

Aristotle and Hegel on Private Property and the Common Good

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The “dialectic” of this paper will be a familiar one, but one which the Greeks tell us is formidable, if not impossible: I shall be invoking the guidance of Aristotle and Hegel in order to steer between Scylla and Charybdis. There are, of course, many such monsters, so we must get a bit clearer. My concern is the moral and philosophical justification and interpretation of property rights: what does it mean to have the “right” to property and in virtue of what do we have these rights? More particularly, I want to examine these questions in light of the problem of negotiating between the claims of property holders to the exercise of their rights and the claims that their communities make on them in their exercise of those rights.¹

In this context, Scylla shall be what John Meyer calls the “absolutist” conception of private property. On this view, private property is “unitary, precluding legitimate restrictions on possession, use, or transmission of property... taken to its logical conclusion, this notion of property ownership would simultaneously prefigure and negate the concept of political sovereignty.”² To have a right to property on an absolutist conception implies the right to use and dispose of one’s property entirely as one sees fit; thus a land-owner may build what he likes on his property subject only to the restriction that in doing so he does not interfere with the rights of his neighbors to use or dispose of their property (by, say, lowering their property values by creating an eye-sore).

This example points to the fact that it’s not just libertarians who work with an absolutist concept of property. As Meyer argues at length, even those who favour “interventions” in the use or disposal of private property often do so in a way that presupposes and reinforces the absolutist concept. For example, those who would justify forbidding, say, castle-building in a Green Belt in the name of protecting others from the negative externalities associated with that activity presuppose that: (a) the problem with castle-building has to do with the negative effects on the property rights and freedoms of others;³ and (b) that the forbidding of castle-building constitutes an *intervention* – albeit a justified one – in the prima facie rights of the land-owner to do as he pleases on his own land. Here the absolutist concept is invoked both to diagnose the problem and to legitimate the restriction of the land-owner’s property rights.

The problem with the absolutist concept is that it loads the justificatory dice in such disputes. When public claims on the use of one’s property are viewed as *external interventions* and *restrictions* on one’s given rights, the burden of justification falls much more heavily on those who wish to intervene and restrict than it does upon those who wish to respect established rights. In Meyer’s terms, this approach treats regulation as

¹ When I talk about “property rights” in general, I intend the inclusion of at least the rights to possession, use and alienation of property. For the canonical attempt to distinguish all of the different kinds of rights (or “incidents”) included in the conception of the right to ownership, see A.M. Honoré, ‘Ownership’ in A.G. Guest (ed.) *Oxford Essays in Jurisprudence*, Oxford: Oxford University Press, 1961.

² John M. Meyer, “The Concept of Private Property and the Limits of the Environmental Imagination” *Political Theory* 37 (2009):103.

³ Even where the externalities are said to affect the “commons”, the latter tends to be conceived of as the property of the community in keeping with the absolutist concept.

“as a necessary evil: necessary because of the environmental good to be protected, yet ‘evil’ because of their violation of property conceptualized in an absolutist manner.”⁴ In disputes between community claims and individual property rights, the “evil” of those claims is not in dispute, only the “necessity” – such a way of setting up the problem clearly loads the dice.

Furthermore, this concept of property does not distinguish between different kinds of property, treating all property (land, in our examples) on the model of moveable commodities. In particular this assimilation of all property rights under the conception of commodities leads us to view them as “perfectly alienable”⁵ and alienable, then, under whatever terms or prices seem appropriate to the owner. However, as Karl Polanyi argues, there are “fictitious commodities” that can never be fully commodified precisely because they are never fully alienable in the way that medium-sized dry goods may be. Land, labour and money can never be assimilated wholesale under the concept of a commodity, because to do so would be to destroy them. Land, in our case, is a fictitious commodity because it “is only another name for nature, which is not produced by man” and hence the complete commodification of it would have the result that “nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed.”⁶ As a result, no system of private property rights has ever – nor could ever – completely bring land ownership under the absolutist concept of property; there has always been some practical recognition of the fact that land is not perfectly alienable and hence that property rights over land cannot fully resemble property rights over moveable commodities. It is this distinction that the absolutist concept of property cannot recognize; in other words, the absolutist concept cannot recognize the unavoidable “embeddedness” of property ownership (at least with respect to land, labour and money) in social and ecological relationships.⁷

So much for Scylla. I should briefly mention Charybdis. Not all community claims on an individual’s use and alienation of his or her private property are legitimate; the right to private property is a *right to private* property insofar as it provides the individual with a claim that can be made against his or her community against unjustified intrusions, restrictions or interventions. In trying to find a way past the absolutist concept of private property it is important to make it clear how we can simultaneously avoid a kind of “collectivism” which would take private property to be no more than a grant to the individual by the community subject to revocation at the discretion of the latter. This collectivist conception would denude the character of private property as a right or bundle of rights; a right is a right precisely because it provides a moral claim that inheres – whether by civil statute or “naturally” in virtue of say, one’s inherent dignity as a person – in the rights-holder in such a way that it cannot simply be revoked at the discretion of those against whom the right can be claimed.

⁴ Meyer, 108.

⁵ Meyer, 107.

⁶ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*. Boston: Beacon Press, 2001. 75, 76.

⁷ “While committed libertarians may continue to hold it up as a normative ideal, the rest of us are better off reconceptualizing property as a necessarily hybrid concept that cannot escape its social and ecological context.” Meyer, 116

What is needed then is a (social) ontology of the right to private property that does not, on the one hand, treat it in an absolutist way as a pre-social claim that *prima facie* trumps all community claims on its exercise nor, on the other hand, treat it as a merely a privilege or grant by the community to the individual. That is, we need an account that allows us to think about individual rights claims and public “common good” claims in a way that does not treat them as mutually external and in conflict such that one must “trump” the other. Seeing them as constitutively intertwined means that the claims of the common good comes from “within” the moral content of property rights and, correspondingly, the claims of private property come from “within” the public good. My argument will be that Aristotle and Hegel offer a way to think about the relationship between private property and the common good that can give us normative direction in negotiating our way between these two proverbial monsters.

Aristotle: Property and the Common Good without “Property Rights”

Aristotle’s defense of private property circumvents an absolutist concept of property by grounding the good of private property in an account of the virtues necessary for achieving the highest good of a political community, viz. friendship. As I will make clear, this account does not pit private rights against the common good as if the one were conceptually separable from the other, rather private property for Aristotle *is* a common good (at least under the right conditions). As such the claims of the community are not extrinsic to the private possession, ownership and use of property, rather they are constitutive for it. By thus avoiding absolutism and private property and hence recognizing the legitimacy of public claims on private property, Aristotle provides some of the desiderata for a workable conception of private property suitable for fairly adjudicating disputes. However, I shall argue further that Aristotle’s conception is in need of further development since it does not offer an adequate conception of private property as a genuine moral right that can be claimed against one’s political community in the face of illegitimate public claims. For that development I will turn subsequently to Hegel. But first Aristotle.

Though one may discern several arguments for the holding of private property in Aristotle’s texts,⁸ the central argument – and the crucial one for my concerns – seems to me to be that private property makes possible the proper unity of the state by means of political friendship.⁹ In *Politics II*, Aristotle’s primary concern is to argue that Plato’s ideal state suffers from too much unity and that, instead, the genuine and proper unity of the state is the holding together of diverse individuals and associations in shared or common goods, the highest of which is friendship. Too much unity as embodied in the communism of family and property is then a threat to the political community and the goods that constitute it.

The political community exists in order to make possible the good life (*eudaimonia*). One of the conditions of the good life is that it be self-sufficient but that

⁸ Robert Mayhew finds in the *Politics* arguments from the impracticality of communism, from communism’s failure to realize distributive justice, from the greater productivity of private property, and from the kinds of pleasures (including those associated with virtues such as generosity) that attend the private ownership of property. Cf. Robert Mayhew, “Aristotle on Property” *The Review of Metaphysics* 46 (1993) 4: pp. 803-831.

⁹ Though Mayhew’s paper is generally informative and reliable, it is remarkable for its neglect of this argument, which I take all of the arguments he offers to subserve.

self-sufficiency is only possible in community and all communities are held together by a kind of friendship.¹⁰ Thus, friendship is a condition for a good life; in fact friendship just is common participation in some good that cannot be achieved individually. Friendship itself is a common good insofar as it provides utility, pleasure and/or an occasion for the development of virtue for all parties.¹¹ In political communities friendship is the bond of solidarity between free and equal citizens who “share their life with a view to self-sufficiency.”¹² The goods that constitute the political community – amongst which are full self-sufficiency and the active exercise of reason in public life – are thus *common goods* that are impossible outside of the friendship between *free* and *equal* citizens.

This freedom and equality – and hence the possibility of a bond of political friendship – are precisely what is jeopardized by the community of property. More precisely, the virtues that are conducive to friendship between free and equal citizens are undermined by the community of wives, children and property. It is good for the *polis* to be united (indeed, it would not serve its ends if it were not), but the kind of unity should be that of friends who seek together the good life that they cannot achieve individually.

Although it is certainly far from clear that Aristotle characterizes political friendship as a robust version of what is sometimes called “virtue friendship,” it remains the case that the exercise of friendship between free and equal citizens requires the exercise of virtue. In his critique of Plato’s *Republic*, Aristotle highlights two of these virtues: “first, temperance towards women (for it is an honourable action to abstain from another’s wife for temperance sake); secondly, liberality in the matter of property.”¹³ These virtues are undermined by community of wives and children, on the one hand, and of property on the other. With respect to the first, Plato recommends holding wives and children in common precisely for the sake of friendship, that is, unity in the state. But Aristotle rejoins that the result of enforcing such a law “would be just the opposite of that which good laws ought to have.”¹⁴ Rather than promoting friendship – which Aristotle lauds as “the greatest good of states”¹⁵ – such a law creates the kind of unity that undermines bonds of love and affection between members of the *polis*: “in this sort of community... there is no reason why the so-called father should care about the son, or the son about the father, or brothers about one another. Of the two qualities which chiefly inspire regard and affection – that a thing is your own and that it is your only one – neither can exist in such a state as this.”¹⁶ When bound by law to regard everyone as one’s family and to care for all in precisely equal measure, the capacity and grounds for genuine care are eroded; that is, the virtues associated with care and affection (amongst which temperance is crucial) are allowed to atrophy.

Similarly, with respect to private property, Aristotle sees social bonds threatened where our unity is achieved by the force of law. If all property is common and the use of it is common – or if all property is common and the use of it is divided between individuals or families in accordance with law – then there may be equality in the

¹⁰ Nichomachean Ethics (NE) 1151a, 1-27

¹¹ NE 1156a, 6-1156b, 24.

¹² NE 1134a, 27.

¹³ Politics 1263b, 9-12.

¹⁴ Politics 1262b, 4-5.

¹⁵ Politics 1262b, 7.

¹⁶ 1262b, 19-24.

distribution of goods, but not on account of the virtues of citizens nor of the fellow-feeling between them. Far better that distributive justice be accomplished as a result of virtue in accordance with the proverb: “by reason of goodness, and in respect of use ‘Friends... will have all things in common.’”¹⁷ Thus property should be held privately and be put to communal use by the voluntary generosity that is natural between friends. If sharing were compelled by law, or if what were shared were not one’s own,¹⁸ then there would be no virtue in the sharing and it would cease to be an act of friendship. If law is to have a role in the ownership and distribution of goods “it is clearly better that property should be private, but the use of it common; and the special business of the legislator is to create in men this benevolent disposition.”¹⁹

The first crucial connection in both these cases is between friendship, virtue and freedom. The reason that Plato’s communism threatens friendship is that it *requires* acts by law that would otherwise be performed out of virtue (a “benevolent disposition”). But an act is only virtuous if it is undertaken as an expression of one’s character and only in virtue of having such a character is one a friend to others. Thus a polity in which the common use of land and resources is required by law is one that undermines the virtues that make one’s fellow citizens one’s (political) friends, and hence it destroys the greatest good of states.

By itself, though, this connection doesn’t suffice to make a case for private property, only for the *voluntary, virtue-based* sharing of resources. The further connection that Aristotle makes is between this kind of sharing and private property. Sharing is only a virtue if the items shared are otherwise a *private* good for the individual sharing it and hence if by sharing it one sacrifices one’s own interest in the use of the good for the sake of his friends’. As T.H. Irwin puts it:

Friendship essentially involves individuals, each of whom is aware of himself as a bearer of distinct self-contained [private] interests, which he freely and willingly adapts to those of others. With no self-confined interests we have nothing to adapt and nothing to adapt to; and private property strengthens the proper sense of self-confined interest. We do not make friendship and cooperation easier by removing each person’s self-confined interest; we deprive friendship and cooperation of their point.²⁰

It should be made clear that “friendship” in this discussion includes *political* friendship; Aristotle is not just digressing from his discussion of the good of political communities to discuss merely *private* bonds of friendship. His concern is about the way a lack of temperance and generosity undermine the good of the *polis*, not merely the private happiness of citizens.

Since the bond of friendship between free and equal citizens is what ought to hold the polis together, and since this bond is undermined by the legislated community of

¹⁷ 1263a, 29-30.

¹⁸ Irwin disputes this claim, but Mayhew gives reason to think that Aristotle is right about it. Cf. T.H. Irwin, “Aristotle’s Defense of Private Property” in *A Companion to Aristotle’s Politics*, ed. By David Keyt and Fred. D. Miller Jr. Oxford: Blackwell, 1991: p. 222-4; and Mayhew, 814-815.

¹⁹ 1263a, 38-40. The principal means here seems to be public education. Cf. Mayhew, 829; Irwin, 218-221.

²⁰ Irwin, 215.

property, a good political community must be one in which citizens have private property and where the legislator impinges primarily through measures to encourage voluntary, virtue-based sharing. One might say, then, that for Aristotle private property is a common good since it is necessary for the exercise of the virtues necessary for political friendship. More accurately, private property is a common good insofar as it can be put to common use by virtuous citizens in the interests of promoting solidarity within the political community; the “common-goodness” of private property depends upon, just as it re-enforces, the virtues of citizens.²¹

What this means, for my purposes, is that private property cannot be properly understood or justified without reference to the common good; the two are conceptually intertwined. This commits Aristotle to a kind of an “embedded” conception of private property, at least insofar as it rejects the absolutist assumption that claims to ownership and use of property are conceptually and morally prior to any claims our communities might make (“from the outside” if you will) on the private use or alienation of property. I want to argue now that, furthermore, Aristotle’s concept offers a way of *justifying* public “claims” or limitations on the use of private property.

This is not perfectly straight-forward since, for Aristotle, the putting to common use of private property must be something done voluntarily from virtue and friendship, not in response to a kind of rights-claim on behalf of the community.²² Thus the “claims” of the community must not, for Aristotle, be given a deontological sense, at least not in the sense of an enforceable imperative. When private property is put to common use it is not, in the first case, because one has a *duty* to share with one’s friends, but because one is a generous person. Nevertheless, one’s friends are rationally *entitled to expect* that one will exhibit the virtues of generosity and hospitality that characterize friendship. Thus, in a good *polis*, where there is a robust political friendship between free and equal citizens, citizens will not only be inclined to put their property to common ends, but they will rationally expect one another to do so and will have cause to doubt the good political will of those who fail to do so. Failure to share one’s private goods in the common interest – though not a breach of enforceable law – will be a breach of friendship and that will incur certain social sanctions and result in a political climate that is not as friendly as it would otherwise be. For the common good of the community, virtuous citizens will not only be generous, they will expect generosity from one another (at least generosity aimed at genuinely *common* goods), and may even “enforce” its breach through social sanctions; it is in this sense that we can derive an Aristotelian justification for public claims on private property.

As Mayhew and Irwin point out, furthermore, Aristotle’s justification of private property includes a set of limitations on its extent, its quantity and its use; in other words, his normative case for private property in general can yield specific normative guidance for particular cases. In the first case, the distinction that Aristotle makes in *Politics I* between natural and unnatural means of accumulating wealth seems to suggest that

²¹ Private property put to private use is not necessarily an evil for Aristotle (subject to certain conditions and limitations, wealth is in fact a pre-condition for the good life), but it does nothing to make for a good community. It is thus at best politically neutral. This is why it is not amongst the options for property ownership and use discussed in 1263a, 3-7.

²² So, it seems that Aristotle does not have redistributive taxation in mind as the means by which private property is put to common use, since this is enforced by law and hence not from virtue. Cf. Mayhew, 828-9..

“even in the best city he would have put a limit on the acquisition of wealth.”²³ The defense of private property is not a defense of unlimited accumulation, the limits of which are established by consideration of the means – whether natural or unnatural – that are necessary to accumulate the wealth. I would add that this is, furthermore, a restraint not only on the degree of private wealth but on its *use*; assuming that a good state would not allow the kinds of “unnatural” forms of acquisition that Aristotle excoriates, the state would thus also forbid the use of existing private wealth in the service of these (e.g., using existing money to lend on interest). I would add further that this point is compatible with arguments made from concerns about the common good (and hence about friendship, by which we participate together in the common good), since one of Aristotle’s grounds for considering certain means of wealth-accumulation as “unnatural” is precisely that they are anti-social. Trade and lending on interest break the bonds of between economic life and the *use* of goods. As such, they know no quantitative limits (which is unnatural), but they also then know no *social* limits. Such accumulation does not contribute to the ends of economic life, which is to secure the well-being of the *household* (a kind of community), which in turn is a condition for the possibility of living a fully good life, which is, for Aristotle, a *social life*. The natural ends of economic life are *social* and unlimited accumulation is unnatural precisely because it undermines our pursuit of those social ends. Furthermore, though household-management benefits all, trade and exchange are profitable only because gain by those means constitutes a loss for another; it undermines community because they are “a mode by which men gain from one another.”²⁴ Thus rather than private property being put to common use (which is the best situation and the one that justifies the existence of private property in a good state since it cements bonds of political friendship), trade and interest put the private property of others to one’s own private benefit.

Aristotle further limits private property in the name of the common good by insisting that “none of the citizens must lack sustenance; the ideal city subordinates the protection of private property to the avoidance of great inequalities of wealth and poverty.”²⁵ Political community requires political friendship, and this form of friendship is between *free* and *equal* citizens. Though equality here does not require perfect symmetry of wealth, it does require that none are so poor as to be unable to exercise the virtues necessary for equal participation in the common life of the *polis*. Furthermore, the *freedom* of citizens requires that none be dependent on others and hence Aristotle does not want to see poverty addressed only by private charity.²⁶ In the name of the common good of the polis and the stability of the constitution – the same grounds upon which Aristotle argued for private property – he therefore calls for some degree of common property,²⁷ sufficient to provide the necessary material means such that each citizen can exercise the virtues rightly expected of him by his fellows.

I conclude, then, that *internal to* Aristotle’s conception of private property and his grounds for defending it is a recognition that the common good puts legitimate limits on

²³ Mayhew, 828.

²⁴ Politics 1258b, 1; cf. also Fred D. Miller, Jr. *Nature, Justice and Rights in Aristotle’s Politics*. Oxford: Clarendon Press, 1995; p. 321.

²⁵ Irwin, 217.

²⁶ Cf. Irwin, 217.

²⁷ Mayhew goes into some helpful specifics here (Mayhew, 820ff.). The details are not my concern, however.

its degree, use and extent. These restrictions are not – as in the absolutist conception of property – imposed from outside the system of property-rights and hence do not need to “override” or “trump” a prima facie moral entitlement to unlimited right of accumulation, use and alienation. Thus Aristotle offers us what Scylla tries to take away: an “embedded” conception of private property that can put the claims of private use and the common good on a level playing field. However, I want to argue now that Aristotle does not adequately provide against the threat of Charybdis, since he does not offer a normatively robust conception of private property *rights* to complement his normatively robust conception of the legitimacy of public claims. In order to make this case I will respond briefly to Fred D. Miller Jr.’s case for the existence of property rights in Aristotle.

Responding to critics who see any attribution of rights-talk to Aristotle as anachronistic, Miller distinguishes between two senses of “natural right:” “a natural₁ right is *based on natural justice*; a natural₂ right is possessed *in a state of nature*, i.e. in a pre-political state.”²⁸ Though it is clear that Aristotle has no conception of natural₂ rights – that would have to wait until Locke or his near contemporaries – he does have an account of natural justice, of duties to others in accordance with natural justice and hence a kind of natural₁ rights that corresponds to these duties. Miller goes on to apply this concept of rights to private property, arguing that since Aristotle recognizes the distinction between possession and ownership as well as other important parts of our concept of property rights (e.g., use, alienability, security of possession), he has a concept of the right to property that can be formulated thus: “X has a property right to *P* if, and only if, X possesses *P* in such a way that the use of *P* is up to X, and the alienation of *P* (giving *P* away or selling *P*) is up to X.”²⁹

Miller reconstructs Aristotle’s political argument for such a right thus: “(1) The lawgiver should promote the happiness of the polis; (2) ‘A polis should be called happy not by viewing a part of it but by viewing all the citizens’ (1329a, 23-4); (3) [Happiness requires equipment (cf. VII, I 1323b, 40-1324a, 21); (4) Therefore, all citizens have a right to property.”³⁰ The passages that Miller refers to primarily (1329a, 17-26) also include a mention of the necessity of virtue in connection with the happiness of the polis, which connects this argument to the concerns about virtue, friendship and the unity of the state offered above. In light of this we might reconstruct Miller’s reconstruction: (1) In a good polis citizens are one another’s political friends; (2) Political friendship requires the exercise of the virtues of temperance and generosity; (3) The exercise of these virtues is impossible without private property; (4) therefore every citizen of a good polis ought to have the private property necessary to exercise these virtues; (5) therefore, every citizen has a right to private property.³¹ This argument (whether in my construction or Miller’s) seems to make a reasonable case for property rights in Aristotle. However, I would like to argue that it is not sufficient to fulfill the desideratum discussed above.

²⁸ Miller, 88.

²⁹ Miller, 312.

³⁰ Miller, 326.

³¹ In my reconstruction the language of “happiness” is replaced by the language of “virtue” but I don’t believe this fundamentally distorts Miller’s reconstruction since happiness and virtue are, for Aristotle, inseparably interlinked. Since there are further differences between the two reconstructions (e.g., focus on the role of the legislator vs. on the role of citizens), I will treat them separately, although I believe that they are substantially the same argument.

The problem primarily lies in the force of the right argued for here. What is needed to avoid the Charybdis of collectivism is a right that can be claimed by an individual against her (political) community such that the right cannot be revoked by that community at its discretion. What this means is that the right must inhere in the *individual* in a way that transcends a mere *grant* by the community, even if that right inheres only in an individual who is also a member of such a community.³² Furthermore, this right must imply a corresponding *duty* on the part of the community (or the legislator who acts on behalf thereof) to recognize and respect that right. I do not believe that Miller's argument (or my reconstruction of it) fulfills these requirements.

With respect to my reconstruction of Miller's argument, the problem lies primarily in the attempt to derive deontological rights from an account of the good couched in terms of the virtues of citizens. Although I argued above that the necessity of the virtue of generosity for (political) friendship can fund a kind of claim on the individual in the form of a reasonable expectation of the exercise of virtue by one's (political) friends, it does not follow that the necessity of virtue can be translated into a theory of political *duties* that would yield also a theory of *rights*. To say that in the best kind of polis, citizens would have private property and dispose of it to the common benefit does not imply a *duty* on the part of the legislator that an individual can appeal to in claiming *rights* against intrusion into her free use or alienation of her property; at best it justifies an argument to the effect that it would be better for the polis (i.e., in the interest of the common good) for the legislator to let me dispose of my property as I see fit. But this is not an appeal to rights nor to specific duties of the legislator (or the polis generally) with respect to *me* and *my* property, i.e., as (an) *individual*. In other words, Aristotle's way of justifying the existence of private property in good cities in virtue-ethical terms does not lend itself to a deontological theory of duties and rights.

In Miller's argument, the right to property derives from one's status as a citizen and the legislator's duty to promote the happiness of the citizens of the polis. This makes property rights derivative of political rights, viz. the right of citizens to participate in the governance of the polis. The problem here is that one's status as a property-rights bearer is bestowed only as a result of one's participation in governance; it is then the political community that determines whether or not one has property rights. Miller acknowledges that "it is highly unlikely that he [Aristotle] would recognize any rights inhering in individuals *qua* individuals."³³ This falls afoul of the requirement that property rights – to be assertible by individuals against their political communities – must not be a grant to those individuals by that community. To put it in terms Hegel will identify, one's personhood (i.e., one's status as a bearer of (property) rights) must not be identical with one's citizenship, even if the two are conceptually intertwined. In light of the argument he attributes to Aristotle, Miller says that "this priority of political over property rights in Aristotle is fundamentally at variance with the priority of property to government in Locke and is rooted in the basic principles of the *Politics* – most importantly, that human beings are political animals and that the polis is prior to the individual."³⁴ For the

³² In other words, I don't believe that this requirement commits us to the necessity of what Miller calls natural₂ rights to property (i.e., property rights existing in a pre-social or pre-political state). The same, I think, holds for Hegel's conception of natural rights.

³³ Miller, 90.

³⁴ Miller, 327.

purposes of this paper, although Aristotle avoids the Lockean absolutization of property rights by embedding them in the political life of a community, by offering a mirror-image of Locke's prioritization, he fails to adequately defend against the opposite danger, that of reducing one's status as a (property) rights-bearer to one's political status (i.e., one's standing in the political community). What is needed is a view that does not straightforwardly prioritize either the polis or the person and hence that does not attempt to derive the one from the other but sees them as dynamically intertwined. For this we turn to Hegel.

Hegel: Personhood and Citizenship

Hegel's discussion of property in *Elements of the Philosophy of Right (PR)*, forms the back-bone of what he calls "Abstract Right," those forms of norm-governed social life that, on the one hand, are most immediate and thus seemingly most basic, and, on the other hand, will be shown to be possible only within the more robust forms of social life (particularly *Sittlichkeit* or "ethical life") that follow.

At the beginning, however, we have abstract right: the subject that has this being-in and for-itself for another only implicitly, what Hegel calls a "person" or "personality." The person is taken as an individual bearing right(s) insofar as it is free in its immediacy. In order to become what it is, if you will, "the person must give himself an external *sphere of freedom* in order to have being as Idea."³⁵ The immediate infinity that is the first moment of the will must undergo a mediation in something external to itself, in something "determined as immediately different and separable from it" in order to achieve "the superseding of mere subjectivity of personality."³⁶ In so doing, the second moment of the will – as "objective," willing a determinate *something* – is disclosed within abstract right. This sphere of freedom, since it must be external to a free will, is, then, to be found in the thing [*Sache*], which is "unfree, impersonal, and without rights."³⁷

When the will creates this sphere of freedom in things, however, the thing is altered, just as the will has been mediated. The will takes possession of the thing, it places its will in it. The thing "thereby become *mine* and acquires my will as its substantial end (since it has no such end within itself), its determination, and its soul."³⁸ The thing becomes something in becoming something-for-me, if you will. Taking possession of a thing, then, as well as being a mediation of the will in an other, is what makes immediate externality *count as* an object, as something for-another. The thing becomes something by becoming a mediation of my will and it thus becomes my property: "The circumstance that I, as free will, am an object to myself in what I possess and only become an actual will by this means constitutes the genuine and rightful element in possession, the determination of *property*."³⁹ But taking possession of a thing in this manner is only the first, positive, moment of property, there are two more in which both the will and the thing undergo further mediation through each other, and which point

³⁵ G.W.F. Hegel, *Elements of the Philosophy of Right*. Tr. H.B. Nisbet, ed. Allen Wood. Cambridge: Cambridge University Press, 1991; §41.

³⁶ *PR*, §41.

³⁷ *PR*, §42.

³⁸ *PR*, §44.

³⁹ *PR*, §45.

beyond this interplay between individual and object toward a mediation of both through another and a common will.

The second moment of property, the “negative” moment, is that of use. In using the thing that I possess, I further alter it by bending it to my needs: “Use is the realization of my need through the alteration, destruction, or consumption of the thing, whose selfless nature is thereby revealed and which thus fulfills its destiny.”⁴⁰ Although this constitutes a negation of the individual thing taken possession of in the first moment of property, this negative moment (precisely because it’s the *individual* thing that’s used) “embodies an even more universal relation, because the thing is not then recognized in its particularity, but is negated by me.”⁴¹

Thus far we have seen that a person externalizes and thus determines its will by placing it in an external thing, which constitutes that thing in the two ways just discussed. These two moments – possession and use – are not by themselves or together sufficient for having property, however. A condition of having property is that I can give it up, that it is alienable. If I could not give up my property, then my will would not be in it *freely*; i.e., it would not constitute an external sphere of freedom and thus would not be my property. The alienability of property is its third moment. However, it also creates a problem. When I take possession of something, I externalize myself in it, it becomes me for me, if you will. If, then, all property is what it is only in virtue of being alienable, then it seems that I have myself only insofar as I can get rid of myself. As Jay Lampert puts it: “the category of property as such is an ultimate danger to selfhood (even though the origin of selfhood depended at first on the ability to grasp and shape property).”⁴² This is true, but only where selfhood is understood individualistically; property does make purely individual selfhood (personality) unstable. Property and the externality of a person’s will therein, can only have a stable, determinate being in the context of mutual recognition with other persons.

Already in §51, Hegel alludes to the inter-subjective horizon in which property takes its place. It is not enough, he says, that the will should fix upon a thing, it must come into existence in the thing by taking possession of it, which implies the ability of others to recognize the thing as mine. This is not saying enough, however. It is not sufficient that it be a standing possibility that others could recognize my will in my property. Rather, this recognition is a condition for the externalization of my will in the first place:

Existence, as determinate being, is essentially being for another. Property, in view of its existence as an external thing, exists for other external things and within the context of their necessity and contingency. But as the existence of the *will*, its existence for another can only be *for the will* of another person. This relation of will to will is the true distinctive ground in which freedom has its existence.⁴³

⁴⁰ PR, §59.

⁴¹ PR, §59, Addition.

⁴² Jay Lampert, “Locke, Fichte, and Hegel on the Right to Property” in Russon and Baur eds., *Hegel and the Tradition: Essays in Honour of H.S. Harris* (Toronto, University of Toronto Press, 1998): 62.

⁴³ PR, §71.

My will by itself, then, is not sufficient for property and thus not able to externalize itself in things, this can only be done in conjunction with another will: “This mediation whereby I no longer own property merely by means of a thing and my subjective will, but also by means of another will, and hence within the context of a common will, constitutes the sphere of *contract*.”⁴⁴

This “common will” is very important here. The wills involved (mine and the other’s) are individual wills concerned with their own externalization in property. But conceived merely as individual, there is a contradiction here. In such a situation: “I am and remain the owner of property, having being for myself and excluding the will of another, only insofar as, in identifying my will with that of another, I cease to be an owner of property.”⁴⁵ What it means for something to be my property is for me to will myself in it and this is necessarily to oppose this claim on it to whatever claims others have on it. But for this property, as we’ve just seen, to come into *existence* is to enter into the sphere of contract, wherein the thing is constituted in its being for another. Thus, as long as the wills in question are construed as individual wills asserting exclusive claims on a thing, property is impossible (it involves a contradiction – the thing is mine and mine alone only insofar as it is someone else’s).

The resolution to this contradiction revolves around what happens to the thing that is my property. The very concept of property compels me to dispose of it; this is the general sense of the above contradiction. In doing so, since the thing *qua* property is constituted by my willing myself in it, I dispose of myself in it and thus make myself objective (i.e., in my property so disposed of in the relation of contract, I set myself over and against myself, I externalize myself). But since the property as something disposable is also constituted by *another will*, at the same moment as I am externalizing my will, my will is combined with this other will: these different wills become a unity. Thereby the contradiction (which is predicated on the two wills being different wills) is overcome in the exchange, i.e., the contractual relation: “This relationship is therefore the mediation of an identical will within the absolute distinction between owners of property who have being for themselves.”⁴⁶ In contract, my will is mediated through its identity with another’s will, thereby becoming a universal or “common” will, one which I share with the other as a “we.” I do not thereby lose my individuality, but it is in this “we” that I gain it in the first place. The common will is, as we’ve just seen, required by the fact that existence is being-for-another, and thus it is a condition for my will coming into existence (being *actualized*) in its willing itself in a thing. This externalization, in turn, is the way in which the two moments of a truly free will (as discussed in the introduction) come to be disclosed in the first place. Thus this disclosure in which I come into being as a free will is possible only on the condition of a common will in the sphere of contract; an individual will is only truly free (and thus truly individual) when it takes itself to be a part of a common will.

Contract is not self-supporting either, however. As a relationship of exchange, it is itself abstract. The kind of common will predicated on the exchange of property cannot account for “wrong” or violations of that contract; it cannot give an account of that in virtue of which such a violation is wrong. Thus we must have recourse to the

⁴⁴ *PR*, §71.

⁴⁵ *PR*, §72.

⁴⁶ *PR*, §73.

moral viewpoint to ground the normative binding force of contracts. Morality itself, however, is an abstraction from ethical life [*Sittlichkeit*] in its various forms, culminating in the full actualization of the concept of right in the state.⁴⁷ Thus Hegel shows that the kind of individuality possible for modern people (being truly free) depends on the development of modern institutions, which articulate the rationality of communities of mutual recognition.

I have focused on the initial arguments of *PR* in order to show how Hegel bridges the gap between Locke and Aristotle, if you will. The initial conception of property seems to be a sophisticated version of Locke's account of the origins of private property in the extension of the self through the mixing of one's labour (for Hegel, one's active will) with an initially undifferentiated given. Hegel accounts on that basis for the primary elements of an absolutist conception of property – the rights of possession, use and alienation – in a way that does not at first give an account of normative limits on these rights. In other words, personhood – understood as rights-bearing – is a normative status that appears at first as self-generating (or, rather, generated by the individual through an extension of her will in respect to things) rather than a status that is bestowed on the individual by a community. In terms I will unpack below, on Hegel's account personhood – and the attendant right to property – is genetically prior to community membership – and hence the attendant orientation to the common good.

However, Hegel's subsequent analysis of what is required for the *actualization* of personhood reveals an "Aristotelian" element to his thought. For my personhood – and thus for the rights that it entails – to come into concrete existence (for it to be *effective*, if you will) it must be embedded in a community of wills with another (contract) the object of which is a *common good*; outside of this relationship my rights are "abstract" or "ideal" in the negative sense. As the analysis unfolds it becomes clear that the realization of this abstraction is possible only in a concrete ethical community oriented toward common goals and in this (what I shall call "constitutive") sense, property rights must be embedded within and understood in terms of the common good of a community (or set of communities). This militates against the absolutist notion that the bundle of property rights are intelligible and defensible without reference to the good and claims of communities. By holding apart the genetic priority of personhood and the constitutive priority of community membership (which I will abbreviate as "citizenship" in spite of the fact that Hegel recognizes a plurality of irreducible ethical communities) Hegel is able to include both a Lockean and an Aristotelian moment in his analysis without contradiction.

Before I reflect further on this distinction and its significance, I should make it clear that, in spite of his insistence that property rights must be embedded within ethical community, Hegel does not believe that the latter cancels out or trumps the former and more than the other way around. Individual personhood and private property do not disappear into the common will of contract, family, civil society and the state, but are preserved as constitutive moments thereof. In fact, one might say that part of the

⁴⁷ A helpful guide to the general argument of *PR* in terms of the actualization of the concept of right (the concept and actualization are the two moments of will – subjective and objective – discussed in the introduction) is found in Robert Pippin, "Hegel's Political Argument and the Problem of *Verwirklichung*" *Political Theory* 9 (1981): 509-532.

justification for the existence of the common will is precisely that it is necessary for the actualization of individual personhood:

Particular interests should certainly not be set aside, let alone suppressed; on the contrary, they should be harmonized with the universal, so that both they themselves and the universal are preserved. The individual, whose duties give him the status of a subject [in abstract right, thus including the status of person], finds that, in fulfilling his duties as a citizen, he gains protection for his person and property, consideration for his particular welfare, satisfaction of his substantial essence and the consciousness and self-awareness of being a member of a whole.⁴⁸

That being said, the meaning of individual personhood and private property changes in its mediation in the shared life of ethical communities and receives different forms in each different kind of ethical community since these have different ends. The dialectical supercession (*Aufhebung*) of moral individuality and rights both preserves and transforms them; in their preservation there is a Lockean element,⁴⁹ in their transformation an Aristotelian element.⁵⁰

With respect to my first concern about Aristotle's lack of an adequate theory of property rights to complement his rejection of absolutism about property – viz. that his setting of the issue in virtue-ethical terms prevents us from safely deriving a deontological theory of political duties and rights regarding property – Hegel's connection of personhood and citizenship provides a means of bridging this gap. Abstract right is made possible by the *moral* standpoint, i.e., a deontological theory of rights and wrongs. But Hegel goes on to show that the moral standpoint is not self-supporting but is rather realized only in an ethical life (*Sittlichkeit*). It is within *Sittlichkeit* that moral virtue has its home (at least in part because it is the home of social and moral teleology). Thus the embeddedness of personhood in morality and morality in ethical life – which, as with personhood and citizenship, implies also the preservation of the moral standpoint in a new context – provides a means by which the language of virtue can be intertranslatable with the language of duty and rights.⁵¹

More importantly, for the current project, Hegel shows how to steer between Scylla and Charybdis successfully. The problem with both Locke and Aristotle is that each in their own way attempts to derive one kind of right or moral claim from another. For the Lockean absolutist about property, property rights are morally and conceptually free-standing while political rights and duties (and hence also the claims that the political community may legitimately make on one's exercise of property rights) are derivative from property rights; they exist and are justified only by the moral requirements of

⁴⁸ PR § 261; my gloss in brackets MD. Lampert seems to think that this endurance of private property in “higher” forms of ethical life causes problems for Hegel and that he would be better off seeing private property as disappearing as the dialectic unfolds. I fail to see the problem. Cf. Lampert, 62ff.

⁴⁹ Lockean, insofar as the supercession in a community is justified by its preservation and protection of personhood and property.

⁵⁰ Aristotelian insofar as the meaning and content of personhood and property are intelligible only in the context of a common life and a common will.

⁵¹ For an illustration and defense of how Hegel reconciles a political theory of individual rights with a theory of civic virtue, see Andrew Buchwalter, “Hegel's Conception of Virtue” *Political Theory* 20 (4) (1992): pp. 548-583.

property rights (i.e., the right to security of property). For Aristotle, as we have seen, the opposite is the case. He avoids absolutism about property by seeing it as conceptually and morally inseparable from the requirements of the common good of political communities. But, insofar as he has a conception of property rights at all, they are simply derivative from the moral requirements of the political community thereby steering too closely to the Charybdis of collectivism.

Hegel, on the other hand, does not straightforwardly *derive* property rights from the requirements of the common good nor does he *derive* the legitimacy of public claims on private property from the requirements of property rights. That is to say, he does not offer a univocal prioritizing of either (property) rights-bearing (i.e., personhood) or community membership (i.e., citizenship). Rather, each is prior in one sense and derivative in another. As mentioned, in the order of *genesis* personhood is prior to citizenship. In other words, one's status as a rights-bearer obtains because one is a rational, free agent capable of acting in the world, it is not bestowed upon a person by an antecedently existing community. But as such this status is merely abstract (*an sich*) as is the agency that underwrites it. For this status to be realized (*virwirklichung*) – for it to become explicitly what it is implicitly, if you will – it must be seen in the context of a shared life with common ends. This points to the *constitutive* priority of ethical life for individual personhood; we cannot properly or fully understand our individual personhood outside of our status as citizens. Our agency and our rights are what they are (i.e., they are *für und an sich*) only in shared practices embodying robust mutual recognition (i.e., insofar as they are *für anderes*). Personhood (and property rights) and citizenship (and subjection to the claims of the common good) are bound together in a complex and dynamic relationship of mutual support; each is prior in its own way and each is secondary in its own way. Furthermore, as discussed, neither moment is extinguished in the other and neither is unaffected by the other. Hence absolutism about property – since it sees the claims of the common good intruding into property rights “from the outside” – cannot stand, but neither can collectivism which would see property rights as deriving simply from the will of the community against whom they would be asserted.