welcome, recognition, openness and respect, as well as the potential for conflict, absolute forms of power (in either direction), and an inbuilt but unexpressed hostility or at least dangerousness.

Etymology is suggestive but not conclusive when it comes to the exposition of concepts and their associated dynamics. However, many of these tensions are also reflected in theory relating to hospitality. Again, we need to be brief, but some significant points must be outlined. Hospitality is centrally about a reciprocal relationship between host and guest, self and other, the at-home and the foreign; it is shaped fundamentally by ideas of boundaries and thresholds in that it presupposes them, as well as constructs and perpetuates them. As Derrida (1999) emphasises, hospitality consists of a welcome or opening of the self to the other, therefore, any instance of hospitality begins with an encounter with an 'other' or an outsider.<sup>1</sup> The host offers her or his home to the stranger or visitor, which is, on one level, an act of generosity; however, as Derrida points out, this is also an act which reinscribes the division and power between host and guest because its condition is that 'the one who receives, lodges or gives asylum remains the patron, the master of the household' (Derrida 2000c: 4). In providing hospitality, in granting access to the home or household, the host is always, at least implicitly, signalling their status as owner and reinforcing their legal rights and the power which stem from ownership. The act of hospitality is to some extent inhospitable, because in the first place it reinforces and reinscribes the power of the host, that is, their power to offer hospitality, and ultimately the mastery they hold over their domain.

At the same time, however, the reciprocal relationship which sits at the heart of hospitality simultaneously reinforces and challenges the host's power. In opening their home to a visitor, the host risks usurpation from an unscrupulous guest: the host can potentially give too much, while the guest can also take too much, effectively challenging the host's ownership and the very basis upon which hospitality can be offered. Hospitality is therefore always and inevitably conditional: if

a guest truly ‘made themselves at home’, this would ‘undo’ the host’s sovereignty and thus their power to offer hospitality in the first place. This may occur either because the host has been too hospitable, or because the guest failed in their duty not to overstay or take too much. Thus, in opening their house the host potentially becomes hostage to the guest by giving up too much, having too much taken. The positions can be reversed – with guest becoming host, and host becoming the guest (Derrida 2000b: 123-125; Leung and Stone 2009: 196).

There is another, and more fundamental, way in which this substitution of host-guest occurs, which is a central feature of Derrida’s conceptualisation of hospitality. Derrida’s work on hospitality is thoroughly indebted to Levinas, in particular, his assertion that subjectivity is formed through an ethical relation and responsibility to the other characterised by a pre-ontological welcoming of the other, an act of hospitality to the other. As Raffoul summarises it: ‘The welcome of the other defines the subject. As such, the subject *is* that very welcome, that very openness to the other’ (Raffoul 1998: 5). In this way, our subjectivity, our sense of being-at-home and our ‘dwelling’ is constituted by an unconditional welcoming of the other, by an act of hospitality. The host, therefore, is always dependent on (and in a sense hostage to) the guest. Their identity as host, as master of their domain, is constituted through their relationship to the guest.

Even if the reality of hospitality is that it is limited and reversible, as Derrida argues, it is nonetheless based on an ideal or an absolute form. The welcome, the opening of the home and the self, must be unconditional – we say ‘make yourself at home’ (meaning, ‘I want you to feel that this is your home’) rather than ‘here is what you can and can’t do in my house’ because such a welcome could be very *unwelcoming* (although so much always depends on tone and context). For Derrida, absolute hospitality (or the Law of hospitality) represents hospitality in its purest form, capturing the essence or ideal of hospitality; it demands that we accept a stranger/guest into our home and show them unlimited and unconditional conviviality; it is a hospitality given to all without question, hesitation or limit; it is provided for the sake of itself, and

not out of a sense of reciprocity or debt. As he states:

absolute hospitality requires that I open up my home and that I give not only to the foreigner ... but to the absolute, unknown, anonymous other, and that I give place to them, that I let them come, that I let them arrive, and take place in the place I offer them, without asking of them either reciprocity (entering into a pact) or even their names (2000a: 25).

At the same time, absolute hospitality is itself a contradictory concept: it demands the unconditional welcome of the uninvited other, however, to be hospitable, it is necessary to greet the guest, to ask their name, to host them in their singularity, not simply as a generalizable other/'serialised nobody' (Barnett 2005: 13; See also Leung and Stone 2010: 199–200). Absolute hospitality, therefore, isn't simply the ethical position which is constantly undone or contaminated by the politics and pragmatism of conditional hospitality. Placing limits on hospitality may be the more ethical choice, constituting a more ethical relation to the other. As Barnett argues, 'This reading of the laws of hospitality undoes the lingering sense of logical and normative priority of pure ethical responsibility which pervades Levinas' work and most commentary on it' (Barnett 2005: 13). Nonetheless, the agreement between host and guest is that the guest does *not* make themselves entirely at home and acts responsibly within the limits of pragmatism or relationality (the *laws* of hospitality). These limits are normally unstated in the context of the personal hospitality one might offer as a householder, but become explicitly expressed as passport, visa, and many other requirements when hospitality is understood as an obligation of a nation-state to the non-citizen other.

Actual hospitality is therefore limited, but can't exist without an ideal of absolute hospitality. It is, in Derrida's words,

a self-contradicting concept and experience which can only self-destruct ... produce itself as impossible, only be possible on the condition of its impossibility ... which is to say, deconstruct itself – precisely – in being put into practice (Derrida 2000c: 5).

Hospitality is contradictory both as a concept and as an experience;

it is impossible and yet entirely negotiable *as* an impossibility. We have all played the roles of host and guest, and experienced it as an incredibly fragile and nuanced performance which is reliant on each agent playing their part well. We enact the parts of ‘host’ and ‘guest’ in many contexts, negotiating the complex and unstated rituals and etiquettes which inform our behaviour, and worrying over the acceptable extents and limits of our roles. It is a delicate and risky performance, never far from ending in embarrassment and anxiety.

#### **4 Self, Home and Nation**

Theoretical articulations of hospitality rely on an often unspoken analogy of self, home and nation. In Levinas, hospitality is primarily about the opening of the self to the other. In fact, for Levinas, as we have mentioned, hospitality (or the ‘welcome of the other’) is constitutive of subjectivity itself, forming/designating an ethical relation to and responsibility for the other which precedes ontology and ultimately politics. The ethical relation in hospitality is ontologically prior to the subject. And while hospitality is often understood through the metaphor of the home or household, it has always spoken to a larger space – the community and the nation state – where the guest is the foreigner, or alien. Thinking about property through the lens of hospitality and vice-versa raises some conceptual issues about scale and space and also about the identities of host and guest. First, we encounter the issue of who is offering and who is accepting hospitality and in relation to what? Hospitality is often positioned as an individual matter, between one person and an ‘other’.<sup>2</sup> When associated with law, however, debate has also frequently focused on the scale of the nation state.<sup>3</sup> Nation-state and home are clearly comparable in this context and can often be substituted theoretically; what is true at one scale may often be true at the other.<sup>4</sup> That this is the case should not however perhaps be completely unquestioned,<sup>5</sup> a point we will return to in a moment.

Kant’s much-analysed essay on ‘perpetual peace’ (in particular its ‘Third Definitive Article’) is a clear influence in this context; it

establishes a right, however minimal, of non-hostile reception of the other into a national territory, as follows:

Here, as in the preceding articles, it is not a question of philanthropy but of right. Hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another. One may refuse to receive him when this can be done without causing his destruction; but, so long as he peacefully occupies his place, one may not treat him with hostility. It is not a question of being received as a guest in one's house, as a particularly benevolent convention would be needed in order to give him a claim to be treated as a guest for a certain length of time. It is rather a right of visit, a right of demanding of others that they admit one to their society. This right all men have by virtue of their common possession of the surface of the earth, where, as on a spherical surface, they cannot infinitely disperse and hence must finally tolerate the presence of each other. Originally, no-one had more right than another to a particular part of the earth (Kant 1795: 439).

The hospitality evoked here by Kant is clearly of the conditional type, a compromise in which all nations have the *duty* to treat strangers as friends rather than enemies. To use Derrida's language, it specifies certain laws, conditions and qualifications, while leaving the Law or absolute essence of hospitality in its background. In the modern context, the obvious application relates to the rights of asylum seekers and the obligations which states have to offer refuge. There has been much written on these issues, which we will not repeat here (see Benhabib 2005; Gibson 2003; Kelly 2006; Wilson 2010).

The transition in thinking about hospitality from an individual site where what is at stake is a welcome of the other into one's home, to the quasi-legal imperative of a political collectivity draws on several structural similarities (cf Still 2010: 11). In each case there is a space over which an owner or political sovereign has a right of exclusion (a proprietary or sovereignty right) to which another – a foreigner, a guest, or asylum-seeker – seeks entry. In each case there is a threshold to cross and, as Benveniste emphasises, an inside-outside distinction:

When an ancient society becomes a nation, the relations between man and man, clan and clan, are abolished. All that persists is the distinction

between what is inside and outside the civitas (Benveniste 1973: 78) .

In each case there is an ideal of welcome but a necessary set of limitations. And although the individual frame seems to align more easily with the notion of ethics while the national frame aligns with politics, in fact ethics and politics cut across both, as Judith Still makes clear:

The distinction between ethics and politics (or law or rights) can be made in at least two ways: first, ethics is the domain of relations between individuals while politics is the domain of relations between States or between the individual and the State. More dramatically, ethics can be seen as the realm of metaphysical absolutes ... while politics is the realm of pragmatic compromise and of negotiated rules ... (Still 2010: 8).

Following from this point, we could observe that there is a politics of hospitality when it is offered by one individual to another (and we must not forget that the personal is political) because of the necessary limitations of any opening of the home to an 'other', and also because of the distribution of power between host and guest. At the same time, there is an ethical dimension to state action which – however limited and compromised – may still ultimately resonate with the ideal of ethical openness to the other.

Nonetheless, the realm of individuality and property is not co-extensive with the realm of nationality and territorial sovereignty. While 'oscillation' between the levels may be productive (Still 2010: 7), it is important that they not be conflated. Individual owner and sovereign are often analogised, as are the home and the nation, but are not the same thing. For a start, the owner and sovereign are differently positioned in relation to the collectivity which constitutes them as such: the owner is primarily an actual person embedded inside the collective, whereas the sovereign is the abstract product of it, and necessarily outside. More accurately, of course, we could say that both the individual and the sovereign are at the *edges* of the collectivity – neither inside nor outside – but nonetheless differently situated in relation to it. The sovereign acts in the name of the people while the

owner acts essentially in her or his own name. Similarly the identity of who provides hospitality, what it constitutes (ie exactly what is offered), and who is the stranger to whom it is offered, all vary between the micro and macro scales. And significantly, the right of ownership is differently justified and secured compared to the territorial rights of sovereignty – whereas law, custom, and the political community underpin ownership rights, there is arguably nothing but force, custom (again), and political pragmatism which underpin political sovereignty. This does not make property ownership more secure than territorial rights, just more removed in a sense from the issue of justification.

### 5 Relational Identities

Hospitality speaks to the host's ethical responsibilities to a guest, but is always mediated through property or, in the case of the discourse of cosmopolitanism, through the nation state. The dynamic of hospitality at the level of the individual or family is based on a very specific paradigm, namely, that of the owner who has control over a domain and invites the other in. The dynamic of hospitality also presumes the originality of the relationship between the owner and the owned even if, as we have seen, the identity of the owner is nonetheless re-constituted in part by her or his relation to the guest. There are arguably two absences in this simple model – first, the object of property and the nature of the right which the host has over it, and second, the political community which upholds the normative fabric from which such a right emanates. As we have seen, the political community does play a large part in hospitality theory, but most centrally in the context of the discourse of cosmopolitanism and internationalism, that is, where hospitality is regarded as a foundation for world peace. The political community plays little part in theorisations of individual hospitality but it remains, nonetheless, the basis of property, the pre-condition for such hospitality.<sup>6</sup> This priority of the community does not derive from the (discredited) idea that law recognises and protects some pre-existent 'natural' property, but because law (generally understood as *nomos* or normative world, not just positive law) is the entire framework

and precondition for property.

We will come back to the issue of the political communities and legal frameworks which construct property shortly. First, it makes sense to compare the structural properties of both property and hospitality. As we have seen, hospitality centrally concerns a relationship between host and guest, where the host is an owner and the guest a visitor of some description. Host-guest relationships, and the resulting problematics of power, identity, and conditionality, are prioritised here. The fact of ownership is present, but only appears in the background and as a precondition for the host-guest relationship.<sup>7</sup> Looking at property, we see that it too only makes sense as a dynamic relationship between these same three structural positions: the subject or owner; other subjects, who appear primarily in the form of individual non-owners and the world at large; and the object of property (such as the home) which is the resource in relation to which the owner and other have rights and duties. Whereas in hospitality theory it is the subject-other relationship which is prioritised, in property theory the triangle is more evenly balanced – both subject-other, and subject-object are arguably of equal significance. This is despite the fact that ‘property’ is still often a shorthand reference for the thing which is owned, and retains a focus on the object (Bentham 1970: chapter XVI, s 26, n1).

Both property and hospitality theory concern reciprocity between a self and an other, one element of which is the identity of each, but in particular the host/self. It is interesting to recall in this context Benveniste’s analysis of the etymology of ‘hospitality’ and in particular the associations of *potis* with identity or ‘the person himself’ (Benveniste 1973: 74) and also in its derivatives with power and possession (1973: 74–75). ‘Property’ and ‘proper’ elicit an adjacent but less self-contradictory set of senses, including authenticity, purity, propriety, and self-sameness (Davies 2007: 25). A property is also a characteristic or trait. These sometimes buried references have been made explicit and analysed in depth in *theory* relating to hospitality and property.

As we have seen, hospitality is fundamentally about the relation between self and other, and the axiomatic role of this relation in the



formation of subjectivity and identity. A great deal of property theory – in fact one might claim *most* property theory – addresses in some way the property-person nexus and its relation to identity. Locke, for instance, saw identity as essentially self-owning and argued from that basis that property involved a mixing of one's self with the natural world (1988: 285-287). Hegel, by contrast, understood property as a stage in identity-formation: we put our immediate self into the external world and draw it back to ourselves as our own property which is not, however, rightful ownership until it is recognised by another person (that is, through contract) (Hegel 1952; cf Carlson 2000).

Perhaps the most intriguing and potentially evocative structural parallel between hospitality and property is the operation of an ideal or absolute in the concept. As we have seen, hospitality is governed and also made impossible by the ideal form, in which hospitality ought always to be available and the home or nation completely open to whoever might arrive. This is, of course, out of the question in a practical sense. Property also arguably contains an ideal, but we could see it as taking almost the opposite form. This is what some have termed the 'ownership model' or even the 'castle model' (Singer 2010: 59). This concept was explained most famously by Blackstone as 'that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe' (1766: 2). The ideal of property consists in total power over an object and a claim that everybody else is excluded from that right. In resting on total exclusion rather than total welcome, it is the opposite of hospitality but is also the precondition for hospitality. Of course, to be precise, the entire universe is excluded from the *right* of property – I alone have the right to this book, this vase, this CD, this car. However, the content of the right is not exclusion but 'excludability' (Gray 1991: 268-269) or the ability to exclude or not exclude as the owner wishes and it is this excludability that opens the way for hospitality to be conceptualised and practiced. In summary, where absolute hospitality says 'you *must* welcome the other', absolute property says 'you *may* welcome the other (but need not)' or even 'you must maintain boundaries'.

This *ideal* of property is powerful and vast. It undoubtedly has an impact on both cultural and legal attitudes towards property. From the perspective of most property theorists, however, the ideal or absolute form does not operate as a desirable normative goal (as it often does in hospitality theory) or an aspiration built in to the property concept; instead, it is rather a simplistic misrepresentation or ideological delusion (Alexander et al 2009). It is not just that the ideal of property is impractical, internally contradictory, and basically untrue as a description of property (which it is) but also that it is undesirable, premised as it is on an impoverished image of the person as separate from any social relationships (cf Nedelsky 1990; 2011; Davies 2012) as well as a complete and potentially destructive power over resources (Freyfogle 1989; Karp 1993). Thus, despite the existence of an ideal, property is regarded as intrinsically limited and contextual. Because it can only ever be embedded in relationships, the ideal – although it has conceptual and discursive force in certain situations – is fundamentally misguided. Regulation therefore does not represent a subtraction from the ideal or absolute form of property (see Gray 2007), but is rather intrinsic to the definition of property. As Gray says, ‘Property ... is organic, interactive, socially defined, normatively resilient, and extremely relative’ (2010: 192-193). Contemporary property scholarship is frequently concerned with the contingency, fragility and the complexity of property, rather than its durability or universality. It is interesting again, to compare this to hospitality which in its non-ideal form says ‘don’t give everything away’ or ‘there are limits’. By contrast, property in its non-ideal form says ‘what you think you own has been given to you’ and ‘your property is owed to everyone else’.

Property centrally concerns a link between a self and an ‘other’ which is strongly mediated through an object which one possesses, controls, excludes others from, is excluded from, and so forth. By contrast, hospitality discourse recognises the object/home as a precondition to an ethical relationship but otherwise seems to leave it out of account. It is the territory or home under the control of the host and into which the guest is invited, but the legitimacy or justification of this ownership seems generally unquestioned and taken for granted.<sup>8</sup>

Without the home and this relationship of *owning*, no act of hospitality can take place. The object of property is the precondition for any act of hospitality, but from where or what does the fact and the right of ownership derive? As a less-frequently cited part of the passage from Blackstone states,

Pleased as we may be with the possession, we seem afraid to look back to the means by which it was acquired, as if fearful of some defect in our title; or at best we rest satisfied with the decision of the laws in our favour, without examining the reason or authority upon which those laws have been built (Blackstone 1766: 2).

For Blackstone, it seems that dominion, mastery and the ideal form of property are to some degree based on what much later generations of thinkers might refer to as a psychic foreclosure (Freud 1986: 564; Butler 1997: 23). Fear that our title may not be good, or that the laws which support it may be built on sand, prevents us from questioning ownership and our own identity as owner. One might even say that collusion between owners to foreclose the question of proprietary right founds us as a society of individual owners. Neither I nor my neighbor wants the question of justification to be raised, even though (and especially in a colonial context) our right is highly questionable. The problem, however, will not go away: what justifies property?

Answers to this question depend on whether it is approached pragmatically, philosophically, legally, or as a textual-discursive exercise. On a pragmatic level, the fact of ownership might be the result of simple appropriation such as in colonisation: I am at the present time in possession of this land, you have no physical or legal means to challenge me in my possession of it, therefore I have a *right* to my possession; I own it. The step from premises to conclusion seems completely unwarranted (deriving an 'ought' from an 'is'), but it is a common enough assertion, one which still forms the basis of the colonial acquisition of Australia, and now recognised as an act of state or raw power which cannot be questioned by the courts (Watson 2002). For Kant, the abuse of hospitality evidenced by colonisers was a strong motivation to limit hospitality among nations to a right of

visitation (Kant 1795: 440). A guest who overstays – at least where nations are concerned – becomes a resident. And of course, though a single factual instance cannot produce a norm, repetition can and does, though whether that ought to be elevated to a rule of law is a different question. Factual excludability, and the act of possession, is even recognised by law in limited contexts; for instance, the finder of an object holds good title against all but the rightful owner, the person who traps or kills a wild animal becomes its owner, while ‘adverse’ possession of real property still in some contexts and jurisdictions leads to real proprietary rights (see Katz 2010).

In a legal context, however, the response to the question of what underpins ownership is clearer. Property is recognised by law, and law is a socially constructed and socially sustained set of norms. Property rights are nothing more or less than the product of a political community, with its own distinct history, cultural characteristics, and economic circumstances. The *law* – understood in the abstract as positive state-based law – does not justify itself by reference to any external source, because it has no need to. It is its own justification. At the same time, every time the law is interpreted and applied, every time an action is taken in accordance with the law or the way set down by law is followed, the action of doing so arguably presumes, asserts, and re-enacts a justification. In the case of property, this presumed justification may vary considerably according to circumstances – the ‘thing’ has been appropriated, inherited, earned by labour, received in an exchange, given, won, redistributed, and so forth. Regardless of the means of acquisition and any moral or philosophically grounded justification for protecting that acquisition, in a sense the *legal* justification of ownership remains the same: it is simply that society collectively accepts a law which designates ownership in a particular case and refuses it in others (such as unjust enrichment, theft, fraud, unlawful copying etc).<sup>9</sup>

The social basis of legal ownership is based on a logic which is, arguably, tautological: you don’t have a legal right to something unless the law recognises that right (the ‘law’ being entirely social). In addition

to the law, of course, there are cultural and social norms and practices of a less formal nature which supply the surrounding *nomos*. Clearly, property is not *merely* a legal construct but rather comprised of many sedimented and often contradictory layers of ideology, social values, historical practices and legal ordering. Its appearance in the legal and regulated world is, as Nick Blomley argues, a matter of performance; property is created or performed through material practices in the world (such as building a fence, deciding a case, planting a vegetable garden, buying and selling), but these practices are informed dynamically by *ideas* which are held about property by lawyers, by scholars, and indeed by everyone (Blomley 2013). Property is conditional, or *contingent*, on social acceptance as well as on the material enactments which reiterate social values and legal forms. In the normal lexicon, we say that the law *recognises* property but we could equally say that property is a *gift* from socially embedded law to the owner; without this basis there would only be forcefully-held possession. Disregarding the social aspect of ownership would elevate the object to a fetish – where the object exists in and of itself, and where the subject-object bond is more definitive than the subject-subject bond because the object itself is given identity-conferring properties (Dant 1996; Schiermer 2011).

Property then, is always contextual, limited, and socially-based. But what does this mean for hospitality? The guest crosses the threshold, and is welcomed into a place of conditional and fragile rights, claimed by the host but generated and sustained by a society constituted (perhaps) by a generalised guest. Is it always in a sense the *social* entity which is being hospitable, not the individual? Is the ‘guest’ both a *rightful* recipient as well as a recogniser of property?

At the very least, every act of hospitality bears the imprint of the social in that it can never be regarded as purely an act between two individuals. But does such a claim undermine a hospitality narrative based primarily on two individuals relating around someone’s home, or a state and an ‘other’ relating around access to a territory? In other words, does the fragility of the host’s right to the home into which the other is welcomed, alter in any way the host-guest relationship? Or are

we left in a situation where the limits of hospitality are simply intensified because the social-political-legal sphere of conditions and pragmatism pre-exists even the absolute form of hospitality? Perhaps we need also to emphasise the fragility of proprietary rights which lead us further into the interchangeability of host and guest. Our final section explores further (though not in a decisive fashion) some of these matters.

## **6 Looking for Equilibrium: Community and Individual**

It is relatively uncontroversial, then, to regard objects of property as things which are *given* to an owner by a political community. A logical extension of that, though not an uncontroversial one, is that the community itself has some interest in the thing.

[I]n most contemporary property scholarship ... the focus is often fixed firmly on the person of the 'owner', and all others reduced to the amorphous category of 'nonowner'. This way of talking about ownership obscures the possibility that the 'community' may have a moral status that is distinct from those of neighbouring owners or nonowning individuals (Alexander and Peñalver 2010: xviii).

Not only does the community have a *moral* status, in many areas (such as environmental protection, heritage and planning law), the community also has a legal status, of sorts. That is to say, while the community at large may not be able to make a claim against an owner and generally does not have legal standing to enforce their interests, nonetheless these interests (such as 'public amenity' or historic, cultural, aesthetic, or spiritual value) are represented by others (eg local Councils) and these notions are given weight in legal frameworks.<sup>10</sup> The point is clearly illustrated by numerous cases to do with everything from wind farms to garages.

To explore this point further, we would like to take a brief detour around an example from suburban Adelaide which illustrates the complexities of conceptualising hospitality when common interests come into play. Mr Lacey lived on 1760m<sup>2</sup> of land in one of the leafy eastern suburbs. His property contained (among other things) a house, a tennis court, a garage, and a tree.<sup>11</sup> Mr Lacey's tree was a large *Eucalyptus*

*scoparia* or Wallangarra White Gum, approximately 14 metres high, with a canopy spread of over 13 metres, and a trunk circumference of 2.1 metres (when measured 1 metre above ground level). This last measurement proved problematic, because it put Mr Lacey's tree into the legally-designated category of 'significant', meaning that he was not permitted to cut it down or otherwise damage it without Council permission. He sought permission from the Council to remove the tree, because – as many gum trees are in the habit of doing – it had dropped limbs and branches onto his land and tennis court. He feared for his safety, as well as for the safety of his family and visitors. The Council refused the application to remove the tree and Mr Lacey appealed to the District Court of South Australia and then to the Supreme Court of South Australia. Both courts refused his appeal and stated that remedial measures such as 'a regime of periodic amputations of those of its limbs which are prone to fall' ought to be tried first before taking the drastic action of a 'final, life-ending decapitation'.<sup>12</sup>

Cases such as these are no longer rare and in fact may even be said to represent a new 'norm' of private property – that is that it is not so much about protecting a domain of individual freedom where the owner may do as they like with their property, but rather that it is a balancing act between the interests of the individual owner and those of the community. Similar examples abound which bring into play heritage, environmental protection, and other aspects of development, for example 'quasi-public' spaces such as shopping malls and other privately-owned commercial zones.<sup>13</sup> Such instances clearly change and in many respects reverse the already intrinsically reversible dynamics of hospitality. Consider, for instance, the following: by virtue of the 'public amenity' of the tree – its contribution to the landscape as a 'prominent evergreen vegetated form'<sup>14</sup> – Mr Lacey could no longer, one assumes, freely offer hospitality to his guests. At the very least, use of the tennis court was, he said, limited. The potential to offer hospitality which in some respects marks Mr Lacey as an owner is diminished by the unwelcome intrusion of public values – the aesthetics of the streetscape, the significance of large trees, and the character of the locality. There can be no absolute or ideal of hospitality under

such conditions because the owner is not free to give away himself by giving away what he owns. He owns the tree but, because it cannot be cut down, it cannot be given away except by also giving away the land upon which it sits). More to the point, Mr Lacey's guests may be limited in their use of the tree by the danger it poses.

In addition, there is arguably a reversal of the ordinary guest-host dynamics to be observed in such cases. Mr Lacey is obliged by law not to damage his tree. He tried to get rid of it, but the court said that before doing so, he was required to try to maintain it in a safe condition by pruning. Mr Lacey is still by law regarded as the primary owner, but he is turned into a stranger – the one who solicits the favour of the community. Or, we could say, like Derrida, that Mr Lacey is no longer host but hostage (Derrida 2000: 107) – constrained by the laws of hospitality to provide his property in a fit state to the community. The tree owner is situated as both host and guest or as both inside and outside his own rights. At the same time, the community and its constitutive subjects remains guest in the ordinary dynamic relating to Mr Lacey's private rights, but nonetheless plays host to his enjoyment of his own tree. The gift of the tree by the community to the owner is foregrounded here – it becomes the necessary condition of any ownership and thus, of hospitality.

We must then ask who is the foreigner and who is at home here? Mr Lacey had to seek permission from a series of increasingly powerful legal gatekeepers in an unsuccessful effort to destroy his property. Compared to many such litigants, perhaps, Mr Lacey was relatively privileged or at least one assumes so since he had the resources to appeal a Council decision twice, but he was nonetheless 'at the mercy' (as the idiom goes) of the courts. The point is underlined in the penultimate sentence of the Supreme Court judgment, where Kourakis J suggests that Mr Lacey could have saved himself some extra time and expense had his original application been drafted differently.<sup>15</sup> (In the end, is everyone a foreigner in the court system?) As Derrida reminds us, Socrates becomes a foreigner in the courts:

He declares that he is "foreign" to the language of the courts, to the



tribune of the tribunals: he doesn't know how to speak this courtroom language, this legal rhetoric of accusation, defense, and pleading; he doesn't have the skill, he is *like* a foreigner. (Among the serious problems we are dealing with here is that of the foreigner who, inept at speaking the language, always risks being without defense before the law of the country that welcomes or expels him; the foreigner is first of all foreign to the legal language in which the duty of hospitality is formulated, the right to asylum, its limits, norms, policing, etc. ... (Derrida 2000a: 15)

The courts hold the power, so it is not they who are foreign. Rather, the person appearing before the court is the foreigner and has the obligation of translating imposed upon him or her.

A variation (or perhaps extension) of this issue arises when the holder of property is not cast as an owner but rather as a steward who is responsible both to present and future generations to maintain and even improve his or her property (Karp 1993; Lucy and Mitchell 1996). The concept of stewardship, used increasingly in environmental contexts, makes explicit the obligations owed to community *and* to resources and again raises questions about hospitality. The steward is obliged to care for the resource – for instance the land onto which the stranger is welcomed – but what if care for the land precludes any welcome? At the very least, the steward is more limited in the hospitality they can offer. As we have seen, the owner-host has the capacity to offer everything, even if this would in the end destroy his or her ability to remain a host. On the other hand, the steward by their very nature cannot offer all – they have first a duty to the resource, to the community and to the future to sustain it.

Finally, and to return to a point which we made at the outset, we should not forget that Mr Lacey's property is in fact an *oikos*, a household; more specifically, it is an ecology unbounded by the limits of human property. A tree such as this one must itself be host to a multitude of animals, insects, and other organisms, some of which live entirely within it, and others of which use it as one of many places to visit. It is part of a complex urban ecology which includes humans, but is not centred upon us or controlled by us; it has its own rhythms, processes,

relationships, and limits. The tree's status within the ecological context highlights the anthropocentric nature of the hospitality discourse which this article has considered. What goes on between a tree and its guests is beyond the realm of human ethics and law. On the other hand, law and ethics are increasingly being conceptualized with reference to the non-human and in particular to environmental factors. The law is now protecting the tree's status as 'host', and the animals, birds, insects, and reptiles as 'guests'. Speaking in this way is possibly meaningless and requires another analysis altogether, though as a final observation on this issue we would point out that here too the host and guest occupy interchangeable and reciprocal positions: the very concept of an 'ecology' emphasizes the inter-relatedness and inter-dependence of all elements of a living environment.

## **7 Conclusion**

This article has explored the productive interactions and tensions of theory relating to property and hospitality. We have attempted to read these two paradigms side by side and in a sense each through the other, an exercise which has identified some absences, connotations, convergences and contradictions. We have focused on unpacking property as a precondition for hospitality, and reflecting upon how the collective aspects of property may complicate our thinking about hospitality – in particular the fact that all property is socially based, and the fact that property is increasingly balancing collective and private interests. At the same time, hospitality theory may lead to some novel conceptualisations for property thought, especially as we deploy a language concerned with welcome and reciprocity, as opposed to exclusion and limitedness. Focusing in on property highlights the movement between different scales of analysis which is characteristic of much hospitality theory – a slippage which is at once productive and in some senses problematic. We have also emphasised the ways in which the tripartite structures of property and hospitality are unsettled by the presence of a collectivity, and how the relationships within the triangle can be balanced or emphasised differently in different

contexts. All of this illustrates the difficulty of pinning down both a 'moment' of hospitality and a secure form of property. We have raised a large number of questions and offered only partial answers which, nonetheless, point towards a slightly altered understanding of both the host-home-guest and the owner-object-non-owner relationships.

### Notes

- 1 It is important also to note that in Levinas (1969:27) this encounter, and the act of hospitality it occasions, actually *constitutes* subjectivity.
- 2 While in some ways this is exemplified in Levinas' construction, it is clear that his analysis is not meant to capture actual, literal individuals or conduct. Rather, it is a 'metaphysical' self and other which is at the centre of his analysis. It is meant to capture, as Barnett notes, 'a forgotten dimension of human relations ... [an] ethical substratum of human relating...' (2005: 9) (see also Popke 2003: 304).
- 3 See, for instance, the special edition of *Parallax* (2005) 11:1 which focused on political asylum and hospitality.
- 4 See Gauthier 2007.
- 5 Cf Still 2010: 6.
- 6 There is admittedly some minimal recognition of the role of law and politics as the basis for property in Derrida, though it is not analysed in detail. He says, 'in defining hospitality in all its rigour as a law ... Kant assigns to it conditions which make it dependent on state sovereignty, especially when it is a question of the *right of residence*. Hospitality signifies here the *public nature (publicité)* of public space, as is always the case for the juridical in the Kantian sense; hospitality, whether public or private, is dependent on and controlled by the law and the state police' (Derrida 2001: 22).
- 7 As we have indicated above, the fact of ownership is problematised in Derrida's analysis of the exchange of positions between host and guest. Nonetheless their 'original' position relies on an assumption that the host owns something.
- 8 See Gauthier 2007: 160-163, discussing Levinas' views on the home.
- 9 Cf Cohen 1954: 371-373.
- 10 See eg, *Heritage Places Act 1993* (SA) s16.

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- 11 *Lacey v City of Burnside* [2008] SAERDC 75, [2].
- 12 *Lacey v City of Burnside* [2009] SASC 136, [5].
- 13 See Gray and Gray 1999; Bottomley 2007; Layard 2010.
- 14 *Lacey v City of Burnside* [2008] SAERDC 75, [15].
- 15 'Mr Lacey's present concerns would have been largely avoided if an application in the alternative, for hard pruning or removal, had been made in the first place', Kourakis J, *Lacey v City of Burnside* [2009] SASC 136, [46].

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