

QUEER PROPERTY, QUEER PERSONS: SELF-OWNERSHIP AND BEYOND

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ABSTRACT

The primary focus of this article is the relationship between property and personality with reference to the specific form of transgression offered by queer theory, that is, transgression of the conventional boundaries of sexual identity and desire. Feminists have strongly challenged the gendered nature of personal relations expressed through property – the association of masculinity with the position of proprietor and femininity with the position of object of property, which in its turn relies upon a fixed opposition between subject and object. It is argued here that attention to certain aspects of queer theory and praxis offers a further ground of critique and the potential for reconfiguration of these fundamental relationships.

The wish for one's own terms and one's proper identity, perhaps the most deeply private property of all, is an impossible desire since both are held in common with others in the community as an effect of the symbolic. (Tyler, 1997: 230)

But if this attribution of property is itself improperly attributed, if it rests on a denial of that property's transferability . . . then the repression of that denial will constitute that system internally and, therefore, pose as the promising spectre of its destabilization. (Butler, 1993: 63)

INTRODUCTION

'PROPERTY' AND 'personality' are terms that are heavily theorised and debated in scholarly literature in disciplines as varied as psychology, law, economics, analytical philosophy and cultural studies. Both terms are also part of the everyday language we use to describe our selves, our relationships with others, and our relationships with external objects. Neither term points clearly to a single referent, and both are conceptualised in widely

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varying ways. It is therefore not possible to deploy either term without making a number of assumptions, and without – whether intentionally or not – raising a whole constellation of social, legal, political and economic associations.

In this article I have chosen to explore the relationship between property and personality through the lens of sexuality and its associated symbolism. My primary focus is upon private property, specifically its *privateness*, but I hope that some of the ideas that I am developing here will suggest new ways of conceptualising property *per se*, both private and collective. I regard my comments as a selective *reading* of property and personality as it appears in various discourses, which does not even approach a general description or theory: although this is a point I could make in relation to *any* scholarly writing, I wish to emphasise it here because of the obvious need to clear a path through a number of large and often contradictory bodies of literature.

SOME PROPERTIES OF PROPERTY

Technically speaking, property is a crystallisation of a number of legal rights and responsibilities. As such it has an unavoidably intersubjective element, meaning that although it may attach to a concrete or abstract object, ‘property’ is primarily a relation between legal subjects which has things as its focus.¹ For instance, my property in my piano is the legal *effect* of a system of legal rights and responsibilities (Eleftheriadis, 1996: 39): the quality ‘mine’ is attributed by law. Emphasis upon the idea that property is a ‘bundle of rights’ (such as the right to use, enjoy, possess, alienate, exclude, derive income), none of which – except perhaps excludability (Gray, 1991) – is *essential* to the legal construct of property, has led to some debate among legal scholars in the 20th century over whether ‘property’ is a distinct legal category at all (Penner, 1997).

At the same time, it is frequently observed that property also carries a particular cultural significance: the relational, mediating and dynamic side of property is often repressed in popular language, meaning that it also signifies a much more immediate, personal, sovereign power of a person over objects (Grey, 1980; Macpherson, 1978: 6–9; Waldron, 1988: 26–30). In both legal and popular language the term ‘property’ is frequently used to refer to the object, rather than to the right. Property is therefore a complex legal relationship, the character of which is highly contestable, and at the same time it is in everyday language a relatively stable reference to things that we own. To say that a legal concept is much more complex than an everyday concept is neither surprising nor usually of much significance. In the case of property, however, I believe it is of great significance: the first purpose of this paper is to indicate some of the ways in which the legal and social meanings of property interact, and why it is important to understand this interaction. I should therefore indicate at the outset that I will be referring to essentially two property concepts: the social and the legal, and hopefully it will be clear by the context which is uppermost at any given moment.

Property is also characterised by an immensely strong symbolic power and is both expressive and constitutive of the person (Nedelsky, 1991), as well as of class, sex and race differences. As I will indicate in more detail later, central social relationships, such as conventional heterosexual ordering, have been symbolised as relationships of ownership (Irigaray, 1985; Pateman, 1988). Moreover, property also obviously holds a central place in the economic order as the legally enforceable mechanism of commodification, enabling capitalist exchange. While it may be true that since the decline of Marxism as a universal explanation of oppression, 'the ownership of economic means of production, that is, property relations, cannot be seen as the source from which all forms of oppression flow' (Edgeworth, 1988: 101), it is also arguable that the metaphorical and symbolic power of property extends well beyond purely legal and state-enforced ownership regimes. The material effects of property are moreover not confined to those flowing from the central categories recognised by legal and economic discourse (see e.g. C. Harris, 1993). The forms of oppression which accumulate around the myth of property do not rest merely in formal legal relationships, but also in the way that property rhetoric is extended and used to structure the realm of the social. I believe the feminist literature already makes this point abundantly clear, but I raise it in a context intended to extend and further explore central feminist insights.

Clearly, therefore, the power of property arises in very complex economic, social and legal ways. Without losing sight of this complexity (but inevitably reducing it in various strategic ways), this article attempts to bring together several further thoughts. As I have indicated, the ways in which certain social hierarchies, in particular those organised around sex and sexuality, are constructed by and reflected in property relationships provide a critical starting point for an analysis of the symbolic power of property. Insofar as it provides a metaphor for personal identity through the notion of self-ownership, for instance, property takes on stereotypically masculine characteristics; but at the same time, the object of property is sometimes said to be structurally female, because the owner/owned, subject/object distinctions all correlate socially and epistemologically to the male/female distinction (Levi-Strauss, 1969; Wittig, 1992). Historical ownership of women by men and the objectification and commodification of women has been the basis of this correlation.

At the same time, arguably, the hierarchy of owner/owned which is expressed in any property relationship translates into other major social divisions, such as those delineated by race and class (Bell, 1988; C. Harris, 1993). The history of slavery, together with its philosophical and scientific justifications, expresses the association of hierarchically constructed race divisions with property relationships.² Ongoing processes of colonisation centrally involve constructions of property and racial propriety: this is evidenced in the non-recognition of indigenous custodianship of the land (J. Singer, 1991; Watson, 1997); in the exclusion of racial 'others' from the property of whiteness (C. Harris, 1993); and arguably in the continuing appropriation of the bodies and cultural knowledge of indigenous peoples by the forces of western intellectual property expansionism (Shiva, 1997; cf. Pottage, 1998). In each

case appropriation is perpetuated and justified through the exclusionary structure of property and its association with a particular type of subject, or a particular type of knowledge. A second intention of this article is therefore to revisit analysis of the way in which the metaphor of property is used to support specific social divisions, and in particular the division male/female. Clearly I do not have space to summarise the whole of this literature or to evaluate it in any detail, but I do rely upon its central insights.

Finally, I have in mind queer attempts to disrupt any form of gendered dichotomies together with their heterosexual imperatives. Queer thinking, which I will outline in the next section, calls into question the myth of the stereotypically masculine liberal self which is based in part on the metaphor of property and which also provides a justification for individualisable private property. At the same time, queer thought aims to challenge what we might term the traditional property, or the exclusive terrain, of sexual categories. Queer offers the promise of subversion of historically entrenched social divisions, while – at least in the hands of theorists who retain a feminist consciousness – refusing to forget or gloss over the violence of existing social relationships, without, that is, undervaluing the fact that power attaches very firmly to certain established social identities (Walters, 1996), and that in order to achieve political recognition, deployment of an identity category is generally essential (Butler, 1993: 229). My third and final intention is therefore to explore queer subversion in relation to concepts of property and personal identity: does queer theory hold any distinct potential for demystifying and undermining both the subject/object distinctions inherent in property and/or the sexualised person figured through the property metaphor? Since gender is so heavily inflected with the thought of property, and since property is so deeply gendered, property is an ideal target for the queer. In its most promising moments, queer thinking may offer not only a critique of the conventional form of property, but also one of many paths towards an altered understanding and practice of property. However, like most social movements, the queer is not immune from the commodifying tendencies of capitalist culture (Hennessey, 1995). It therefore carries a danger that its subversive activities will be confined to a particular terrain, normalised, packaged and reappropriated.

The fascination of property is therefore the ways in which the various dimensions of the property as social myth and legal category interact in a multitude of inexpressibly complex ways. However, because the central social symbolism of property is of something fixed, certain, delimited and absolute, this symbolic and material mobility is forgotten or even repressed in a gesture which reinforces the ideology of centralised power and masks the underlying circulation of meanings.³

QUEER THEORY

Having made such a bold beginning, I should preface my comments by making clear that I am not entirely convinced that there is anything *specifically* queer

to be said about this particular set of ideas. This is simply because there is not necessarily any distinct content to the notion of 'queer' in the first place. 'Queer' is a term that has been used in a variety of different ways, generally to indicate some deviation or position of marginalisation from whatever is regarded as sexually conventional. For instance, Carl Stychin says that 'Central to a queer identity . . . is the problematisation of categories of sexual identity and sexual propriety, as they have been historically constituted. Queerness in part suggests an unwillingness to fix difference . . .' (Stychin, 1995: 141; see also Jagose, 1996: 72–100). As Stychin points out, 'queer' need not refer to an identity category, but can also be taken to mean an attitude or an approach, the content of which may vary according to context. Queer theory may be antithetical or of little relevance to some types of feminism precisely because of its continuing attempt to destabilise identity categories, including the category 'woman' in its opposition to the category 'man' (cf. Irigaray, 1996: 35–41; Braidotti and Butler, 1997). At the same time, queer theory is continuous with much feminism which has itself challenged the stability of identity categories, foregrounded the social constructedness of both sex and gender, and critiqued the hierarchical nature of conventional relationships between men and women (Dale, 1997; Martin, 1994).

For me, 'queer' is a shorthand way of referring to what is a rather complex heritage of ideas, including (but not limited to) the postmodern critique of identity, feminist insights about the reproduction of hierarchy in (stereotypical hetero-) sexual relationships, and lesbian and gay theory and practice which aims to call into question both the universality of this hierarchy and also the fact that it gains force as a social and legal presumption – to the exclusion of all other sexualities, whether lesbian, gay, bisexual, transgendered or heterosexual, which do not reflect the dominant norms. Whether queer theory is a distinct intellectual enterprise is not an answerable question: it gains distinctness by virtue of claiming a (provisional) space, and by bringing together a variety of approaches, but by its very nature queer theory works against proprietorship of ideas as well as identities. Therefore it is only to be expected that the insights generated by any queer analysis may also be said to be consistent with, though not reducible to, strands of postmodernism, feminism or lesbian/gay theory.

In fact, if anything may be said with certainty about the 'queer' it is that it owes its existence to a certain position of marginality, or transgression of intellectual frontiers, and that it does not 'own' any particular conceptual terrain (Butler, 1997), any more than it is 'owned' as a discourse by any group of people. The anti-ownership stance of the queer is, indeed, integral to its relationship to property, as I will explain. The difficulty here is that identity as property – that is, identity which is exclusive, separate, categorised and recognised by the state – is generally a desirable prerequisite for access to the social discourses which distribute power through a myriad of social, political, economic, legal or cultural sources. For instance, the category 'woman' is the basis for oppressive ideas and practices, but it is also the source of strength and visibility for feminist activism. Any attempt – queer or otherwise – to

dismantle unilaterally a recognised source of actual or potential social power would appear to be unwise (Robson, 1998). Yet identity categories themselves can be the occasion for mainstream stereotyping: they can be stifling and, in their turn, oppressive to those who are marginalised within the category. At its best, queer thought expresses precisely these dilemmas (Stychin, 1995: 141), attempting to denaturalise sexual identity, while remaining sensitive to current distributions of power. At the same time, 'queer' carries the very real danger that points of resistance to mainstream culture will be disempowered in the name of multiple identities.

A further difficulty concerns the consequences of a queer collision with mainstream culture, in particular what may be termed a reciprocal capitalising on the (cultural and economic) capital of queerness. After only a brief history, the queer already finds itself drawing upon the commodity form as a way of gaining visibility – by relaxing into a queer identity, by participating in the fetishizing of queerness (Hennessey, 1995), or by installing academic icons of queer theory who appear to have some essentialised place in a definable territory. Within and beyond its own contingent borders the queer has become implicated in the commodity culture. Whether these mainstreaming forces provide an opportunity to subvert from a position which is neither outside nor inside, or a slow death by appropriation, or something of both, will depend on the extent to which a self-reflective dynamic can be maintained by queer academics and activists.

To speak of queer property, then, is itself a rather ambiguous and in many respects politically sensitive project which must be undertaken as a contingent, even tentative, exploration. Property – at least in the popular and traditional conceptions I have alluded to – is basically straight, and I mean that it reflects and enforces a conventional heterosexual symbolism which is hierarchical, and also that it relies on the possibility of exclusivity and separation in the objects it seeks to classify (Gray, 1991). In queer theory the relevant opposition is not between heterosexuality and lesbian/gay theory or practice, but rather between what might be called 'the queer mind' and what Wittig called 'the straight mind'. Heterosexual practices may be queer insofar as they do not reflect the dominant cultural norms associated with heterosexuality (Walters, 1996), but queer is not straight in that it is consciously critical of both the presumption of heterosexuality, and of conventional heterosexual symbolism and categories. Queer thought deliberately works against exclusivity and separation in its approach to classification. In contrast to queer thinking which resists the frequently supposed uniformity and singularity of straight laws (cf. Stychin, 1995: 147), the everyday concept of property that I have referred to above establishes a realm of the same, a closed field subject to a unitary law. Queer property is therefore about as odd a juxtaposition as queer law, or queer nation, or even queer theory. But of course as several writers have noted, queer does not destroy boundaries but lives on the edge, parasitical upon the norms it seeks to critique. After all, as Judith Butler says, 'normalising the queer would be . . . its sad finish' (Butler, 1997: 25).

Of course, it is arguable that property in its technical sense is already

somewhat queer, because it has lost its distinct identity, meaning that the relationship of the person to the object is no longer hierarchical and direct, but rather is mediated by the complexity of multiple legal relations. Owning is therefore not as straightforward a path to power as it perhaps once was, even though the social meaning of property still reflects and in some ways enables a distinct correlation between property and power. I will come back to this briefly later.

PROPERTY AND IDENTITY: THE LAW OF THE SELF

I would like to proceed by explaining some of the issues which arise out of the relationship between property and personality, and to situate the question of sexuality and self-ownership within this framework. The relationship between property and personality has several dimensions, which I will very briefly summarise.⁴ In the first place, Locke's understanding was that a person has property in him-/herself, and he appeared to regard this not only as a symbol for personal autonomy and rights, but as a natural law of self-ownership which could give rise to substantive rights over the world's resources (Locke, 1690/1960: 285–302). The one relatively simple (though often hotly debated) premise thus generated a picture of radical state-of-nature equality, while expressing a justification for unlimited individual appropriation (Macpherson, 1962: 230–1), as well as colonial appropriation of what were regarded as vacant or under-exploited territories (Shiva, 1997: 3; Staves, 1994: 140–2).

At the simplest level, the notion that we may have some natural relationship of ownership to ourselves leads to a bafflingly large range of philosophical issues about, for instance, the status of human tissue, of our public 'identity', of our relationship to our persons (Radin, 1993), and our ability to exclude others from our bodies or our persons broadly conceived. Such philosophical questions have their counterparts in medical law (J. Harris, 1996; Magnusson, 1988), reproductive law (Nedelsky, 1993), intellectual property law (Dangelo, 1989), labour law and criminal law (Naffine, 1997). Whether it is played out on a legal, ethical, cultural or symbolic level, any such conception of actual self-ownership assumes at some point a divided self – that which owns, and that which is owned, which may be the body, the mental capacities, or as in the intellectual property sphere, some more nebulous 'identity' (Davies, 1994: 381–2; Naffine, 1998).

On a symbolic level, this division of the subject-self from the object-self is, for instance, suggested by the famous first line in Catharine MacKinnon's first *Signs* article which states that sexuality for women is most one's own, and most taken away (MacKinnon, 1982: 515). Without going into detail about the various implications of this statement, I would simply comment that if we accept that identity is at least partly an intersubjective, cultural construction and not simply a pre-social attribute,⁵ then the 'taking' (perhaps more accurately a giving) of an identity or an aspect of it is in some senses

inevitable. There is a sense in which identity is *never* one's own, but a culturally determined aspect of one's person. (I am white, with North European ancestors, born and raised in the mainstream culture of Australia: this is 'my' identity – but in what sense is it 'mine'? How does the general culturally created identity interact with the identities encouraged by the smaller communities through which I have moved during my life?) The implication that there is simply some pre-socially 'owned' sexuality which is 'taken' from women, a sex which becomes a gender, is therefore one I disagree with, but there can still be a very severe disjunction between what one feels as one's identity (whatever its source) and a dominant cultural construction of it. Indeed, the queer subversion of the self-owning person lies partly in the uncovering and exploitation of such disjunctions, for instance in the uncoupling of sex and gender.

These complexities and possibilities are not consistently recognised by the central liberal model of self-ownership, which would have each person as the author and owner of his/her own personality.⁶ Even so, without acknowledging the fact that the 'I' who owns and the 'me' who is owned may themselves be an effect of linguistic and cultural messages, the self-ownership paradigm does rely upon a divided, non-self identical, person (Hegel, 1821/1967: section 47): the dichotomising of the self into subject and object which the liberal notion of self-ownership requires, therefore sets up at the very least a possibility that the object side of one's personality may, if not legally, at least symbolically or socially, be object to some subject other than one's self. In other words, the structure of the self-ownership rhetoric inaugurates the very serious possibility of appropriation by another, and the consequential strategic need to draw upon the self-ownership paradigm in order to ensure that any such appropriation does not exceed the bounds of liberal morality (which can be fairly loose, often stopping only at slavery).⁷ Paradoxically, the condition for autonomy and individual sovereignty is already a division within the self.

In addition to the liberal concept of *self*-ownership, property in external objects is sometimes said to constitute the human being as a person. In feudal societies a person was legally and socially defined by his/her position in relation to a fixed hierarchy of property and power (Noyes, 1936: 226–7). In post-feudal society, the rigidity of the structure was relaxed: while one of the attributes of legal personality remains the *ability* to own, this is supposedly a *power* of persons – it is not necessary actually to own anything in order to be a legal person. It is no longer the case that only the propertied can enjoy the full potential of legal personality, although it is also undoubtedly true that so-called 'rights' are sometimes meaningless without property. In reality, only the wealthy can protect both their reputation and their interest in free speech, although these benefits of law are formally constructed as available to all.

The counterpoint to the formal legal dissociation of property from recognition of personality, is that proprietorial relationship to the world of external things is still socially, and sometimes philosophically, assumed to define the person. For instance Margaret Radin, drawing upon Hegel, has argued that

ownership is important to the way the person is constituted socially, and that therefore the law should pay particular attention to protecting 'property for personhood', as opposed to mere fungible or commodifiable property (Radin, 1993; 35–71). Radin's pragmatic view is based upon an appreciation of the actual social and political importance of property for individuality: given a particular social configuration and political ideology, she asks how it is possible for the law to respond to the needs of persons, and in particular disempowered persons, within this context (Radin, 1993; 6). The main difficulty with this approach is that by taking a particular ideology (property for personhood) as a given, it does not sufficiently reflect upon the ways in which that ideology may also contribute to social division. Having said that, no reform is immune to criticism, and we do need seriously to think about ensuring that encroaching commodification of persons and personal attributes does not result in merely reconfigured oppressions.

Radin is undoubtedly right to emphasise that in addition to owning themselves, the ability to own (conquer, appropriate, control) external things is in western society a constituting feature of the person – sometimes to the extent that the person extends into the physical world of objects associated with her or him, such as cars or houses.⁸ The widespread notion that persons have some sort of natural right to own property draws upon the idea that human personhood necessarily contains within it an ability and a need to control external resources. Ideologically, property defines an area of privacy, of personal autonomy and personal sovereignty (Reich, 1991) so that the owner has a much greater sphere of protected rights than the non-owner. This is one of the ways in which the ideology of property is in serious conflict with the ideology of equality (cf. Nedelsky, 1991).

Historically and conceptually, the association of property-ownership with the ideal of self-ownership, enforces and reinforces the alignment of the male owner with the male subject who is autonomous and who owns. Ownership is only justified where the person can be said to own him-/herself and his/her destiny, and of course, this norm culturally applies much more easily to the wealthy male subject. If the subject is not self-owning, then self-ownership as a justification for private property is itself under question. I will return to this matter at the end of the article.

These notions – ownership of the self and ownership of the other as definitive of the self – are therefore not philosophically distinct. Locke's idea was basically that self-ownership provided a *justification* for the ownership of external things, through the mechanism of mixing one's labour with the external world (Locke, 1960: 287–8). In contrast, Hegel argued that a person achieves concrete personality, including self-possession and recognition by others, *as a consequence* of appropriating external things (Hegel, 1821/1967: section 41). In both cases, ownership therefore becomes a necessary element of personhood, and is justified for that reason.

In addition to these two very important aspects of the property/personality problem, I would add a third dimension which arises perhaps as a consequence of the self-ownership ideal. It concerns simply the way in which the

person is figured through the metaphor of property and in particular through the notion of excludability and the consequential territorial space attributed to persons. Jennifer Nedelsky has written of the 'bounded self', a concept of the self which draws on the property metaphor, encodes property, if you like, *as* the notion of the self, so that the person, like property, becomes exclusive, territorial and singular, all characteristics of the liberal person which are culturally male (Nedelsky, 1991; cf. Naffine, 1997). I will discuss this masculine side of the self-ownership metaphor in the next section. Traditional and popular notions of property also presuppose a particular version of the person: the sovereign self-empowering and separate subject. The person and the idea of property are therefore conceptually inextricable – property metaphors define the boundaries of the self, and the person determines the shape of property.

On an even more abstract level, we have the metaphysical concept of the proper itself, which is basically a family of ideas, metaphors and assumptions running through western philosophy. As it has been explained by Derrida, the 'metaphysics of the proper' is not an explicit philosophy. It is rather the groundwork, or assumed framework, within which western philosophy operates (Davies, 1998; Derrida, 1974: 26). The proper names the characteristics of the person and property which are pure, exclusive, singular, appropriate, self-defining and legitimate. It is the metaphysics of the proper which makes it so difficult to move beyond the same/other and subject/object distinctions, which are our foundations for the concepts of both self-referential identity and ownership. On the level of social existence, the proper as propriety names a certain socially acceptable behaviour and position. (As such, the proper is precisely the target of the queer, which, whatever else it may or may not be, is certainly not proper.) According to Carol Rose, one of the functions of property as propriety 'is to accord to each person or entity what is "proper" or "appropriate" to him or her . . .' (Rose, 1991: 232). Importantly, therefore, and as one would expect, the notion of the proper person, personality defined through the metaphor of the proper and property, carries class and race connections – the proper is opposed to the common, just as the owner is opposed to the slave – as well as encoding a stereotype of masculinity. I say that these correlations are expected primarily because of the historical relationship of property, masculinity, whiteness and class to legal subjectivity. However, it is also my view that this symbolism has not been lost with attempts to create a formally egalitarian society, and is still influential in the construction of the legal, civic and social person.

Before proceeding, I wish briefly to locate this configuration of ideas in a practical setting. On the level of the legal conceptualisation, there has been historically a separation and hierarchisation of the concepts of the person and property. Basically, the person is not, and cannot be, property (Naffine, 1998). The person is also in theory valued over property. The law has traditionally resisted the notion that a person may legally 'own' her or his body, attributes, identity, because it would debase and potentially commodify the person. This is so even though the metaphor of self-ownership would suggest

that we somehow naturally own ourselves (cf. J. Harris, 1996), and even though it has been suggested that a property paradigm may be the most appropriate to express in legal terms the sorts of control one should have over oneself with respect to others (Bray, 1990; Radin, 1993). Since the abolition of slavery, nor can any other legally recognised person be owned: the move which elevates a human being to the status of 'person' is also supposed to ensure that they are not the object of another person's property.

Of course, I should qualify this by stating that whether one has property in one's person or in that of another in the legal context all depends completely on what is recognised as property and, to a lesser extent, on what is regarded as the person in which one potentially has property. While on the one hand the law may officially distinguish between property and persons, so that the two cannot get confused, it may be that in all sorts of legal relationships we can find a property-like dimension with a person as the object, or a set of relationships which are tantamount to property in a person, though not named as such.⁹ It is only where property is conceptualised as a formal and legally enforced sovereignty over an object that it is possible to state generally that there is no property in the person, or in the person of another human being.

So whether property in the self or in others is legally recognisable must depend in large part on what is meant by 'property'. It also seems to me that as a result of both technology and the limitless bounds of intellectual property, the lines between the person and property are beginning to blur in the law. The patenting of cell lines from indigenous populations provides an example where one legal person may be said to 'own' an aspect of another (Shiva, 1997). The various ways in which the law protects the celebrity's marketing of his/her image, which is explicitly a property relationship in the United States of America, is an example of self-ownership (Dangelo, 1989; Frow, 1995; B. Singer, 1991).

As a final comment upon this matter, which I will develop further shortly, let me say that where property has the character of sovereignty over an object, self-ownership is primarily sovereignty over the self – individualist and demarcated by conceptually clear frontiers. Where property is a relationship to others, and not simply the ability to exclude them from a protected area, the person will take on a completely different character.

PROPERTY AND SEX

Let me continue by considering the sex of the concept of property, as opposed to the sex of the stereotypical owner. I will state it bluntly – does the concept of property have a sex or a gender? Now this may seem to be a rather odd question, but I raise it as one aspect of the property/personality configuration.

First, there is a long and distinguished feminist tradition which highlights and attacks the literal and figural commodification of women. Women are

propertised in the economy of male ownership and property is feminised, as in the boat or car which is referred to as 'she'. Jeanne Schroeder is a feminist Lacanian property analyst, who has been very explicit about the place of property in a heterosexual economy. She argues that:

... property serves a function in law parallel to the function of The Woman in the psyche. They are both types of the 'Phallus' in the sense of the psychoanalytic term for the object of desire. Both property, according to Hegelian philosophy, and the Feminine, according to Lacanian psychoanalysis, are fictions we write to serve as the defining external objects enabling us to constitute ourselves as acting subjects. By serving as objects of exchange between subjects, property and the Feminine simultaneously enable subjects to recognise other humans as individual subjects – they enable us to desire and to be desired. (Schroeder, 1995: 816)

According to Schroeder there is not just an *analogy* between women and property. It is rather that they perform the same symbolic function in defining and mediating masculine subjectivity:

When men speak of possessing a woman in sexual intercourse, they do not make an analogy to the possession of real property as the right to enter and the power to prevent others from entering. The two are not merely similar; they are psychoanalytically identical. (Schroeder, 1994a: 255)

Thus Schroeder's characterisation of the relationship between women and property emphasises their symbolic function. Both are objects of desire to be exclusively possessed in a masculine economy. Although I remain unconvinced of the necessity of the psychoanalytical framework in reaching this understanding, and although I am wary of the potential normalisation of women's lack of subjectivity in psychoanalytical thought, it does represent a descriptive tool which – if not taken literally – may be of some value. I will come back to this briefly in the next section.

Although her analysis is more explicitly psychoanalytical than most, Schroeder is only one of many theorists to notice a parallel between the function of property as a means of exchange and communication between men, and the role of women as objects of mediation. We know of Levi-Strauss, for instance, who described the socio-economic function of women as objects of exchange between men, thereby constituting the means of communication and contract between men (Levi-Strauss, 1969). In very different ways, a number of feminists, such as Pateman, Irigaray and Wittig (who explicitly compares women as a class to the feudal class of serfs), have analysed and critiqued the ownership paradigm of heterosexual relations (Irigaray, 1985; Pateman, 1988; Wittig 1992).¹⁰ It is important to emphasise that the feminist critiques attack not only the symbolic or metaphorical construction of heterosexual relations through the concept of property, but also the material conditions of heterosexual existence, and most importantly the non-reducibility of meaning to materiality, and vice-versa.

Feminists have adopted a variety of approaches to combat this structure of

male ownership of women. The very successful liberal feminist strategy has been to insist that women too can be subjects and owners, and therefore cannot be the objects of property. Feminists have sometimes rejected the notion of self-ownership because of its potential to commodify (Nedelsky, 1993), and sometimes defended some version of it on the basis that it increases symbolic and actual autonomy (Radin, 1993). As Nedelsky comments, 'property looks to some like the perfect vehicle to power and autonomy and to others like the path to oppression' (Nedelsky, 1993: 350). A somewhat different approach is adopted by Irigaray who suggests a little enigmatically that the commodities might refuse to go to market (Irigaray, 1985: 197), thus rendering it powerless. Whatever else it means, such a suggestion draws on Irigaray's argument that a mimetic engagement with, and reiteration of, gender categories provides a path to rewriting gender and sexual relationships within the framework of dualistic sex difference.

On the other hand, and taking a very different approach to the feminists who have emphasised the centrality of property in the hierarchy of sex, is James Penner, who at the beginning of his recent book entitled *The Idea of Property in Law* presents a somewhat masculinised picture of property:

Here property, have a drink. Let us light your cigarette for you. Now just start with something simple, something we all understand. What sort of company have you been keeping? Come on, no idea is an island. You say your marriage to Gift has broken down? That's terrible. And been spending all your time with that hustler Contract, hanging around in the market place, have you? Well, well, well, that explains a lot. (Penner, 1997: 1)

In need of some serious therapy, property is suffering an identity crisis, possibly even a sexuality crisis, although this is my own speculation. Property is moreover having some marital problems with its spouse, Gift. Penner does not explicitly sex Gift or Property, and in fact he is careful to use the male pronoun throughout his book, consistently marking all characters – which include a corpse, a doctor, a slave, a prostitute, a trustee, a cashier – as male. Thus the marriage between Gift and Property in Penner's opening metaphor may even be a gay marriage, but I do not think so. (What would property look like if s/he was gay or lesbian?) The purpose of *The Idea of Property in Law* is to restore the confidence of property in its own identity, and to rescue the marital bond from irreconcilable difference by ensuring gift's centrality to property's identity (Penner, 1997: 88–90). Slightly intemperately, and probably reading far too much into a simple metaphor, I am inclined to suggest that an underlying message here is that it is important to ensure property's strongly hetero nature by retaining the feminine complement, and foreclosing the possibility that it does not go queer or degenerate in the manner of Posner's rabid market (cf. Posner, 1992). More moderately, and despite his intentions, the concept of property defended by Penner reflects cultural norms of masculinity, especially insofar as it is regarded as a definable positive object with clear boundaries and an ascertainable and dominant place within the legal context. Interestingly, Penner's metaphor also suggests even

more strongly the traditional owning class alignments of property, and what he sees as its currently debased company: no wonder the concept of property is having an identity crisis when he is hanging around in the market place (cf. Rose, 1991: 232–5). The suggestion is that property is made for better, more aristocratic, things. While I am talking about class, I should also mention that the more proprietorial dimensions of the queer also carry particular class alignments – the queer does tend to reflect, if not aristocratic, at least middle class values and concerns (cf. Hennessey, 1995: 33)

The masculinity of property as a metaphor is emphasised in a systematic fashion by Jennifer Nedelsky who draws on the feminist critique of social constructions of masculine separation and self-sufficiency and feminine fluidity and interdependence (Nedelsky, 1991). Not only does property act as a symbol for individual rights (attaching centrally to wealthy white men and only by extension to others) and a method of ordering our social relationships, it also structures our notion of corporeal autonomy, since women's bodies are regarded as essentially penetrable, while the male body is constructed as exclusive and impenetrable. Nedelsky comments that 'When boundary is central and intercourse is violation, women come to be seen and experienced as something less than fully human' (Nedelsky, 1991: 170; see also Naffine, 1997). She argues strongly that the answer is not to 'try to shore up women's boundaries' (Nedelsky, 1991) but rather to develop a relational notion of autonomy for women and men which recognises the value and importance of human co-operation and interdependence.

TRAJECTORIES

We can see some tension, therefore, in the sexual identification of property, which could be explained in several different ways. Insofar as it is an external object against which the self is measured and defined, property is feminised, and insofar as it is a separated, exclusive and autonomous self with proper boundaries, property is masculinised. Equally, the concrete, bodily aspect of property (the thing owned) is female, while the conceptual, abstract, sovereign dimension is male. *Being* property characterises the female condition, while *having* it denotes self-owning masculinity. Sex identity is determined by one's relationship to property, which seems simply to reinstate the sexual hierarchy: whether one is an object of property or a person/proprietor determines one's identity as female or male.

As a feminist I regard the critique of this structure to be of immense importance – on a strategic level so that the current social basis of personal power may be better understood and exploited (or challenged) by women and on a more ideal level so that we can begin to imagine other ways of understanding sexual difference which do not reduce to a subject/male–object/female dichotomy. Even if private property is here to stay – and I must admit that my utopian self would like to imagine its elimination – there is undoubtedly a need to expose the power relations embedded in cultural constructions of property,

as well as undertaking the more traditional left-wing project of critiquing the distributional effects of certain policies or ideologies.

To this end, I would like to suggest that there is more sexual ambivalence to be uncovered here. The woman/property and man/proprietor associations rely on relatively stable and self-contained notions of both persons and property, in particular upon a fixed and stereotyped distinction between person and property. It is at this point that the queer emerges as a potential supplement – but as I have said a dangerous one – to feminist approaches to property. As I have briefly indicated above, feminist arguments have had women taking over the role of proprietor equally with men; refusing our object status, or alternatively reconfiguring it; adopting a property metaphor for the body, or rejecting it; and so on. All of these are very important strategies. All involve what might be identified as a ‘queer moment’ – a transgression of sexual normality in the sense of a crossing of the boundaries of conventional femininity.

However, it is also possible to challenge the theoretical foundations for the system itself, and in particular the fixity of the property/person division. That which I would identify as a ‘queer’ take on property might involve some crossing over between subject and object, and between the masculine position and the feminine position in property and in the construction of individual personality. Such an approach as I understand it would not be antithetical to any feminism which does not universalise sexual difference, as long as the critique of the power relations within gender is not forgotten. The thoughts outlined in the rest of this article indicate some of the ways in which cracks in the property/person distinction have been identified, and what can be made of these points of ambivalence.

HAVING AND/IS BEING (‘I HAVE, THEREFORE I AM/MALE’)

The legal concept of property has for some time been going much the same way as its counterpart, identity. For many years now, at least in some areas of philosophy and certainly in feminist thought, we have been speaking of a notion of identity which is relational, contextual, discursively constructed, not underpinned by any essential thing, and which is not entirely stable.¹¹ The subject is not separable from the social, symbolic and material context within which it is located. The property which is one’s personal identity turns out not to be personal at all but rather ‘held in common by others in the community as an effect of the symbolic’ (Tyler, 1997: 230). Similarly, we could say that private property is held by virtue of communal relations as an effect of the legal. The sovereignty description of property has been superseded, but not entirely replaced, by an appreciation of the way that property is primarily a constructed legal category, not a natural sovereignty over things, and as such has the character of a complex of relationships between persons, not simply a relationship to a thing which confers rights over persons (Eleftheriadis, 1996). There always is an object of property, but this is an effect of the

relations between persons, and may be differently constituted in different cases. In other words, the object of property does not exist *as* property but for the legally defined relationships which constitute it as such. There is no essential character of property: it gives rise to a variety of rights, responsibilities and powers but these vary according to the context (Gray, 1991) and are, moreover, in constant flux as the range of potential objects increases to incorporate, for instance, cyberspace (Radin, 1996) and cultural heritage (Herrera, 1994).

Having said that, culturally both property and personality retain a strong connection with the essential, the authentic, the permanent, the territorial and the individual. It is therefore not possible to speak simply of a single discourse of either property or the person: in both cases a decentring, de-essentialising understanding has offered a critique and alternative to the modernist view, which nonetheless remains in certain areas undisturbed and central, and in others retains a certain ideological force. Although some have argued that the modern understanding of property leads to its 'disintegration' (Grey, 1980; Edgeworth, 1988), in fact it is equally plausible to see it as the key which unlocks the potential of universal commodification (Schroeder, 1994a: 243–4). In spite of its legal transformation, property has not yet left behind the symbolism of sovereignty, personal power and masculine control of a feminine other, meaning that instead of disintegration, what we have is arguably an increased realm in which this symbolism can operate.¹² To my mind, there is no simple truth here, but rather a raging conflict: is property dead, or has it taken over the world? Does the process of taking over the world inevitably involve the dilution and ultimate disappearance of property as a central method of structuring our relationships, or will everything become subject to increasingly limited and proprietorial thinking?

As I have indicated above, feminists have adopted a number of important responses to these sexualised subject/object alignments. But I want to ask whether queer theory has the potential to reinvent property itself, just as it reinvents the person and the relationship of the person to sexuality. What does it mean for property and property symbolism if the relation between the subject-self and the objectifiable world is not marked by an absolute frontier? What if the distinction between having and being is a socially enforced illusion which in its more rigid manifestations engenders a sameness and otherness of violent proportions and effect? What if this illusion is shattered? What if the one, same self who provides the justification for ownership is all along an other? Where would this leave the sexual affiliations of property, let alone property itself?

I should make it clear that I do not claim that queer as a theory and practice has in fact managed to create a new understanding of property – clearly, as I have indicated earlier, queer is itself becoming a commodity. Rather, at the risk of sounding prescriptive, my claim is that because having and being are culturally so interwoven, any questioning of 'being' must bring with it – at some level – a questioning of 'having': failure to notice the interdependence of these ideas could simply lead to the re-stereotyping or re-freezing of the

identities which are otherwise subject to transgression. Property is potentially a rich target for queer theory, but silent acceptance of established modes of 'having' may undermine the very possibility of reconfiguring 'being'.

In order to begin to elaborate on these matters, I would like to return briefly to Schroeder's psychoanalytic description of the symbolic position of women as the objects mediating the construction of masculine subjectivity. While acknowledging that 'Lacan's theory is virulently misogynist' (Schroeder, 1994a, 318), like Irigaray, Schroeder appears to accept Lacan's fundamental proposition that there is a *necessary* structural difference between the masculine and the feminine written into the symbolic order. Therefore the feminist strategy for Schroeder, as for the European 'sexual difference' feminists, is to *reconfigure* the relationship between masculine and feminine, not to envisage or work towards a queer transgression of the structural dichotomy in sexual symbolism. Schroeder's feminist strategy involves 'the rewriting of the myth of the Feminine as an active mediatrix' which 'requires the creation of feminine subjectivity' (Schroeder, 1994a: 318; cf. 1994b: 165–71). Like Irigaray, Schroeder does not reject the basic sexual dichotomy, but argues instead that *within* our category, it is possible for women to invent a subjectivity, to be active, not passive or invisible, while fulfilling the seemingly necessary function of object-ness or mediation.

Now, psychoanalysis appears to me to be unhelpful in some respects, and especially insofar as it appears to entrench this ontologically stable distinction between the masculine and the feminine. But I do want to ask what may be several naive, but not novel, questions: if the object of property is analogous to the Feminine as a sort of universalised object of desire, what happens when it is women who are doing the desiring? Who is Schroeder's subject who needs the feminine to constitute itself as a subject? Why must the mediating role be characterised as 'feminine', and why is it necessary to adopt such a clearly differentiated gender configuration? There are undoubtedly answers to these questions to be found within psychoanalysis, but the point is also a political one. While I certainly accept the feminist argument that female identity is a politically charged category which makes activism and change possible, I regard this as a strategic necessity, not an ontological one which would lock us into a sexual difference per se.

Judith Butler's 'lesbian phallus' is of some interest here: she has proposed in a rather complex argument that 'having' and 'being' the object of a sexualised property in the heterosexual economy are not necessarily clearly distinguishable (Butler, 1993). This is where the argument starts to become distinctly queer. To simplify rather brutally, in Lacanian theory as Schroeder points out, women are considered to be the phallus, while men have it or own it. Similarly, classical notions of the person demand that a person who is able to own property, is not herself or himself property, whereas the human being who is owned is not a person. The modern resistance to any relationship which would overtly commodify a person owes its force to this logic. One may either *have* property or *be* property. Now, as I have indicated there is already some tension in this distinction when it is applied to the concept of

self-ownership, because that implies that one simultaneously is and owns oneself. Having and being oneself defines the person.

Butler argues essentially that the logic of Lacan's system can accommodate a phallus which is 'transferable or plastic property' (Butler, 1993: 62), meaning that it *need not* be attached symbolically to any particular body part, that it does reappear in mutated forms detached from male bodies, and that therefore having it and being it are not necessarily structurally distinct. Therefore, according to Butler, the subversive potential of phallic imagery lies in the fact that, as property, the phallus is subject to appropriation or transfer, and therefore is *capable* of reappearing in places – such as within the structure of lesbian sexuality – where it does not conventionally belong. The reappearance of the signifier of masculinity in an *improper* place emphasises its contingency and the contingency of the power relations it brings. We could even say that the phallus is like intellectual property, which obtains its economic value by a legal fiction restricting its use and therefore creating an artificial scarcity. Intellectual property involves removing a creation from common use in order to give it value, which it does not have 'naturally' since an object of intellectual property is infinitely reproducible (Drahos, 1996: 22). (A loaf of bread runs out, but a computer program can be reproduced over and over, and therefore has no physical limitations to its use. Limitations on use which create the object's value must be artificially created by law: this is done through copyrights, trademarks or patents.) Returning an object of intellectual property to the commons would devalue it, and undermine or even destroy its own status as property. Similarly, the attachment of the phallus as property to masculinity is what gives both masculinity and the phallus their particular status: to argue that the phallus is transferable and plastic suggests not only the devaluation of the imagery as property, but also the subversion of the system which would fix it to a particular group of persons.

Undoubtedly Butler is in part trying to make a point about the psychoanalytic division between masculine and feminine, but in my view the argument can be made without buying into the Lacanian system. On a more simple level, we could generalise first that it is possible to be socially mapped in conflicting ways, according to one's sex, sexuality, personal choices, and so on, and that 'masculine' and 'feminine' are floating signifiers which may become detached from their normalised positions. Second, that the adoption and transformation of heterosexual symbols within lesbian (or gay) culture, while unavoidable, may also pose a challenge to predominant heterosexual symbolism (as well as to the 'purity' of lesbian culture).¹³ Butler's intention appears to be to point out the ambivalence in the conventional markers of heterosexuality – not to accept uncritically the psychoanalytical model, but to challenge the assumption of a stable male/female distinction which runs through it. However, what is most interesting about her views is the explicit connection she draws between property and sexed positioning in the symbolic order, and her discussion of having and being, which sets up the property relationship.

For my purposes, such a line of reasoning signals a reconsideration of the dimensions of proprietorship itself – what it involves, and what its dangers are. Some theorists have suggested that a breakdown or subversion of the subject/object distinction will be emancipatory in our ethical relationships (Laclau, 1996: 1), and it seems to me that one aspect of this is a deconstruction of the boundaries between having and being. In particular, the conventional logic which specifies that having (the phallus/a woman/an object of property) is the foundation for being (male) and that being (property/female, etc.) precludes having, is open to reinvention. If property is a complex of relations, and if the person is not simply sovereign, perhaps we may at once have and be property. Patricia Williams has suggested, for example, that rights, including the right to private property ought to be given away freely in an effort to reformulate the individuation of subjects set apart from objects ‘so that we may say not that we own gold, but that a luminous golden spirit owns us’ (Williams, 1987: 401). The tantalising thought here is that being does not have to be understood as a natural condition or a reflection of our individual efforts at appropriation, but rather may be regarded as a gift in process – connecting the self in perpetuity to the other, and implying a constant effort at reconciliation, rather than domination.

This may all appear to be rather abstract: the central point is that the a queer reading of the relationship between having and being might be seen as posing a challenge to the distinction between person and property – not only to its gendered associations, but also to the structure of property as a grant of personal sovereignty. On the practical level, it is possible to understand the legal relationship between personal rights and property as – in some elementary sense – involving a coming together of self and other, rather than simple domination of the other by the owner. For instance, increasing recognition that property carries both rights and responsibilities (Eleftheriadis, 1996: 40–1) – we own the object, but it also owns us, in that it limits our behaviour – may in fact signal some fundamental movement away from the modern liberal view of the proprietor as sovereign. If my ownership is limited by the interests of others, then the property is a relationship between us, not merely an extension of my personality. (I would like to emphasise that this is not a description of property – which would erase the hierarchical power embedded in current social and legal property configurations – but rather a reading which illustrates a possible reconstruction, far off though it may be.)

QUEER PERSONS AND QUEER PROPERTY

In a more general sense, this ambivalence in the having/being distinction in property may be expressed as the non-reducibility of personal identity to exclusive self-ownership. As I indicated earlier, self-ownership, self-possession, self-identity are all models which attempt to collapse identity into itself, but which inevitably rely upon a fragmented person, and a person who at once is, and has possession of, him-/herself. Current thinking about identity

has taken the notion of fragmentation much further: personal identity is not an essence which can in any simple sense own even another aspect of itself, but is rather an effect of cultural and linguistic processes of construction, as well as a metaphysics which sidelines these processes. Finally therefore, I want to ask, if the self is not self-limited or self-possessed, what becomes of ownership of external objects? Does recognition of the queer person provide some potential for a queer property?

In liberal thought it is essentially the *self*-referential nature of the individual which provides the connection between the person and the (private) property.¹⁴ It is because the person is regarded as committed essentially to his/her own identity, and that that identity is primarily self-contained and self-constructing, that these connections can even arise on the different levels in which I have just outlined them (Zucker, 1993: 88). An other-referential self, or, the concept of a person for whom subjectivity including sexuality is a secondary effect of social relationships, cannot sustain in the same way the connection with private property. Where the other is not simply the objectified outside of the self which may be appropriated and reduced, but rather a potentially positive, respected and celebrated element of the context within which a subject is created, the concept of private property as the means of mediation between self-contained persons is no longer sustainable.

Now, queer thinking aims first to expose and challenge 'natural' sex and gender categories. In doing so, one of its central targets is normative heterosexuality and heterosexual assumptions, since this is the institution through which the difference male/female is defined, hierarchised and stabilised culturally. For Judith Butler, for instance, constructed sex difference is based upon performative acts which take place within a system of conventions or laws: gender is not a pre-existing identity but rather the effect of repetition or citation of sexual conventions (Butler, 1990, 140–1). The signs of gender, like all signs, are therefore iterable in the Derridean sense – meaning can only arise through the repetition and repeatability of signs, and any repetition is always predicated both upon a primordial divisibility in any meaningful identity category, as well as the exclusion of an other. Iterability points to the fact that there is always an other in signification, and therefore in any self-identification:

Iterability supposes a minimal remainder (as well as a minimum of idealization) in order that the identity of the *selfsame* be repeatable and identifiable *in, through*, and even *in view of* its alteration. For the structure of iteration . . . implies *both* identity *and* difference. Iteration in its 'purest' form – and it is always impure – contains *in itself* the discrepancy of a difference that constitutes it as iteration. (Derrida, 1977: 190)

One explanation of the queer is that it draws upon and exploits the instability of the frontier between the other and the same: instead of masking the repetitions and exclusions which go into identity formation, queer thinking aims to highlight not only sexual constructedness, but also the fundamental instability of our gendered identity categories, without forgetting the power

of conventional thinking to enforce its codes, often violently (Butler, 1993: 226–7). Drawing on such insights, one of the central goals of queer theory is the subversion of such clear notions of *self*-referential identity, to bring out the otherness of any self, and in particular to emphasise that sexuality is a performance, not an essential object or characteristic which I can own in any simple sense.

Finally, therefore, I would like to suggest that if my relationship to myself is not simply one of self-referentiality, or self-ownership, then I can hardly be said to have a unidirectional, determining, sovereign relationship to anything external which I am said to own. Indeed, one function of private property has been to shore up the ideology of individualism by creating and protecting selves separated along proprietorial lines, but private property itself relies upon this myth of the separate person. If identity is not just personal identity which we each own individually but an identity which is owned and developed in common with others, then it cannot provide a general basis for purely private ownership, because the self always *owes* its own identity to the community. Ordinarily this debt of the person is written off or erased in the name of the individual, and in particular in the name of the self-owning masculine individual: rediscovering it potentially leads to a notion of property which is neither sovereign, limited, nor entirely private.

Envisaging such a conception of property is no easy task, because within this western, Anglo-American legal culture, there is no language that transcends the division of subject and object, of separated self and other, or of male and female. Jennifer Nedelsky captures the problem by saying that we ‘will need a new vocabulary, new metaphors to invoke if we are not to be sucked back into the forms we are resisting even as we argue against them’ (Nedelsky, 1991: 181). However, as I have tried to show, new forms may be drawn out of the old: by emphasising that which – *within* the complex web of philosophical, legal and social understandings of property – appears to pose a challenge to the traditionally rigid and oppositional rhetoric of property, new approaches will gradually emerge.

CONCLUDING THOUGHTS

There is not really a thesis or conclusion which can be stated from the above, since it is more of a beginning than an end, and undoubtedly raises more questions than it answers. In particular, the exact dimensions of a ‘queer’ property as something which exceeds conventional oppositions between private and communal, and self and other, remains in a sense a mysteriously foreign concept. However, there are several comments I would like to make, as a way of summarising some of the central themes which I have suggested.

First, there is a link to be drawn between sexual propriety (that is, the properties conventionally attributed to the sexes which demarcate sexual identity) and the metaphorical deployment of property in constructing sex. Socially, and until this century legally, sexual propriety has meant on the one (male)

hand the position of being a self- and other-proprietor, and on the other hand the position of being the object of property. Relationship to property on the metaphorical level therefore remains a powerful indicator of (social) status. Insofar as the queer is concerned to accentuate the *improper* generally, and possibly the improper potential of every person, one important aspect of a queer approach is critique of this propriety, and of property symbolism tied to sex.

Second, the distinction between having and being which has been so important to the person/property distinction and its expression in the subject-male/object-female hierarchy is unsustainable philosophically, and like these other distinctions, is susceptible to deconstruction. This is most immediately evident in the very notion of self-ownership which conflates having and being property, but also flows from recognition of the social nature of the person and of sex and sexuality. Appreciation of the *queer potential* of persons, rather than the fixity and stability of persons as simple self-owners, opens up the concept of property for reconsideration, as well as the positioning of persons in the sexual economy. If persons are never fully private or individuated entities, then the justification for private ownership which relies upon property in the person begins to look decidedly shaky.

Finally, I would not go so far as to say that the future of property is collective or communal, but only that it is not simply private or exclusive. As Kevin Gray has argued, private property is not 'truly private' because it is regulated and protected by the state, and because it confers a very public power over others (Gray, 1991: 304). Nor is the person ever 'truly private': continuing to rethink the question of the relationship between the person and the community with a focus on property must lead to an altered understanding of property as an institution. This, however, is a topic for another article.

NOTES

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1. There is a large and complex debate about the philosophical and legal nature of property. However, I take it as reasonably well established that property does not necessarily signify a specific closed set of rights which are always present whenever property is present. It is a 'bundle' of potential rights which arise between persons in relation to objects (see Edgeworth, 1988; Gray, 1991; Hohfeld, 1913).
2. A recent discussion paper of the Australian Model Criminal Code Officers Committee on slavery deals in part with sex slavery and enforced prostitution of women: clearly here there are questions of race as well as sex, although the report does not specifically talk about race. Through the examples it gives, however, the report does clarify that modern slavery or involuntary servitude is not only about exploitation of women, but also about people with disabilities, those unable to

- pay debts, children, exploitation of illegal immigrants and refugees, and overly restrictive labour conditions (Model Criminal Code Officers Committee, 1998).
3. Such a description of the operation of property/power is, of course, derived from Foucault's analysis of power. I sometimes think, however, that in an effort to discredit the sovereignty model of power in favour of the discursive, circulating model of power, Foucault's work has the tendency to undervalue the symbolic force of power as hierarchy and sovereignty. Even if the power of the sovereign/proprietor is nothing more than a crystallisation of an underlying circulation of meanings, it is no less real and effective – in fact it is much more difficult to dispel than mere commodity-power.
 4. See Naffine (1998: 198–200) for a fuller account. Naffine distinguishes between 'property for personhood' and 'persons as property'. I have departed slightly from Naffine's taxonomy.
 5. Obviously there is an extensive debate about precisely this question, and I am making an assumption which others may not accept.
 6. This does not mean that liberal thinkers have not recognised the social nature of the person, but rather that there is nonetheless a high degree of reliance on the pre-social person, or some version of human nature, as opposed to the idea that the individual person is entirely the result of language, culture or meta-physical structures. The liberal person, whether socially constructed or not, is still essentially the intentional and self-conscious person. Moreover, and more importantly, the link between the person and private property assumes an individual autonomous person.
 7. Many feminists have defended the self-ownership model, because at the very least it provides some protection for the autonomy of women.
 8. Margaret Radin defends this construction of the person through property, arguing that as a basic incident of autonomy an area of 'property for personhood' ought to be market inalienable. See Radin 1987.
 9. Calliope Farsides comments that 'The laws of libel and slander could be said to operate on the assumption that I own my good reputation' (Farsides, 1992). Trespass to the person mirrors trespass to goods or land. And arguably 'character merchandising' cases decided on the basis of passing off or 'misleading and deceptive conduct' (s. 52 Trade Practices Act, Australia) come very close to being about appropriation of personality, even though outside Canada and the United States such a cause of action is rarely recognised. See, for example, *Hogan v Koala Dundee* (1989) 87 ALR 14. Similarly, courts do not award specific performance on contracts for personal services, but in cases of breach of such contracts will grant an injunction restricting the defendant's use of his/her own personal capacities. This may be regarded as establishing an exclusive right to an aspect of another person (cf. Owens, 1997).
 10. Wittig's concern is, of course, somewhat different from those of Irigaray's and Pateman's, who have each written of a sexual contract between men, which constitutes social and political relationships. Wittig's concern has been to highlight the *heterosexual* nature of the contract: that is, to indicate that it structures the world of sexual relationships *as* heterosexual.
 11. The legal fiction of the person, which is not co-extensive with the human being, but is rather a construct based upon the attribution of contextually arising rights and responsibilities also reflects this non-essential notion of personality. However, the law has not been consistent here, also assuming at times a much more essentialised human being.
 12. Schroeder makes a similar argument (1994a).
 13. Butler makes this point as follows: 'In a sense, the simultaneous acts of deprivileging the phallus and removing it from the normative heterosexual form of

- exchange, and recirculating and reprivileging it between women deploys the phallus to break the signifying chain in which it conventionally operates' (Butler, 1993: 88).
14. See note 6. It has been pointed out to me that queer *theory* can be not only self-referential but also self-reverential: underlining, perhaps, the power of property thinking, and the continuing need for transgression of disciplinary boundaries.

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