

## The Priority of Intellectual Production and Creation in the Hegelian Understanding of Property

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### Article Info

#### Article type:

Research Article

#### Article history:

Received 17 October 2025

Received in revised form  
30 October 2025

Accepted 10 November  
2025

Published online 20  
January 2026

#### Keywords:

Hegel, Intellectual Property, Property Rights and Justification, Expressivist Theory of Property, Labour Theory of Property, Free Market Capitalism. Social Production, Socialism.

### ABSTRACT

Orthodox readings of Hegel's expressivist theory of property rights putatively assume he is an apologist for free market capitalism in all spheres of production and distribution. However, greater attention played to his discussion of intellectual property reveals that he is a pluralist about property rights and the particular manifestation of economic distribution and ownership is contingent on structural, economic and technological aspects of a society. The following essays seeks to show that intellectual property rights are an example of pure intentional activity that is best understood as public, social and collective labour when there is an overcoming of rivalrous material limitations. At the end of history, when economic and social conditions allow, private property can be superseded by collective sharing of resources and this is the dynamic nature of spirit, what moves it, the coming out of itself into the world. Recognition for the creator is to be protected and for this reason intellectual labour is both the alpha and omega of property – it is where it begins to where it ends, in the individual being-with the community.

**Cite this article:** Rose, D. (2026). The Priority of Intellectual Production and Creation in the Hegelian Understanding of Property. *Journal of Philosophical Investigations*, 19(53), 111-128. <https://doi.org/10.22034/jpiut.2025.21099>



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Publisher: University of Tabriz.

There are at least three ways to discuss Hegel's twenty-first century relevance. One is to delineate an impact, influence or parallel to be found in a contemporary writer or thinker, to propose the thesis that Hegel has already said what we now find novel and a careful reading may illuminate it further (McDowell 2013). Another is to look at current interpretations and compare them to his past reception (Žižek 2012); to show why, for example, the nineteenth and twentieth centuries largely read Hegel as a conservative, and the late twentieth and early twenty-first sought to redeem him as a liberal (Westphal 1993). A final path is to ask what relevance Hegel has for us now, how his thought is still relevant. And here again there are two approaches: one to show what his system offers to our economic and social relations or the metaphysical assumptions we make about a host of pertinent issues (Rose 2013: chs. 5—6). The final, final approach is the least travelled, but it is one I shall pursue here. To look at something quite small Hegel said and realise that it offers a very telling commentary on problems, be they epistemological or ethical, and a revision of what we take Hegelian orthodoxy to be.

Of the apologists of capitalism, private property and the free market (which, for ease here, will be taken as synonymous), there are three main groupings: the utilitarians, the moral-labour desert models and, finally, the autonomous expressivist accounts. Private property either directly promotes most overall welfare with equal consideration of interests or indirectly does so through securing and maintaining those values which promote overall welfare; or, it protects the moral status of individuals in that it expresses the distinctiveness of individual persons. These are usually identified by the proper names of J S Mill, Smith or Hume; Locke; and Hegel (Biron 2014; Richards 2002).<sup>1</sup> Justifications of private property become prevalent with the onset of the modern age and the rise of the individual agent. Following most of the literature, let us initially accept property to be a bundle of rights to control some thing through one or some of the (at times conditional and limited) following arrangements: possession, use, management, accrual, consumption, security of possession, transferal, persistence, duties not to harm, liability and the respect of residual claims in one's own property (Honoré 1960; Waldron 1985; Faraci 2014). Considerations of intellectual property and its status is often a supplement, an add on, tagged on at the end of discussions as something peculiarly late modern and in need of discussion insofar as it requires a legal status. It is nothing special.

Hegel is uncontestedly an example of expressivism (Davis 1989; Knowles 2003, 107—117). This is not to say he does not owe a debt to Locke's labour-mixing model of property and we shall return to that later. For Hegel, understanding oneself as a distinct person is necessary for

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<sup>1</sup> Biron (2014) describes three types of justification for intellectual property: the labour, the expressivist and a third Kantian communicative justification. I do not deal with this last here for a series of reasons: one, I am not convinced of the interpretation of Kant, it sounds too conveniently Habermasian to me, but admit must do more work to justify this intuition. Two, I am not convinced what substantial difference (and not just formal one) there is from the expressivist account. The third reason is, then, that I do not have space here to do justice to the account or these scepticisms on my part without losing sight of what we are discussing.

full moral self-understanding and as a citizen of the rational state. Yet, the claim that his personality justification of property necessitates a free market, that at the end of history the most rational society will necessarily enshrine the free market and private property just as it enshrines monogamous, bourgeois family structures, actually rests on a misreading, or a deliberate non-consideration of the significance of creative, intellectual expression in property and that, if one were to pay just a little more attention to the comments he makes on intellectual and artistic property, then the prevalent reading of these as a surplus, additional form of property tolerated by stable and advanced ethical societies, will dissolve. Intellectual property is central to his account and, if read correctly, actually reverses the justification of property in the material-ideal relationship. That reversal reveals that, just as one can have different forms of democratic institutions, the end of history can have different forms of property institutions that are all expressions of the idea and neither merely conceptual nor materially extant.<sup>1</sup> Couple that with the emergence, in the twenty-first century, of digital, non-rivalrous commodities and sharing rather than owning technologies, and as late capitalism breaks under the strain of new production and distribution paradigms, Hegel's expressivist account is not so directly entwined with free market economics as commentators, and critics of private property, may assume.

There are standard ways to recognise intellectual property in law: patents, copyright, and plagiarism (Breakey 2010; Resnik 2003). And when the rights of the author-maker-owner (many intellectual rights, such as doctorates, academic texts or even songs do not always belong to the most obvious creator) are violated, then they can be compensated. Hegel establishes rights and duties to be embedded in the rational order so that violations can be determined and individual autonomy can be maintained and promoted. However, the issue of intellectual property is complicated by three factors (PR§69R; Hettinger 1989; Resnik 2003).<sup>2</sup>

One, Intellectual property is non-rivalrous. The ideas, the actualisation of the producer, do not require material resources and thus there is no need for utilitarian or the rights-based protections because the free use and appropriation of ideas will not violate the more fundamental rights of life and liberty because they do not concern resources which satisfy needs.

Two, Hegel has more than some inkling of the scientific need to protect research and development: it protects truth against indoctrination, conspiracy and falsehood. Furthermore,

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<sup>1</sup> The working assumption of many Hegelians and casual readers of Hegel is that the end of history is of one form and with it, history stops, as in Taylor (2015), Hardimon (1994), Brooks (2012). Such a reading is contested by Gadamer (1976), Croce (1952), Žižek (2012). One point I will make about this, with explicit reference to property, is to remind readers of Hegel's (1999, 129) critique of Kant's categorical imperative in the natural law essay where the content of our duty is only necessary against a social background of private property which is itself not necessary, otherwise Hegel's criticism fails.

<sup>2</sup> Abbreviation PR refers to Hegel, Georg. *Elements of the Philosophy of Right* (1821), trans. Nisbet, H. Cambridge: Cambridge University Press, 1991; cited by section (§ -- 'R' refers to a remark and 'A' to an addition).

the rights of the author protect innovation, originality and personal livelihood. Scientific, epistemological and artistic progress depend, to a certain extent, on productions being freely accessible and reproducible without impediment, but those who participate and produce requires motivation from moral recognition, be this through value recompense, credit, or celebrity, depending on the cultural and economic structures of specific societies. The whole nature of scientific endeavour, innovation and, of course, learning is this appropriation of the established thoughts of others and making it into one's own alienable product: the student reads a research paper and reproduces it as her own in an assessment. This is a collective good but remember that Hegel's justification of private property is the recognition of the individual, the establishment of moral equality. The claiming and reuse of another's ideas seems to undermine this, yet simultaneously require it since learning is a form of objective freedom. Any hard and strict rules on the ownership of ideas undermines the collective nature of learning and innovative progress.

Three, the celebration of individualism is at odds with most intellectual productions. It is impossible to identify the origin of ideas in an individual and not a collective or process of tradition because the material shaped by the thought is not simple matter (it is not the printed page, the score, the design plans) so it is difficult to point to where the idea has been actualised and at what point consumption becomes a new or innovative use.<sup>1</sup> Knowing when ideas are copies, reproductions or innovations is not immediate. And because it is not easy to determine when an idea has become someone's from the learning they have received, plagiarism is not as easy to detect as theft. It is not the removal of an object which has the will of another in it and the non-recognition of her status, but one recognizes the free will of the other by copying and reproducing their ideas. Thus, it is the subject who knows when she truly understands them and thus presents them as their own, a question of integrity. Like theft, though, the unacknowledged use of ideas harms the interests of the author or even the status of the resource and thus the utilitarian justification of exclusiveness is most pertinent: "The purely negative, but most basic, means of furthering the sciences and arts is to protect those who work in them against theft and to provide them with security for their property, just as the earliest and most important means of furthering commerce and industry was to protect them against highway robbery" (PR§69R).

It is here that an offhand, minor comment becomes significant: "Plagiarism ought therefore to be a matter [*Sache*] of honour, and honour should deter people from committing it" (PR§69R). Hegel interestingly discusses intellectual property in the context of education and

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<sup>1</sup> The issue facing us today is that the artist who sculpts based on an education in the history of art may not be substantially different from the worker in the factory who uses an artificially intelligent algorithm to produce an ornament for public demand. Only perhaps ideologically: "Invention, writing and thought in general do not operate in a vacuum; intellectual creation is not creation *ex nihilo*. Given this vital dependence of a person's thoughts on the ideas of those who came before her, intellectual products are fundamentally social products" (Hettinger, 1989, 38). The "social" nature of these products is crucial here and we return to it below. See also Hegel PR§69R.

the transmission of culture, and plagiarism is defined as a crime of honour and not, in the first instance, right.<sup>1</sup> Intuitively he has a point; for example, the use of artificial intelligence to compose essays is becoming difficult to detect because the systems are determined by a cybernetic system of reproduction aimed at Turing ends. To understand whether the work presented adequately represents the student's understanding is almost impossible. The same with intellectual content by companies, on websites, and cultural productions. The response is to shrug and say something along the lines of *honour*: the student or producer must take their own responsibility and recognise whether the work is their own. If they have cheated the system (as they would if they had paid someone else to write the essay for them or when an author uses a ghost writer), it is not *theirs* in any meaningful sense and they deserve no moral credit for the production. Hegel's actual discussion cites intellectual property as a matter of honour which is a very premodern idea of ownership, akin to the non-constitutional idea where being gentlemen is enough to assure others of good practice. With material objects it is impossible to rely on such trust, one could assume a piece of overgrown land is disposable to farming, only to be told that it already belonged to someone else. The way to resolve such a conflict is through notaries, not the word of the other, especially *not* the posh-accented gentleman. Honour has always been abused mercilessly by English gentlemen and capitalists (words which may be, here, treated synonymously).

Where transmission is most clearly a repetition and a passing on, the modern responsibility of the self is invoked: do not copy, do not pretend, do not take anything which cannot be justified by your own efforts and talents. Hegel here reflects the ideological self-understanding of our age, that is, individual moral responsibility. Who will get the credit they deserve for her effort and talent? The grade on your essay reflects your talent and effort; to copy is to deceive one about this talent and effort. The only argument remaining is the *a priori* idea of individual responsibility due to labour and creativity and this is represented in the fertile legal ground of intellectual property rights. The films you download illegally, music you tape from the radio, or pdfs of books you share – even if there is enough to go round and welfare will increase through wider distribution -- the actor, singer, or author deserve to have their labour recognised through fair exchange, as a matter of *honour* (and the production houses and capital investors *deserve* the massive returns!).

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<sup>1</sup> It was probably the problem connected to individualism and celebrity raised by spats like those between Newton and Leibniz over the “invention” of calculus that concerned Hegel. The issues of moral desert and talent are, of course, at the heart of intellectual property, and he oddly does not think it is a real problem at all: “ – But as for the effect of honour in preventing plagiarism, it is remarkable that the expression ‘plagiarism’, or indeed ‘literary theft’, is no longer to be heard these days. This may be because honour has had its effect in suppressing plagiarism, or because plagiarism has ceased to be dishonourable and the revulsion against it has disappeared, or because an insignificant new idea and a change in outward form are rated so highly as originality and as the product of independent thought that it never occurs to anyone to suspect plagiarism” (PR69R).

For Locke, property was the justification for state regulation of interpersonal relationships to ensure and maintain the equal moral status which had been carved out by the English Civil War and the Glorious Revolution. Locke's second treatise uses property as a way to ensure all citizens have, because they are equal, their liberty respected and that entails the right to a minimum level of property and a disapproval of vast differences in wealth since large inequality leads to political corruption.<sup>1</sup> The fundamental law of nature (all ought to be preserved) is a prior principle which justifies all the others (Locke 1988, 6). Our life and activity are gifts over which we are custodians and with respect to other individuals, we own ourselves and our activity for God's preservation plan to be achieved. It is this move which is eminently modern and which grounds our contemporary understanding of self-ownership, yet simultaneously medieval (Locke 1988, 27).

Locke wants to know how a thing which belongs to everyone in common and is given to all humans with respect to the fundamental law of nature – that all, as much as possible, should be preserved – can become exclusively someone's. His answer is through labour: "Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined it to something that is his own, and thereby makes it his property", fulfils God's plan by taking care of His creation. Those who do this well are to be rewarded. Property protects the liberty of the individual to preserve God's creation and so primary acquisition is brought about by mixing labour with matter: "... every Man has a property in his own Person. This no Body has any Right to but himself" which entails "The Labour of his Body and the Work of his hands, we may say, are properly his" necessitating "Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his labour with, and joyned to it something that is his own, and thereby makes it his Property" (Locke 1988, 27). What is special about labour is that it adds value to an object, so cultivated land is the moral reward for effort and is worth more than uncultivated land (Locke 1988, 34–45). And Locke assumes that one cannot possess the added value without exclusive rights to the land or material worked upon, as the wood sculptor cannot have the carving without owning the wood, illustrating perfectly the original model of property is based on the shaping and transforming what the human encounters or the matter before us. Labour is like paint which the agent transfers from the paintbrush to coat the wall, imposing a quality on the thing that was not there before. However, whereas carving wood or painting a wall involves a rearrangement of matter, the production of ideas does not. And this notorious labour-mixing argument grounds the moral one which becomes foundational for the conception of modern understandings of the individual: the industrious ought to be rewarded.

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<sup>1</sup> For a fuller account of the rather brief discussion of Locke here, I recommend Ashcraft 2013, Sreenivasan 1995, Waldron 1985, Knowles 1983, and Davis 1989.

Labour or activity “removes” a commonly owned object by making it properly the individual’s own. But it is this move which Knowles (1983) believes generates a problem from the conflict between theological and thoroughly modern metaphysical principles. Locke sets the theoretical identification of the essential and inessential – the alienable part of its will – at the limits of the body. One cannot alienate one’s body but one can alienate the labour transferred into objects when the security required to maintain ownership threatens the community’s protection of life. Two assumptions are embodied here: one, the moral status of a human, as a Person, allows labour to transfer a quality of the human to things, extending their domain; and two, labour makes something new, creates a new object (otherwise it could not be given, disposed of) removed from the common inclusively owned stock. Locke’s theological account can plausibly account for the former because it is in accordance with the fundamental law of nature (if man did not labour, the world would go to waste), but not the latter. There is an equivocation in that property is understood as the extension of the moral personality of the individual into the thing; whereas the second meaning, sees property granted by the making of something new in the world, a material possession, which was not there before. One is entitlement; two is creation. And for Locke, only God can create, yet labour justifications of private property require the moment of something new being made by the labour of the agent if it is to be alienable.

One would think that artistic or intellectual creation is the embodiment of labour *par excellence* and hence the paradigm example of actualisation of autonomous intentions, but it requires neither material substance nor the protection of the producer’s life (and by extension the reward of her activity).<sup>1</sup> The labour-mixing argument presents particular problems for intellectual property which legal frameworks are unable to resolve: a book that takes fifty years to write does not have one hundred times the protections of one that took six months; patents are awarded for novelty but granted on a first come first served basis and not the amount or intensity of labour; productions – such as vaccines, films, songs – are no longer produced by a single person; and the person who types an idea into a computer file invests labour akin to the one who thought it up. Intellectual property, for Locke and any labour-mixing theorist, must remain predominantly supplemental. The agent, the artist, the thinker does not create but copies, consistent with Locke’s theory of ideas.

Hegel’s early thought incorporates much of Locke’s thought on labour, but develops through his career to a more precise expressivist account in response to this equivocation of labour as simultaneously a transmission and a creation. In Hegel’s expressivist account, an idea is not matter and unlike say where I impose a form on a substance in sculpting it, there is not

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<sup>1</sup> Faraci (2014, 531) puts it in a nutshell: “In brief, the argument is that (1) property rights are legitimate only when necessary, (2) necessary only to avoid injury resulting from one party’s use or possession of a good over others’, and (3) that such injury is possible only where there is scarcity.” And this seems to entail intellectual property rights are illegitimate, but he holds that “each of three prominent theories of the justification of property rights cast doubt on (2) and (3).”

transmission in any sense whatsoever, but to be actualized it must have an external objectification in activity, institutions, meanings or products. Labour is transferred into a thing and becomes the “inherently individual will of a subject” (PR§34). A particular will has self-imposed determinate ends and is the transition from animalistic desires to second-order desires and the emergence of value (PR§35; Frankfurt 2018; Taylor 1985). I am indeterminate when there is no distinction between what I want and the expression of my will but I am determinate when what I want stands in relation to me as not-me. The Lockean theological framework is no longer required because property is the self-founded, rational existence of a *Person* as a particularity and territory.

However, Hegel does seem to detrimentally use Locke’s mixing argument putatively in his own. There are two obvious reasons for this: one, a hangover from the earlier thinking on property from 1802—1805 where the thinking of property was largely a stylized romantic account, starkly expressed in Hegel’s resistance to the emerging mechanical nature of modern activity. The individual ends determined by the mechanical relationships are encountered in a world which confronts me as given and particularity is lost to an institutionalized mechanical operation (Hegel 1979: 117). The relation between thought and matter is clarified and purified in later works and, what was a largely muddled account between the intuitive Lockean labour mix and his own expressivism, becomes more starkly expressivist.

A second reason is Hegel’s requirement that rational actualization of ideas involves shaping matter broadly conceived. There is no problem with that, but Locke has a very narrow understanding of matter and Hegel sometimes in his early work is equally too literal. The importance of matter remains in the later 1820s Berlin lectures, where Hegel understands property as freedom actualising itself in a world (PR§52) and where a form of one’s intentions must take a material form. Elsewhere in his later thought, ideas can be expressed in action (PR§113), the shaping of the body (PR§57), and in political institutions (PR§257), that is the shaping of the collective social world. Hegel defines the thing as that which acquires the agent’s will as “substantial ends” (PR§44). The matter in these cases also makes the rationality actual and an object of recognition, so one does not need understand matter in a narrow sense. The problems with intellectual labour facing Locke do not raise their heads in the later understanding of property because, for Hegel, it must be a specific kind of labour and hence the collective mind of a team may be the most appropriate *Person* to acknowledge and the person who thinks (labour) is privileged over the person who types (qualitatively different labour). Intellectual property on this model is not supplemental but prior.

The discussion of property is located in “Abstract Right”, prior to the discussion of moral subjectivity and the ethical state, located between metaphysical freedom (PR§§4—19) and the moral status of activity (PR§§112—119) and prior to full ethical subjectivity. Hegel states that “The rational aspect of property is to be found in the superseding of mere subjectivity of personality. Not until he has property does the person exist as reason” but adds notably that the

first phase of this, the mere possession of a things that can be alienated is “a poor kind of reality” (PR§41A). The subjective will must be recognized as freedom, so it requires the institution of property to differentiate “instinctual taking” of the animal from “rational appropriation” of the human being (PR§§45, 46, 51). A further transition occurs when the mere human who possesses things that are useful, develops into a *Person* who owns property comes about when commodities emerge, viz. objects of labour which can be alienated. Property is what allows for deferral of consumption or enjoyment and allows us to rise above our animal nature and the immediate satisfaction of our desires. Thus, it is a medium of recognition before others as, in later pages, marriage and class will be (PR§§51, 57, 161—163, 199—201).

A *Person* is Hobbesian, reducing moral choices and value choices down to the simple level of wanting or not wanting and thus the will of the free market who divides the world into those objects to be “disposed over” to use Habermas’s apposite turn of phrase (2002: 38). The *Person* is a universal self-consciousness which requires institutional support to persevere, because the determinate natural and arbitrary givenness of my existence (my body, my height, my talents and desires) must be properly and freely chosen as mine, so the natural world must be replaced by the spiritual and moral world (PR§35R). As a *Person*, I recognise an abstract capacity to resist, reject and act on my desires and to do this through external objects but this capacity is reciprocal; personality contains the capacity for right in be a person and respect others as persons (PR§36). Reciprocity is maintained and supported by recognition granted through the holding of products of my activity. It sets up the conflict of the master/slave dialectic – because I can only be “in conflict” with those I recognize as to be overcome, resisted or annihilated. I am not in conflict with things. These are to be consumed, modified, changed, that is disposed over. A particular need or drive and arbitrary will (desire) can make something a mere possession such as a dog growling over a bone. Yet, for that bone to be its own requires the determination of property, an institution that confers the extension of the will into things (PR§45). I can take the bone from the dog and it becomes mine, only with the institution can the taking then be seen as a wrong. A need constitutes a thing as a means, but property constitutes the thing as a realization of freedom, as embodying my will. Without the conventions and expectations of property none of this would be possible. One’s limitation as possibility is overcome through actualisation (PR§39) and property is that medium through which the embodiment of the will is manifest; we fashion a world which expresses our difference and discreteness in “an external sphere of freedom” (PR§41).

Personality requires property in order to demonstrate its particularity to the world and to meet the demand for equal moral status through recognition (PR§31). If the use of something does not impact the satisfaction of another’s needs, then its reuse is not a matter of power between asymmetrical wills (one who owns and one who does not). If I alienate the control over that which I produce, I am a slave. If I alienate my personality, I am nothing but the superstitious will as others’ ends work through me as unquestionable givens; I am a thing

(PR§26). A slave can still will her freedom if she can renounce her essence, but the loss of personality results in regression to the depths of the superstitious will (Rose 2024). So, the elements of my identity which can be alienated are anything I create or produce in the external form of an object (including thoughts, ideas and actions), whereas, according to Hegel, I cannot alienate my personality and what he calls “freedom of will, ethical life and religion” (PR§66). To have being as an idea, the will requires a sphere of freedom. The will must have a medium to express itself as particular and make itself determinate that is not identical with it (as the animal is identical with its body, its desire). When you affirm your personality in a thing, you do so because you want it, but that want – in becoming actual – is an embodied value, a motivation worth having and thus, even if you are inarticulate, you are expressing reason in action. An institution of property is distinguished from mere consumption or satisfaction of needs through the characteristic of alienation and this requires contract. Consent becomes the rationality of holding property because contract and regulation are required when mere seizure becomes property proper. Exchange concerns the volition of two wills, consensual reciprocity, and it is a response to how and when someone or something can impinge my territory. It is based on the relationship of mutual recognition: only persons can exchange, bequeath and buy (PR§74).

For Hegel, then, the institution of property is a form of objective freedom such that it is the will of individuals, classes or society materialized in institutions and sets of cultural ideas that makes possible mutual recognition necessary for and constitutive of autonomy. The distribution of property is therefore purely arbitrary, but the institution is rational. Abstractly it does not seem to tell us what belongs to whom, that is a matter of historical caprice and arbitrariness. It is enough that there is property for rationality’s demands. Equality is equality of moral respect; but this does not entail equality of resources, or a demand for equal distribution; that is determined solely by freedom (PR§49).

What is obvious with the emergence of the person and the moral subject is the idea that I understand my body as my own because it is the site of action. The self-ownership in Locke which emerges within a theological framework is reproduced as an idealist universal and a material embodiment of Kant’s end-in-itself. Equality of individuals is brought about by the recognition of personality constructed through the territory of rights. It requires an extension of these rights into objects which express the individuality of my person and subject (telling others what I value) (PR§38). The self-understanding of agents as agents who bring about external physical actions and are responsible for consequent events, the understanding which makes possible the subjective moral conscience, is impossible without the institution of property. The expression of me as a *Person* requires a system of property through which I can acquire, exchange and choose amongst goods. Property frees me from the dependence of day to day living, it gives me playtime or that sphere in which I can choose how to use my activity. In capitalism, all of our work life is actually a playtime and when we realize this, it is odd that we

see it as a burden or do it against our own will. We are no longer forced by nature to hunt, gather and toil to satisfy our needs. Yet, free market ideology reintroduces “need” through enclosure, commodification and wage-labour. A system of private property generates enough surplus wealth so that I am freed from the necessity of needs. Property broadly understood is not about the distribution of resources in a society, but the very separation of a people from nature which constitutes civilization. Property allows for leisure and free activity and how we use that activity, whether we choose to be productive or to play is the space of self-determination of the human being.

It has been assumed that this external sphere necessitates the institution of the free market. Hegel seems to pre-empt the argument for private property as the only possible medium to express free, arbitrary choice: individuality is most rationally expressed in whole and total private property (PR§62R). Eecke (1983: 195) identifies five separate Hegelian arguments for the free market: one, it incorporates subjectivity and free self-determination; two, the economic order recognises the principle of subjectivity (as Cartesianism did in philosophy and Lutherism did in religion); three, alienation requires the activity and free exchange of labour; four, economic freedom allows one to balance egoism and civic duty; and, five, it sets the established limits of public interference in the private individual’s will. However, exclusive private property is only entailed if the matter in which it is manifest is limited and its consumption rivalrous. Inclusive property can meet the requirement of number four (a system of free civic, charitable duty or a shared allotment site), but it seems that the others do require private, exclusive, individual rights. Arguments one and two are different expressions of the same thing, the recognition of individual *Personality*, and equal moral respect between persons is granted by mutual recognition, hence the alienation argument in three: those agents able to hold and dispose of property bearing responsibility for their activity. And five is then the expression of the protection of the autonomy of this agent. What intellectual property shows is that viewing a product as a resource allows a non-exclusive product to meet the requirement for the recognition of equality of individual agents with the need for annihilation and complete alienation of the product of the activity. And that is why honour, better understood as integrity, is required, it is a performative requirement for full autonomy.<sup>1</sup> Private property is initially required for this self-understanding although, as we shall see, forgetting its moral justification in Hegel as an expression of individuality leads to the metaphysical error of assuming it is necessary for individuality.

The point about intellectual property – ideas and artistic creations – is that if the good is not rivalrous and not the satisfaction of a need, it can be shared, copied and the will still receives recognition. The actualizing of the inner will through property takes three forms and labour-activity is a form of appropriation through creation (no longer a problem given the shift from

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<sup>1</sup> Much like sincerity under questioning is for Kant (1949).

Lockean empiricist to Hegelian idealist preconceptions about the world) that creates ideas, thoughts, and productions that can be alienated. Alienation is the key to a thing becoming property and an object of contract. The recognition that I have the power over the thing to do with it as I see fit imbues a thing with the characteristic of property. A thing becomes mine by containing a moment of my will (and the will of others through recognition). This recognition is then supported and maintained through the objective freedom of institutions (rights, laws, duties, exchange). Since property requires that, one withdraws one's will from a thing (alienation), Hegel can differentiate between aspects constitutive of selfhood (body, natural luck) and those that can be alienated (products of my personality). We see here why property must be expressed through a medium, matter as such, but intentions can be reconstructed through the objectivity of actions and their consequences (PR§§113—119), and political and historical decisions can be reconstructed through persistent institutions (PR§277A). It is assumed that the institution of private property and the free market play this mediating role. Private property is necessary for an understanding of myself as an intentional subject because it territorializes the empirical 'I'. My car is "me", but it can be alienated. My beliefs, values and sex are me, but cannot, for Hegel, be alienated. Collectivist property would not support such an understanding since, according to Hegel, one cannot give away what is not recognized as exclusively one's own.

The right to property and abstract right in general are justified as forms of objective freedom, in that for me to enjoy and be secure in my own rational, subjective freedom (individuality) I require certain institutions that maintain and secure my status as a rational individual and be recognised as such. Private property ensures my particularity and allows me to express my free choice as well as my arbitrariness. It allows me to engage in work rather than mere need satisfaction, it allows me to express my taste in my consumption choices, and it allows me to develop and actualize value in those activities and consumption. The products of my activity (as long as I have not temporarily alienated activity) are mine and express what is important to me. It would seem that the justification of intellectual property and the condemnation of plagiarism are simple: the former is a product and an expression of my free will; the latter is the taking of something which is already owned. However, non-rivalrous goods do not require exclusivity to fulfil these demands. Music digitally available to stream or books available for free over the internet do not cause harm by the free and appropriate use and still allow the subject to transmit value, identity and distinctiveness to others. The makers of these, the need for individuality and moral reward, can be gained by social media "likes" rather than capital.

Hegel's first mention of intellectual productions are expressions of an activity and these activities are immediately things because they can be bought or sold (PR§43R). Ideas like other products can be reduced to something immediate to be taken possession of and exchanged, but they are activities through and through. In the same remark, Hegel discusses the immediacy of ideas with the parental relationship. Intellectual things are still "will" and cannot be wholly

alienated in the free market. To do so is to pose the unstable case of a thing-not-thing (as children were considered under Roman law). The children and the artistic, intellectual product are not rationally actualized if they are to be “disposed over” under the domain of abstract right because the intellectual product or child is not “separable” or “immediately different from the person” -- thus one does not possess one’s learning, nor exchange it, but one can partially dispose of it.

Hegel returns to these ideas in his most explicit discussion of intellectual ideas and ownership: “The distinctive quality of intellectual production may, by virtue of the way in which it is expressed, be immediately transformed into the external quality of a thing [*Sache*], which may then in turn be produced by others” (PR§68). The idea is alienable in a very immediate way; it is digital from its inception and not analogue because it is in not actualised in matter or in matter which is rivalrous. It is “immediately transformed into the external quality” -- it has no medium of matter, as such, the ideas and the words are the same thing (just as a smile expresses happiness, but the smile is not caused by happiness), and that means someone else can say the same thing straight away without taking the thing, since there is no matter as a substance or medium. This differentiates it from other activities or labour. The “sole purpose” of intellectual productions is, for the most part, their being distributed and shared and does not alter or touch the original (as it would with mere matter). One can therefore reproduce the ideas and/or the way in which they were expressed without taking from the original. And this is their value (the use which can be exchanged) and can be expressed in money or other exchanges. Intellectual property can be copied without taking the substance or the thing at hand and then re-used, or augmented and taken possession of as a new idea. The danger of merely copying though is the return to his earlier worries about the mechanism of the human, the bypassing of Spirit and the loss of relations to others:

In the case of works of art, the form which tangibly represents the thought in an external medium is, as an object [*Ding*], so distinctive a product of the individual artist that any copy of it is essentially the product of the intellectual [*geistigen*] and technical skill of the copyist. In the case of a literary work, the form which makes it an external thing [*Sache*], as with the invention of a technical device, is of a mechanical kind. For with a literary work, the thought is represented not in concrete depiction but only by a series of discrete and abstract signs, and with a technical device, the thought has a completely mechanical content; and the ways and means of producing such things [*Sachen*], qua things, belong to the category of ordinary skills. (PR§68R)

The use of technology (in its broadest sense) renders such copying easy – thoughts in words is just a matter of putting the words in the right order. Hegel tells us that “Between the extremes of the work of art and the product of manual craftsmanship there are also transitional stages which share the character of one or other extreme to a greater or lesser extent” (PR§68R). So, art is wholly idea, and the literary work is the highest art, whereas the simple marking of a tree

with a sign (or urine) is the lowliest craft. Most activities fall between these but thought emerging immediately, without medium, is the activity human *par excellence* “for he has not immediately alienated these universal ways and means as such but may reserve them for himself as his distinctive mode of expression” (PR§69); even if the owning of the universal aspect, the form, is dependent on proper recognition from others and this cannot be annihilated (as it can with other products and possessions) by theft, consumption, or non-acknowledgement. So, by buying a book, I own all the ideas and value contained therein, I am then the exclusive owner of it. Yet, the author also makes claim to its value (i.e. the ideas contained therein). I can claim the token (the particular book) exclusively, but with plagiarism what I do is claim the type as well and that is a violation of my own and others’ integrity.

With intellectual products, Hegel separates the ownership or right of the owner of the universal from the power of another “to manufacture such products on his own account as things should not become the other’s property” or own the right to reproduce it (PR§69R). This power has the “peculiar character of being that aspect of a thing which makes it not merely a possession but a resource” and so we understand owning intellectual property is not only the power to alienate them (sell the patent, give away the book) to a manufacturer or producer who then sells copies of these things. The universal value of the product remains with the inventor/author (patent, copyright and so on). Hegel seems to see the problem with mass production and the individual production of ideas and value. Private property seems to be annulled when we no longer need matter to produce. What distinguishes these products is that they are not the satisfaction of a need or object of a desire, but are a “resource” which gives the product a sort of reusable, general character. A book is not the actual thing in front of you, but the ideas it contains (so different editions are the same book), whereas different tokens of a coffee pods are not the same thing because consumption destroys them. The consumption of intellectual objects does not exhaust their use so to make them exclusive makes no sense. By thinking of intellectual property as supplementary to our other legitimations of property, we distort it as a resource for the betterment and progress of Spirit and civilization. By showing that intellectual property is property essentially as it is, that is an alternative to commodity capitalism, we set up new social modes of production that support reciprocity and recognition: the digital profiles being built through digital consumption and on social media. These productions alongside the essays we write whilst at college, the ideas we have, express us in an actualised way and thus have been in and for itself — we can be recognised by not exclusively owing but by sharing.<sup>9</sup> The model most appropriate here is, for consumption and alienation, is the public library, and, for production, the socially collectivist studio or laboratory.

The conceptualization of intellectual property most appropriate to the twenty-first century is as a resource and not dependent on the ownership of rivalrous goods:

Besides, the destiny [*Bestimmung*] of a product of the intellect [*Geistesprodukt*] is to be apprehended by other individuals and appropriated by their representational thinking, memory, thought, *etc.* Hence the mode of expression whereby these individuals in turn make what they have learned (for learning means not just memorizing or learning words by heart – the thoughts of others can be apprehended only by thinking, and this rethinking is also a kind of learning) into an alienable thing will always tend to have some distinctive form, so that they can regard the resources which flow from it as their property, and may assert their right to reproduce it. (PR§69R)

It was perhaps once a matter of rivalrous goods or need for competition to reward the winner, as in the massive amount of research and development required for vaccine production or the paper and ink required for the dissemination of knowledge, but – now – one can easily imagine that being replaced by hyperreal simulation models and digital exchange. Hegel thought the free market and private property were the end of history because goods and matter remained mostly rivalrous. It may not be so anymore. The nature of intellectual products and scientific innovation is a type of theft anyway, a sort of reworking, copying and reproduction. We all squat on the shoulders of giants. Any institution, and include private property here, that hinders the progress of history and Spirit needs to be overcome. Thus, the defence of private property in utilitarian terms or the expression of individual activity, both present in Hegel, in this sphere disappears and explains why it is ultimately honour and not legal protections to which intellectual property must appeal.

The honour claim is only in place because legal frameworks are not yet actualised to defend the welfare consequences in society's where the theft of intellectual property results in the death of innovation and progress. One major virtue of Hegel's theory of private property is, according to Breakey (2010, 117 n. 17), its consistency. Whereas other theories stretch and twist to accommodate non-standard property (such as intellectual), Hegel's theory has a universality that seemingly covers all cases. The above discussion seems to undermine that virtue by assuming that some property should be private and some should be a resource. However, the rationality of property is not in its form but in its underlying structure: it is rational insofar as it supports and maintains individual autonomy and reciprocal equality between individuals. That requires consistency with the underlying form of the concept. To assume the underlying form is private and exclusive is to make a conflationary mistake. It is akin to mixing up the shapes and manifestations of enablers for differently-abled persons. An accessible toilet is the same as a reserved parking spaces in that there is an acknowledgement that for specific individuals to be treated as equal, they require specific support. The former is a communication that the physical space is designed in such a way that it is more suitable for individuals with specific needs (support bars, larger spaces) whereas the latter is an exclusion, all things being equal, so

that persons with specific needs can participate more freely. Differently-abled persons can wait as we all do if a toilet is being used (but given the opportunity it would be good etiquette to leave the accessible toilet vacant) but the parking space is exclusionary in the case that it needs to be left vacant in the case of an individual with specific needs arriving. The rationality here is consistent, equality of opportunity and access, but the particular institution and manifestation is different. However, we all just assume that accessible toilets are exclusive and not to be used by the non-differently-abled, which is not true. We have already seen with Hegel that he does not shy away from using the utilitarian justification of property when exclusion results in promotion of the interests of individuals.<sup>1</sup> Private property is a possible but not universal form of property. The institution is pluralist, some objects are exclusive, some inclusive, and some a resource and this will not fail consistency if the underlying rationality remains the same.<sup>2</sup> With property, societies can and do have different types based on the nature of the thing. Water and air are inclusive property because they are the most basic of needs in that their prohibition would undermine all rational action and self-determination in that as a collective, we must look after them, but they cannot be privately owned.

When economic and social conditions allow, private property can be superseded by collective sharing of a resource and this is the dynamic nature of spirit, what moves it, the coming out of itself into the world. Recognition for the creator is to be protected and for this reason intellectual labour is both the alpha and omega of property – it is where it begins to where it ends, in the individual being-with the community. It is the justification of the exclusionary nature of objects in the individual subjectivity which is so damaging to pluralism: "Property enters reality through the plurality of persons involved in exchange and mutually recognizing one another" (Hegel 1979, 121). "Plurality" of persons does seem to intimate that individualization requires plurality of individuals, but does that mean it essentially necessitates private property. Early historical forms of collective property involved authoritarianism which was Locke's fear, but there is no need to assume when activity has become largely of non-rivalrous goods that authoritarianism follows from collective activity, whether it be production or consumption. To transition from mere convention to rational justification of property takes the justification of moral personality and the idea that moral desert and autonomy require recognition of one's intentions as different from causes in the external world; and it is this which is missing in Locke. The manifestation of will in an external sphere of freedom is a creation of a world on top of a world and meets the requirements of recognition and reciprocity: the library does not require the exchange of money for the recognition of the author. The public library is a model of public ownership that still disseminates individual accountability and one can

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<sup>1</sup> See above p. 3 (PR\$69R) and the idea that commerce and industry require protection.

<sup>2</sup> No economic structural arrangement is ever "pure". Most free market restricts access to drugs and generally has a monopoly on the basics of logistical infrastructure and needs (the UK excepted due to Thatcherite aberrations). Cuba allows for private enterprise even if heavily taxed.

imagine similar creative production studios, publicly funded and democratically oriented, like the spontaneous and free participatory folk music played in the pub. Just publicly fund them. And this explains why in Hegel his theory of property does not see primary acquisition as a particular problem and in his successor, Marx, primary acquisition becomes primitive accumulation and is not some prehistoric, lost moment, but the very origin of capitalist relations in systems of enclosure. Locke's justification seems ideological on this reading and rightly so (Birdal, 2007). Digital matter brings to the fore the collectivised tradition and when we have that, rather than the individualised merit system of the privatised commodity, then we have a new way to self-understand. Hegel's thinking on intellectual property and the idea of honour in one's contribution to a debate, to a tradition, to making a difference give us a model of new collectivised forms of production. These new forms should be democratically oriented and socially collective with the opportunity and possibility of individual recognition. Spirit expresses itself rationally in the individual but is not individual in that intellectual ideas are products of collaboration and historical development and so fundamentally social in nature; this means private property is to be superseded by social production.

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