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**The socio-spatial composition of property
relationships**

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PhD

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Declaration

I declare that the work presented in this thesis is my own.

Candidate Harley Ronan

Signature

Date 19.02.22

Abstract

This thesis presents a novel analysis of the composition, endurance and effects of property relations through the utilisation of the approach and methods of actor-network theory ('ANT'). As such, it challenges the limitations of much contemporary property theory, and argues that 'property' has not been sufficiently understood within, through, or by, the presumptions within which orthodox property theory remains predicated. The argument is made that contemporary property theory still tends to be characterised by simplistic ontological assumptions which posit property as a coherent social or legal relationship between humans in respect of objects. Further, property theory as developed in legal scholarship views law as a foundational source of property, and presents space and time as inert, pre-existing contexts onto which property is mapped. In contrast, this thesis builds on recent work which explores property in socio-relational and socio-spatial terms: that is, how property takes form, endures and has effect, and is constituted and constituting, within social ordering.

Although ANT has been deployed by legal scholars investigating the extension of property forms into contexts other than land (notably intellectual property), it has not, until now, been used in the context of property in land, or directly into confrontation with the orthodoxies of property theory. In contributing to property theory, this thesis reveals how 'subjects' and 'objects' are effects of network formation rather than pre-given constituents; how non-humans participate in the construction and dynamics of property; how law is contingent rather than foundational; and how space and time are constructed in the processes of making property. Further, by imputing 'logics' onto processes of network formation, this thesis highlights property's variable effects on social life, reinforcing suggestions that, while property is central to contemporary forms of exploitation, it is capable of being remade in alternative, progressive and imaginary ways.

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Chapter 1

Introduction

1.1 Introduction

This chapter begins by outlining the scholarly context from within which property theory emerges and, in particular, the ontological assumptions which are evidenced in orthodox property scholar scholarship. I argue that in order to be able to explore and understand 'property' more comprehensively, it is essential to find a means through which to reveal and contest these assumptions: in particular, the foundational ontological move of property as distinguishing between the actively *constitutive* role of subjects and the passive receptive position of objects. I contend that this account of property suits both a legal analysis and a political system based on privileging individuated property ownership to the extent that it has become 'naturalised' and is not recognised as culturally specific. The chapter then moves on to consider methods which might be brought to bear to reveal a) the partiality of this account of property, and b) the potential in not only thinking property differently, but in exploring how property, in its socio-spatial setting, emerges and endures. What, in effect, might a different conception of property enable? Finally, this introductory chapter details and summarises the form the thesis takes, including the use of three case studies to explore and develop the potential in using actor-network theory ('ANT') for the development of what I call a 'socio-spatial' analysis which allows us to engage with the full complexity of how property is composed.

1.2 Scholastic context and challenges

In contrast to more conventional accounts of property theory, which I explore in more detail in Chapter 3, recent scholarship has emphasised that property is 'a relational effect, performed into being through the alignment of human and nonhuman

resources’;¹ as ‘a set of networked relations in which the subject is embedded’;² and as an active process ‘constituted by those who live it’.³ This thesis builds on such research by developing an approach to the study of property informed by ANT to explore how property is a *networked effect*, produced and sustained through the connections of material, spatial and temporal dynamics.

I will argue that this approach is necessary because property scholarship has been slow to challenge its ontological assumptions. As Alain Pottage argues, orthodox property theory is sustained by a simplistic distinction between persons and things.⁴ Through this distinction, social life is reducible to interactions between subjects against a background of objects.⁵ This ontological lens has helped naturalise a conception of property that amounts to subjects’ domination of objects, set against a universal backdrop of linear time. Kevin Gray, for example, makes the extraordinary claim that

Deep in the human psyche is some primal perception of an inner rightfulness inherent in certain kinds of private proprietary claim – even where the claims in question relate to incipient or inchoate opportunities of exploitation and enjoyment. We are continually prompted by stringent, albeit intuitive, perceptions of ‘belonging’. Accordingly there is widespread recognition of the wrongfulness of certain misappropriations of resource and opportunity. In this context we are still not far removed from the primitive, instinctive cries of identification which resound in the playgroup or playground: “That’s not yours; it’s mine.”⁶

However, the claim that appropriation, exploitation and individual control are inevitable features of the human psyche, and of property, immediately collapse when one steps outside of the subject-object distinction that is inherent to Western liberal-legal thought.

As Davies puts it,

¹ Nicholas Blomley, ‘Making Space for Property’ (2014) 104 *Annals of the Association of American Geographers* 1291, 1296.

² Davina Cooper, ‘Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property’ (2007) 32 *Law and Social Inquiry* 625, 636.

³ Sarah Blandy, ‘Collective Property: Owning and Sharing Residential Space’ in Nicholas Hopkins (ed), *Modern Studies in Property Law - Volume 7* (Hart 2013) 153.

⁴ Alain Pottage, ‘Instituting Property’ (1998) 18 *Oxford Journal of Legal Studies* 331.

⁵ Pottage, ‘Instituting Property’ (n 4) 337.

⁶ Kevin Gray, ‘Equitable Property’ (1994) 47 *Current Legal Problems* 157, 159.

if those of us immersed in liberal thought shift perspective even slightly, we can see that we are in fact all immersed in a world of things, that we are completely inter-dependent with it, and that in the end we are also ourselves things.⁷

Moreton-Robinson, for instance, discusses the processual nature of indigenous ontology in which land is constitutive of the subject. She highlights that appeals to naturalness by those who seek to explain property as little more than individual appropriation, are, within certain contexts, 'inextricably tied to white possession and power configured through the logic of capital and profound individual attachment'.⁸ Such concepts are, then, culturally and politically contingent. Accordingly, Pottage contends that there is naivety – perhaps even complacency – in claims as to the ubiquity of property in a particular form and the ontological elements it is both premised on and reinforces.⁹

However, the enduring dominance of specific sets of subjects, objects and rights in our understandings of property has precluded property scholars from questioning and analysing property's relational and ontological basis. This reluctance has cemented and reproduced assumptions about what property inevitably *is* – and also what property can *be*. Gray's claim as to the psychology of property, noted above, is characteristic of such assumptions: property concerns relationships of control over things, and as such relationships are inherent features of human subjectivity (because human subjectivity contains an inherent desire to appropriate), our property forms are both natural and inevitable. Accordingly, much property scholarship continues to pay little attention to the processes and devices which *constitute* and compose property – including how subjects, objects and temporality are themselves effects of the processes that make property, rather than its pre-existing constituents or contexts. In

⁷ Margaret Davies, 'Material Subjects and Vital Objects — Prefiguring Property and Rights for an Entangled World' (2016) 22 *Australian Journal of Human Rights* 37, 44.

⁸ Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (University of Minnesota Press 2015) xxi; see also Huri Islamoglu (ed), *Constituting Modernity: Private Property in the East and West* (IB Tuaris 2004).

⁹ Pottage, 'Instituting Property' (n 4) 340.

failing to question how property is constituted, much property scholarship also neglects to question how property relationships *endure*. Once the constitution of property is problematised, its contingency becomes apparent, and its endurance and temporality become questions rather than inevitable consequences.

In this thesis, I seek to displace the assumptions of orthodox property theory, and therefore much contemporary property scholarship, by interrogating property's relational basis as a networked effect. I argue that exploring property as a networked effect reveals that property does not conform to the classical image of rights held by subjects over things. In developing and evidencing this argument, I intend my thesis to contribute to property scholarship in the following ways.

1.2.1 Property's relational ontology

Firstly, this thesis contributes to property theorists' calls for more detailed explorations of property's relational ontology, thus helping to continue to displace and problematise the foundational subject-object distinction in orthodox accounts of property. Specifically, it responds to Davies' suggestions that it is necessary to remove the traditional ontological assumptions underlying most property theory – 'the self-owning, autonomous subject' – and instead 'situate property in a more mobile inter-subjective and emergent dynamics.'¹⁰ Further, it responds to Verdery and Humphrey, who contend that, in analysing property, it is necessary to explore how the 'person' and 'thing' integral to conventional understandings of property come to be constituted as 'persons' and 'things', and how property's effects follow from the 'the ways in which property itself is constituted as real'.¹¹ It also responds to Blomley's call for an analysis

¹⁰ Davies (n 7) 51.

¹¹ Katherine Verdery and Caroline Humphrey, 'Introduction: Raising Questions about Property' in Katherine Verdery and Caroline Humphrey (eds), *Property in Question: Value Transformation in the Global Economy* (Berg 2004) 2.

of property which explores how property is a relational effect, created and sustained by the connection of human and non-human elements.¹²

My thesis contributes to these calls by interrogating property as 'a networked effect'. Utilising ANT, I approach property as a phenomenon which is formed and held stable by the interaction of the three dimensions of materiality, spatiality and legality. ANT posits the social as constituted by networks of 'heterogeneous' elements: networks are the contingent outcome of a patterned ordering of mixed elements which involve both human and also non-human actors.¹³ Critically, ANT maintains that agency is distributed among a confederation of non-human actors, and such non-agency shapes and imbues networks with particular force, characteristics and capacities.¹⁴ I claim that my approach develops our understanding of property's relational ontology in the following ways:

- i) This research provides evidence for and argues that the categories of 'subject' and 'object' are outcomes of the processes that constitute property rather than pre-existing distinctions. Davies suggests that property relationality, subjects, and objects are not prior to connections between human and non-human worlds.¹⁵ My research reveals *how* such distinctions are produced by, and follow from, network formation. This thesis therefore argues that the features of 'subjects' and 'objects' which sustain conventional explanations of property are not intrinsically associated with humans and non-humans. My

¹² Nicholas Blomley, 'Performing Property: Making the World' (2013) 26 *The Canadian Journal of Law & Jurisprudence* 23.

¹³ John Law, 'Notes on the Theory of the Actor-Network: Ordering, Strategy, and Heterogeneity' (1992) 5 *Systems Practice* 379; Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford University Press 2005); Annemarie Mol, 'Actor-Network Theory: Sensitive Terms and Enduring Tensions' (2010) 50 *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 253.

¹⁴ Jim Johnson, 'Mixing Humans and Nonhumans Together The Sociology of a Door-Closer' (1988) 35 *Social Problems* 298; Diana Coole and Samantha Frost (eds), *New Materialisms. Ontology, Agency, and Politics* (Duke University Press 2010); John Law and Annemarie Mol, 'Notes on Materiality and Sociality' (1995) 43 *The Sociological Review* 274.

¹⁵ Davies (n 7) 53.

analysis of how subjects and objects are produced by property also sheds light on how patterns of normativity inherent to property relationality are produced. Rather than external norms that operate *upon* human subjects, my analysis suggests that normativity takes effect by *producing* the subject in distinct relational arrangements.

ii) My research reveals how property is constructed and sustained by the agency of non-human elements. ANT attends to how non-human actors enter into the construction and endurance of networks, and my analysis sheds light on how property emerges as an effect of networks constituted partly by the agencies and dynamics of non-human actors. I suggest that these non-human elements, despite their lack of humanity, produce human consequences, and I claim that my approach highlights that property, individuals and community are dependent upon and constituted by non-human things.

iii) My approach enhances our understanding of the role of space in the production of property. While developing a spatial understanding of property and exploring the role of space in property's formation is certainly not novel, I contend that questions remain in current scholarship as to how space plays a role in constituting property. Keenan argues that space 'holds up' property, and Cooper argues that space is 'encoded' with property norms.¹⁶ My analysis, however, develops these accounts by exploring how space becomes 'loaded' with particular agencies and capacities, thus shaping and affecting the uses and users caught up in it.

vi) My approach enhances our understanding of the role of law in property's relational ontology. I suggest that conventional property scholarship inflates the

¹⁶ Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge 2015); Cooper, (n 2).

role of law, too often positing that law is a foundational ‘source’ of property. In contrast, my approach explores how law is a contingent actor in network formation, rather than determinative. Following the work of Cloatre and Cowan and Hunter, I explore how legal actors and meanings enter into the production of property networks. Cloatre and Cowan contend that, rather than study law in its ‘institutional setting’, it is necessary to explore what Ewick and Silbey describe as ‘legalities’– ‘the meanings, sources of authority, and cultural practices that are commonly recognized as legal’.¹⁷ Thus, rather than a foundational actor from which normativity and relationality flows, legalities engender fluid and ambivalent effects. Cloatre and Cowan suggest that legalities are given form and endurance through materiality. Similarly, Hunter explores how leases are ‘socio-legal objects’ which participate in the building of the social and which can be ‘invoked’ to format relationships between parties – relationships which do not mirror the lease’s ‘legal’ content.¹⁸ Following Cloatre and Cowan and Hunter, I suggest that, if property is a networked effect, the production of legalities is part and parcel of the production of networks, and that legal objects format such networked relations. This enhances property scholarship by exploring the provisional and contingent role of law in the production of property.

v) Finally, my analysis develops our understanding of the relationship between property and temporality. I criticise orthodox property scholarship’s assumptions as to the nature of time as a ‘context’ to social life which unfolds in a linear direction. Grabham suggests that time is the *outcome* of ‘a set of techniques

¹⁷ Emilie Cloatre and Dave Cowan, ‘Legalities and Materialities’ in Andreas Philipopoulos-Mihalopoulos (ed), *Research Handbook in Law and Theory* (Routledge 2019) 439. My emphasis.

¹⁸ Caroline Hunter, ‘Solar Panels, Homeowners and Leases: The Lease as a Socio-Legal Object’ in Dave Cowan and Dan Wincott (eds), *Exploring the ‘Legal’ in Socio-Legal Studies* (Palgrave Macmillan 2015).

constituted by and within a network', produced by the 'hooking together' of non-human elements.¹⁹ I build on the work of Grabham to suggest that, rather than the *context* of property, time is also produced in the processes of network formation which constitute property.²⁰ To that end, I claim that, if property can be understood as a networked effect, these networks create the temporalities needed to give effect to property. This moves property scholarship beyond outmoded understandings of time, and reveals how property can engender varying forms of 'temporalization'. This forms part of a broader claim in this thesis as to the mutually constitutive nature of space and time.

1.2.2 The 'work' of property

I turn now to outline how this thesis contributes to our understanding of property's ability to format social life. Property scholars have attended to the variability of property's effects through differing means. For Davies, 'property concerns individuals and communities: how they are formed, how they live together, and how they use their resources. On this understanding, property brings into play an entire social order'.²¹ For van Holstein, property does 'different kinds of work with both inclusive and exclusive effects'.²² Cooper explores 'the productive life of property', and calls for analysis of 'the work performed by property practices within a community'.²³ The contrasting effects of property's 'work' are visible across property scholarship. On the one hand, scholars such as Thorpe analyse how property can construct relationships of belonging.²⁴ Similarly, Sargisson examines how property relationships can be re-cast so as to

¹⁹ Emily Grabham, *Brewing Legal Times: Things, Form, and the Enactment of Law* (University of Toronto Press 2016) 26, 34.

²⁰ Grabham (n 19).

²¹ Margaret Davies, *Property: Meanings, Histories, Theories* (Routledge 2007) 2.

²² Ellen Van Holstein, 'Transplanting, Plotting, Fencing: Relational Property Practices in Community Gardens' (2016) 48 *Environment and Planning A: Economy and Space* 2239.

²³ Cooper (n 2) 627.

²⁴ Amelia Thorpe, "'This Land Is Yours": Ownership and Agency in the Sharing City' (2018) 45 *Journal of Law and Society* 99.

'transgress and disrupt the egoistic self of possessive individualism'.²⁵ Further, Blandy has examined how the dynamics of a cohousing site 'constitute a different form of property incorporating collective self-governance'.²⁶ These cases show how property can be re-cast so as to be productive of a different subjectivity and collective life.

On the other hand, as Blomey notes, property can re-format the subject to different ends, underpinning novel forms of neoliberal exploitation.²⁷ As Graham argues, the liberal legal conception of property carries with it a powerful universalism: rights are capable of being created over any 'thing' regardless of that thing's specificity.²⁸ This extends to human subjects. In helping construct the very categories of subject and object, property can be made in a manner which enables humans to be situated as the objects of property and value creation. Maurer explores, for example, how financial property forms 'redefine the subject of property not as the bearer of rights but as a risk profile subject to the disciplinary practice of insurance'.²⁹ For Maurer, such property forms facilitate worrying forms of exploitation: 'At stake is not merely a new definition of property but a new definition of personhood and a new form of governmentality. Rights and property give way to risk and insurance.'³⁰ In privileging the idea that property relationships flow from human subjects, much property theory omits to explore how property can be re-cast to produce such novel forms of exploitation.

I suggest that our understanding of *how* property constitutes individuals, communities and social order in the varying ways described above is limited by traditional property theory's ontological assumptions. By privileging the human, and positing that property

²⁵ Lucy Sargisson, 'Friends Have All Things in Common: Utopian Property Relations' (2010) 12 *British Journal of Politics and International Relations* 22, 33.

²⁶ Blandy (n 3) 172.

²⁷ Nicholas Blomey, 'Un-Real Estate: Proprietary Space and Public Gardening' (2004) 36 *Antipode* 614.

²⁸ Nicole Graham, *Landscape: Property, Environment, Law* (Routledge 2011).

²⁹ Bill Maurer, 'Forget Locke? From Proprietor to Risk-Bearer in New Logics of Finance' (1999) 11 *Public Culture* 47, 366.

³⁰ Maurer (n 29) 366.

relationships simply flow from subjects, property theory fails to explore the variable and potential effects property is capable of producing. I will argue that my approach to property as a networked effect moves property beyond conventional assumptions as to property's forms, and better places us to explore property's variability and potential. Such an approach, I suggest, entails how property is constituted in novel arrangements of exploitation – but also how property might be made anew and in a more progressive and reciprocal form.

As such, this thesis follows Davies, who argues that exploring the relational ontology of property is integral to understanding how property formats social life, but also how 'alternative property practices'³¹ might be realised which engender relationships underpinned by alternative registers of value such as use, encounter and mutual support:

connectivity between the human and non-human world is ontologically prior to and foundational of human relationality. There is an ethical dimension to this connectivity which is, simply, that the goal of long-term human and planetary sustainable flourishing demands a non-exploitative understanding of property, one where objects are not categorised according to who owns them, but in a way that recognises their significance in an ecology of both living and non-living things. This involves a re-physicalisation of property, the opposite movement to its de-physicalisation throughout the liberal era.³²

My approach enables exploration of what Davies describes as the 'pre-figuring' of property alternatives: 'to imagine the future with an eye on the present' and to 'oscillate...between imaginings and practice, and to find resources within the complex ideational resources available within Western culture to support alternative narratives'.³³ Critically, on realising alternative property practices, Classens suggests that 'taking seriously the prospect of a nonanthropocentric property paradigm means,

³¹ Anne Bottomley, 'Property's Competing Values: The Public House Re-Cycled as "Community Asset"' (2020) 12 *Journal of Property, Planning and Environmental Law* 251.

³² Davies (n 7) 52.

³³ Davies (n 7) 55.

minimally, a revision to the axiomatic principle of the contemporary anthropocentric property paradigm that property is a relation between people in regard to land.³⁴

Two points follow from this. Firstly, much orthodox property theory has, in mirroring conventional law and political theory, been predicated on property in land. This focus on property rights in and through land has formed an enduring (and perhaps intransigent) core to property theory. In as far as ANT has been utilised by legal scholars exploring property, it has been in those contexts in which property has been mapped onto emergent commercial or social potential to render a particular effect (that of control and exploitation through the vesting of ownership in 'property'). ANT has been deployed to explore the development of intellectual property,³⁵ for instance, but, to date, little ANT scholarship has focused on the more conventional site of property in land.³⁶ It is not simply a matter of disrupting the paradigm, but also reassessing it. This thesis contributes to this. Secondly, by exploring the heterogenous actors and means through which property is constituted, this research enables a move beyond the trappings of the subject-object divide and the property narratives it sustains, enabling instead a recognition of the possibility that 'land is more partner than property'.³⁷

1.3 Structure of thesis

In Chapter 2, I outline the methodological framework of this and research design, and I reflect upon the development of both my methodology and my use and choice of case

³⁴ Michael Classens, 'The Matter of Matter: Making Property in the Holland Marsh' (2018) 31 *Society and Natural Resources* 246, 256.

³⁵ Michael Madison, 'IP Things as Boundary Objects: The Case of the Copyright Work' (2017) 6 *Laws* 13; Alain Pottage, *Figures of Invention: A History of Modern Patent Law* (Oxford University Press 2010).

³⁶ With the exception of Dave Cowan and Helen Carr, 'Actor-Network Theory, Implementation, and the Private Landlord' (2008) 35 *Journal of Law and Society* 149. For an ANT-inspired approach to shared ownership, see also Dave Cowan, Helen Carr and Alison Wallace, *Ownership, Narrative, Things* (Palgrave Macmillan 2018).

³⁷ Classens (n 34) 256.

studies. I set out how the following research questions, and explain how they were identified from the literature:

1. Can property be understood as a networked effect?
2. How are networks productive of property relationships? What does this mean in practice?
3. How do materiality, spatiality and legality interact to form networks of property?
4. How are the subjects and objects of property produced through processes of network formation?

Chapter 3 explores the extent to which foundational ontological assumptions about property relationships still underpin and limit much of the scholarship on property theory: namely, the universality of the subject-object distinction and an understanding of time as a linear, universal process. The first part of the chapter explores how the subject-object distinction came to shape dominant conceptions of property and property theory in Western scholarship. It argues that problematising property's naturalness, and revealing how it might be otherwise, depends upon recognising that our distinctions between person and thing, nature and culture, are constructions, fabricated through a variety of legal and discursive techniques.³⁸ The second part of the chapter explores how contemporary property theorists have sought to analyse the formation and endurance of property relationships in a struggle away from the seeming intractability of the dominant paradigm. However, I argue that contemporary property theory has yet to adequately depart from, or escape, the foundational subject-object distinction. In reviewing contemporary property theory, I identify four areas for

³⁸ Alain Pottage and Martha Mundy (eds), *Law, Anthropology, and the Constitution of the Social: Making Persons and Things* (Cambridge University Press 2004); Fritjof Capra and Ugo Mattei, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (Berrett-Koehler 2015); Roberto Esposito, *Persons and Things: From the Body's Point of View* (Polity Press 2015).

development necessary to move away from a subject centred understanding of property and which inform my research questions: the agency of materials, the role of space, the decentering of law, and the deployment of alternative methodological tools.

In Chapter 4, I build on these areas for development, and set out an ANT approach to the study of property's relational ontology. I introduce how thinking in terms of property's 'logics' enables a distinction between differing property forms. Bottomley and Moore suggest that things have multiple 'value trajectories' or 'logics' around and through them.³⁹ I build on their work, along with that of Law and Mol's, to argue that if the composition of property can be apprehended as a process of network formation, different *logics of property*, or different logics of networking, are productive of different forms of property and of collective life.

To make a distinction between differing 'logics' of property, I utilise the work of Henri Lefebvre. Lefebvre emphasised that differing conceptions of space gave rise to very different forms of social life. In particular, Lefebvre's work emphasises that different logics or modes of ordering *space* are productive of different social effects. A key distinction for Lefebvre was abstract space and lived space. He argued that the instituting of abstract space gives rise to an alienating form of social existence. In contrast, what he describes as the making of lived space can give rise to emancipatory and meaningful ways of relating to one and other. I make a distinction between an abstract logic of property, on the one hand, and a lived logic of property on the other. Abstract property, I suggest, is productive of an alienating lived experience. Lived property, I suggest, articulates relations around inhabitation, use and negotiation.

³⁹ Anne Bottomley and Nathan Moore, 'Matters of Ownership: A "People's Port" for Dover?' (2013) 64 Northern Ireland Legal Quarterly 365, 375. See also Bottomley (n 31).

Chapters 5, 6 and 7 are case study analyses utilising the ANT framework set out in Chapter 4 to unpick the socio-spatial composition of property, to and explore the contrasting effects property's various logics have on social life.

In Chapter 5, I explore the composition of a distinct form of abstract property: the residential mortgage-backed security ('RMBS'). The RMBS enabled large swathes of mortgage obligations to be traded as abstract income rights. The RMBS exemplifies the phenomenon of financialisation, in which finance capital has come to play an increasingly dominant role in contemporary capitalism. While universalism and de-physicalisation are integral to modern property thought, finance supercharges this relationship, translating a multitude of individual, specific homes and lives into an abstract income stream that can be traded with ease. As Maurer suggests, financial property forms such as the RMBS implicate people as the objects of property.⁴⁰ The RMBS is a useful case study through which to explore the heterogenous engineering of materiality, spatiality and legal form that produces and sustains property; and, in presenting the RMBS alongside the analysis in Chapters 6 and 7, highlights the contrasting effects that can follow from property's networked dynamics.

In light of the research questions, the analysis of the RMBS in Chapter 5 chapter focuses on how, in the process of making property, the subjects, objects and time of property are produced. Through my analysis of the RMBS as a networked effect, I suggest that abstract property forms such as the RMBS distort the understandings of orthodox property theory: firstly, humans are constituted as the objects of property. Secondly, I contend that temporality follows from the making of property, rather than forming a universal and linear context. The analysis of the RMBS highlights how, through processes of network formation, distinctions between present and future became blurred, enabling future value to be accessed contemporaneously.

⁴⁰ Maurer (n 29).

Chapter 6 brings an alternative focus to property's construction of subjects and objects as identified in the previous chapter. Chapter 6 examines the making of what I described in Chapter 4 as a 'lived' logic of property: property relationships which prioritise encounter, use and the specificity of land. The chapter explores the composition and effects of property relationships at Copper Lane Cohousing in London. Deploying the approach developed in Chapter 4 and utilised in Chapter 5, I examine how, through the interaction of materiality, spatiality and legal form, property emerges as a contingent networked effect. Firstly, following Latour and others, I analyse how Copper Lane's residents are constituted as subjects by processes of network formation. Rather than property acting *upon* subjects, I contend that property's normative nature takes effect at Copper Lane through the *production* of the subject. Following Davies, I argue that my approach problematises the subject-object divide inherent to property theory in that (1) subjects are effects of property rather than pre-givens and (2) objects at Copper Lane are akin to subjects in that they play a central role in the network constituting property.

Secondly, drawing on Cloatre and Cowan, I consider how the making of legality forms part of network construction at Copper Lane. I suggest that the residents' understandings of law in flexible and uncertain terms (particularly in respect to their company minutes and service charge obligations) imbues the network with stability. While the residents' use and understanding of law does not accord with the expectations of lawyers, I argue that the specificity of Copper Lane's legality helps produce belonging and normativity (which, incidentally, do not follow from the technical content of the legal devices they deploy). Finally, the chapter considers the failures and contradictions of Copper Lane. My analysis reveals how conventional property logics sit alongside lived property, raising questions as to whether the creation and endurance of alternative property forms is contingent upon the enduring work of the individuals who create them. This is explored through participants' accounts of the first sale of a home at Copper Lane, and the prospect of new residents joining.

Chapter 7 pursues the theme of endurance highlighted in the previous chapter and explores how property relationships are sustained at Springhill Cohousing in Stroud, England. This is a well-established cohousing site that, despite the absence of many of its original inhabitants, continues to be characterised by a distinct lived logic of property that has endured. In particular, the chapter explores the role of leases in generating and sustaining property relationality. Following Hunter, I explore how the lease is a 'socio-legal object' that enters into the dynamics of network endurance. I contend that the lease shapes the network by helping to maintain a distinction between residents – as subjects of property – and 'Springhill' as an entity. I pay particular attention to a leasehold covenant to 'comply with the Principles of Co Housing', and following Blandy, explore how the lease can be invoked to produce outcomes and behaviours not envisioned by its technical legal content. The chapter also reintroduces the theme of time identified in Chapters 5 and 6. In Chapter 7, I explore how space and time are mutually constitutive of property. Following Grabham and Latour, I suggest that space at Springhill plays an important part in the network's dynamics by creating a temporality or inertia that obliges reciprocity between residents. I contend that combining temporality with property theory and ANT helps us understand how networks can constitute individuals as subjects of property in an enduring manner.

The thesis concludes by exploring the relationship between property's ontology and its politics. Understanding how property relationships are made and sustained is integral to understanding how other forms of home might be realised.

Chapter 2

Research design, context and methodology

2.1 Introduction

In this chapter, I set out the methodological approach of my research. In this thesis, I argue that property theory remains overly reliant on the subject-object distinction and the capacities of legal form; that it fails to appreciate the role of materiality and spatiality in property's dynamics; and is characterised by a simplistic understanding of temporality as the backdrop to property. To move beyond these limitations, this research seeks to understand property as a networked effect. Following Davies and others, I develop an approach to understand the 'connected ontology' of property, and unpick how it emerges 'from relations between human and non-human spheres'.¹ In doing so, my approach contributes to property theory by displacing the ontological assumptions as to the role of human agency and legal form in the production of property. Instead of a coherent social or legal relationship, my approach reveals how 'property' is an *outcome* of connections, translations and displacements of human and non-human elements. More specifically, my approach upsets the assumptions as to the constituent 'parts' of property: human subjectivity, temporality, and legality are not 'ingredients' of property, but emerge as *effects* of the processes of network formation which constitute property.

Further, I claim that understanding property through the metaphor of the network sheds light on the variability and expansiveness of property. As detailed in Chapter 3, there is a persistent and unerring assumption that human subjects' domination and control of

¹ Margaret Davies, 'Material Subjects and Vital Objects — Prefiguring Property and Rights for an Entangled World' (2016) 22 *Australian Journal of Human Rights* 37, 52.

objects, given stability through the buttresses of law, is the defining feature of 'property'. I suggest that this assumption not only clouds our understanding of property's relational composition, but also obscures our understanding of property's *variability*. Accordingly, by unpacking property's relational ontology, this thesis also explores how property is capable of constituting varying social effects. On the hand, property can be – and is being – articulated in variations that facilitate novel – and often worrying – forms of exploitation of both humans and objects. On the other hand, there is evidence of property being calibrated in ways that seek to re-define relationships between subjects and objects which emphasise mutuality and connection, rather than withdrawal and exploitation. I claim that understanding property's connected ontology enables understanding of property's politics and potential – or the 'range of relationships between humans and the world' that might be articulated.²

Two aims therefore underlie this research. Firstly, to render visible the processes and connections that constitute property relationships. Secondly, to explore the variable 'work' of property and the contrasting forms of social life it is able to produce. In what follows, I set out the design of this research, the research questions, how a theoretical framework was developed, and the case studies and methods relied upon.

2.2 Research design

2.2.1 Context and initial questions

The design of this research was inductive in nature. The origins of the project lie in my experience as a master's student. From 2014 to 2016, I completed a master's degree in Urban Studies at six universities in four European capital cities under the auspices of the Erasmus Mundus consortium. During my studies, I was struck by how the same trends in urban life were apparent across differing European cities: escalating housing

² Davies (n 1) 37.

costs, the proliferation of glass and steel towers, the creation of ‘cultural quarters’, and the expulsion of uses and users not conforming to the vision of businesses and local government. In short, I was struck by the presence of homogenising forces in geographically and politically distinct places which operated to pacify urban space.

This observation was pursued in the development of my master’s thesis. I argued that the ongoing homogenisation of cities was in part an outcome of attempts to rely upon human subjects’ experience and perception of space as a variable in value creation. This trend, I claimed, was symptomatic of contemporary capitalism’s shift to a form of ‘biocapitalism’. Biocapitalism, Hardt and Negri argue, is characterised by ‘the production of forms of life’ as ‘the basis’ of value creation.³ To that end, within biocapitalism ‘the *object* of production is really a *subject*, defined, for example, by a social relationship or a form of life’.⁴ In my master’s thesis, I argued that the creation of ‘cultural quarters’ and other distinct, branded locales within cities (often subject to bespoke legal and governance arrangements) constituted a strategy to target users’ perception of (and consumption within) such spaces so as to increase commercial property values.

I developed this argument by exploring one particular form of governance: Business Improvement Districts (‘BIDs’). To my surprise, my findings suggested that in so-called ‘global cities’, BIDs facilitate connections between investors who own assets within the BID and the governance of such space, enabling investment fund managers to shape how urban space is governed. I therefore argued that BIDs play an important role in realising investors’ expectations and wishes as to the management of urban space. This, I suggested, in part accounted for the homogenising trends in European cities: fund managers were utilising the BID mechanism to gain purchase on the surrounding environments of their investments, lobbying for the creation of urban environments

³ Michael Hardt and Antonio Negri, *Commonwealth* (Harvard University Press 2009) 132.

⁴ Hardt and Negri (n 3) 133. Original emphasis.

which are tightly controlled spaces of consumption so as to increase the value of their investments within the district. To that end, I argued that the manipulation of urban experience was a variable in the value of investors' holdings in cities.

On the other hand, I was also struck during my studies by how alternative forms of urban life were flourishing across Europe. I visited numerous projects across European cities which attempted to redefine access to urban resources and relationships between inhabitants: housing collectives and community land trusts; collective forms of food supply and production; and alternative forms of infrastructure and social centres. The largest of these involved sites such as Metelkova in Ljubljana, Slovenia, and Christiania in Copenhagen, Denmark. These sites are entire autonomous enclaves, attempting to operate outside formal state legal structures, described by Ntounis and Kanellopoulou as '*sui generis* legal systems' and 'jurisdictional heterotopias'.⁵

My interest in how urban life is capable of re-invention – yet also a target for novel forms of value creation – was reflected in my initial PhD proposal in 2016. I proposed to explore how 'urban commons' are being constructed in respect of housing, infrastructure and public resources, and how 'forces of enclosure and control circumvent these practices and exacerbate socio-spatial inequalities.' However, upon completing an initial literature review in 2016, the object of analysis and theoretical framing were both adapted. Firstly, property – as a relational phenomenon – became the central focus of my research. During my master's thesis, property had been a tangential theme. In that project, I suggested that BIDs 'amplified' investors' property rights in that ownership of a property within the BID facilitated influence over the broader locale. Accordingly, what was merely ownership of a share or income right became a power to shape how the object of the investment was managed. However, it

⁵ Nikos Ntounis and Evgenia Kanellopoulou, 'Normalising Jurisdictional Heterotopias through Place Branding: The Cases of Christiania and Metelkova' (2017) 49 *Environment and Planning A: Economy and Space* 2223, 2230.

subsequently struck me that this was not so much the *amplification* of pre-existing relationships but rather the *creation* of a distinct form of property. Property, Gray and Gray suggest, 'is not a thing or resource, but rather a power relationship...The term "property" is simply an abbreviated reference to a quantum of socially permissive power exercised in respect of socially valued resource'.⁶ To that end, the investors' ability to manipulate urban governance through the BID represented, in part, the *creation* of power in respect of a resource. This was not amplification of a pre-existing right, but something entirely new. Accordingly, I concluded that property was the mechanism through which novel forms of value creation are taking form.

Secondly, upon reviewing the commons literature in greater detail, I concluded that the concept presented difficulties as a methodological approach. As Ela outlines, in recent years, researchers in urban studies have explored 'commons' 'as a category of analysis, an institution, and a social practice', varying the norms and practices of private property by establishing systems of governance, and rights of access, which can constitute sites or objects 'as a shared community resource'.⁷ While the political focus of the commons was attractive, I concluded that commons scholarship remains overly focused on the establishment of rules and protocols between subjects for the management of collective resources. While scholars such as Ostrom emphasised the need to explore 'field settings', her key focus was on how individuals 'can organize and govern themselves to obtain continuing joint benefits when all face temptation to free-ride, shirk, or otherwise act opportunistically'.⁸ This did not chime with my own experience of visiting projects across Europe which could be described as 'commons'. Rarely, if ever, did the creators of these sites suggest that the functioning of the project

⁶ Kevin Gray and Susan Francis Gray, 'Private Property and Public Propriety', *Property and the Constitution* (Bloomsbury Publishing 1999) 12.

⁷ Nate Ela, 'Urban Commons as Property Experiment: Mapping Chicago's Farms and Gardens' (2016) 43 *Fordham Urban Law Journal* 247, 251.

⁸ Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press 1991) 29.

was attributable to the rational, express creation of rules and governance arrangements. Commons scholarship, I concluded, imposed an artificial rationality in its analysis of such projects.

This conclusion was reinforced by my initial literature review, which led me to the work of property theorists such as, among others, Margaret Davies, Sarah Blandy, Davina Cooper, Sarah Keenan and Nicholas Blomley. These scholars emphasise the need to explore the *construction* of property in processual terms as a contingent and lived relationship. Furthermore, recent scholarship calls for a shift away from subjects and objects as the ‘building blocks’ in the analysis of property’s constitution. For instance, Verdery and Humphrey claim that property theory is limited by an understanding of ‘persons’ and ‘things’ in which ‘those “persons” and “things” are clearly bounded, have integrity, and are easily recognizable as separate kinds of entities.’⁹ Similarly, Davies has called for a radical dissolution of subjects and objects in our analyses of property. Davies argues for an ‘ontological shift’ in our approach to property which examines the ‘interconnectedness’ of humans and non-humans.¹⁰ In this respect, Davies argues that there is ‘flow between the subjective and the objective worlds’.¹¹ As such, Davies contends that the conception of property as a right held by a (human) subject in respect of a (non-human) object is unsustainable. For Davies, subjects, objects and property are *outcomes* of connections between the human and non-human. Accordingly, I concluded that commons scholarship imposed an overly rigid and artificial framework, which reduced the analysis of commons to exploration of how human subjects created rights in respect of objects and spaces.

⁹ Katherine Verdery and Caroline Humphrey, ‘Introduction: Raising Questions about Property’ in Katherine Verdery and Caroline Humphrey (eds), *Property in Question: Value Transformation in the Global Economy* (Berg 2004) 6.

¹⁰ Davies (n 1) 38.

¹¹ Davies (n 1) 42.

Thirdly, my shift away from the idea of the commons as outlined in my proposal prompted a re-assessment of how I had proposed to understand the differing effects of property forms. My review identified the work of Davina Cooper, who urges us to explore 'the work performed by property practices within a community';¹² and the work of van Holstein, who calls for analysis of the 'different kinds of work' property performs, and how variations in property's 'work' achieves both 'inclusive and exclusive effects'.¹³ Thus, rather than attempting to categorise particular practices as examples of commons or enclosure, my focus shifted towards exploration of how, in the constitution of property, particular outcomes and effects are created. My project therefore moved towards Davies' suggestion that exploring the ontology of property better places us to confront the politics of property, and its varying effects on social life.¹⁴

Finally, my framework was refined following my experience as member of the 'Space, Place and Time' research collective – a network of PhD students across multiple disciplines studying at universities in south-east England. In 2017, 15 members of the Collective travelled to the Performing Arts Forum ('PAF') in Northern France for a residency that sought to share research and foster interdisciplinary discussions among students researching the themes of space, place and time.¹⁵

PAF was unusual in property terms. It is located in a former convent, and comprises a large complex of buildings, including living quarters, kitchens, large work rooms and dining rooms, gardens, and a church. While we were expecting something not dissimilar to a hotel, PAF is in fact a 'self-organised space' with no staff. The use of the space is entirely up to the users to decide upon. Guests check themselves in and find a

¹² Davina Cooper, 'Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property' (2007) 32 *Law and Social Inquiry* 625, 627.

¹³ Ellen Van Holstein, 'Transplanting, Plotting, Fencing: Relational Property Practices in Community Gardens' (2016) 48 *Environment and Planning A: Economy and Space* 2239.

¹⁴ Davies (n 1) 52.

¹⁵ See <https://www.chasevle.org.uk/archive-of-training/archive-of-training-2017/navigating-borders/>.

room. Kitchens, dining rooms, working spaces, gardens are open to all, and were being used by other visitors. As the website puts it, '[t]he things in PAF are there for you and you are there for the things as well'.¹⁶ We were struck by how, within a very short time of arriving, we had all become *subjects* of PAF, exhibiting particular behaviours and conforming to the norms as to the use of the space. In a text prepared for discussion at the residency, I wrote that PAF

...utilises and manipulates property to achieve possibility rather than the status quo. Borders, access and entitlement are turned on their head and replaced by values of access, openness, interaction, experimentation and self-production. This is the central point of critical property scholarship: [not the] rejection of property as a concept or practice that regulates social life, but [rather] the notion that one vision of the subject, one vision of social life and one conception of value underpins what property is, how property should regulate access or indeed what is 'proper'. As I reflect on my own work and thinking, I am increasingly convinced of the need to trace how alternative property practices such as PAF emerge, how they stabilise their dynamics, and what kind of social they create; but also the nature of collective life if sites such as PAF were pervasive rather than the exception.

With Carolina Amadeo – a PhD student at Birkbeck College – we enrolled the Collective to participate in an 'autoethnography'. We asked each member to use the tools of their own discipline (the group included sound artists, film makers, geographers, and students of English literature and political science) to provide an autoethnographic account of their experience of using PAF and negotiating its property norms. Students produced films, sound recordings, photographs and maps, in addition to texts. Further, Carolina and I carried out semi-structured interviews with each member of the group, which explored students' experiences of adjusting to PAF's property norms. Carolina and I pushed our own methodological boundaries by exhibiting our findings through the creation of a film. As this project was not pre-planned and emerged from our experience, it was not subject to any ethical approval, and the film nor interviews can properly be shared outside the Collective. Nonetheless, my work at PAF was valuable in shaping my approach to this research: the accounts

¹⁶ For more information, see <https://www.pa-f.net/basics>.

given by students, as well as my own experience of becoming a subject of property, suggested to me that property does not act so much as an external force *upon* subjects, but rather implicates the production *of* the subject. Moreover, what shone through our interviews was the distinct role of objects and spaces in the creation of that subjectivity. Upon returning from PAF, I orientated my project towards the study of how property is constituted, and how the subjects, objects and effects of property flow from property's construction.

2.2.2 Refinement of research questions

Having revised the orientation of this project, my attention turned to refining my research questions. I undertook a review of property theory, which is set out in Chapter 3, and identified three limitations in current scholarship. Firstly, I concluded that property scholarship remains overly focused on the human subject in explaining the ontology of property. As I detail in Chapter 3, theorists have called for greater exploration of the non-human in the formation of property – in particular, the role of materiality, spatiality and legality. I concluded that by privileging the human in the explanation of property, analysis of the role of 'non-humans' in the creation and endurance of property remains underdeveloped.

Secondly, I identified methodological ambiguity in attempts to apprehend the composition of property. While researchers have sought to push the bounds of explanation beyond the centrality of the human subject, such work is clouded in methodological haziness. For instance, as detailed in Chapter 3, Blomley's claim that property can be understood through the lens of performativity is weakened by his suggestion that performances are given stability by their references to pre-existing norms, undermining his attempt to explore property without reference to such externalities. Moreover, Cooper's suggestion that property can be understood as 'a

spectrum of relations, norms, and practices' which interlock through space is weakened by ambiguities in her analysis as to how this process actually occurs.¹⁷ I therefore concluded that current methodological approaches to property's composition require refinement.

Thirdly, I concluded that property theory, in remaining constrained by a focus on the human, fails to consider the wide-ranging effects and variability of property. Progressive property scholarship, for instance, locates property's variability exclusively in the domain of legal form. This, I suggest, is problematic, and did not accord with my own experience of how BIDs could be understood as property arrangement that exploited value from human subjects – nor how I 'became' a subject of property at PAF. As such, in failing to problematise property's ontology, I concluded that property theory fails to explore how property does not merely construct relationships between people and things – it potentially enters the constitution of both 'people' and 'things', with varying effects.

I identified a potential response to these problems in recent turns to explore how property is constituted by or in 'networks'. Blandy, Bright and Nield, for instance, call for attention to 'the diverse *network of sources* influencing rights and responsibilities in enduring property relations'.¹⁸ Similarly, Cooper suggests that property should be understood 'as a *set of networked relations* in which the subject is embedded, rather than as simply exercising mastery or control over an object'.¹⁹ Further, Keenan contends that property theory should move 'away from the subject and onto the broader spaces, relations and *networks* that constitute property'.²⁰ Finally, for Davies,

¹⁷ Cooper (n 12) 627.

¹⁸ Sarah Blandy, Susan Bright and Sarah Nield, 'The Dynamics of Enduring Property Relationships in Land' (2018) 81 *Modern Law Review* 85, 87. Emphasis added.

¹⁹ Cooper (n 12) 636. Emphasis added.

²⁰ Sarah Keenan, 'Subversive Property: Reshaping Malleable Spaces of Belonging' (2010) 19 *Social & Legal Studies* 423, 426, emphasis added. See also; Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge 2015).

'[e]ach holder of a property right owes their status as such to their *embeddedness within a network* of legal relationships...The subject-owner is subject to these relationships and this network, not separate or independent of it.'²¹ The metaphor of the network therefore emphasises that property is an *outcome*, and I concluded that it presents an appropriate methodological lens to unpick property's constitution and respond the latencies identified above, by enabling exploration of how materiality, spatiality and legality enter property's formation.

However, while scholarship has moved towards exploring property as a networked effect, I contend that property scholarship has not followed through with a full analysis of how such networks are constituted. I therefore claim that the use of the term 'network' within property scholarship as an explanatory terms is underdeveloped and imprecise. Accordingly, the following research questions were developed to underpin this research:

1. Can property be understood as a networked effect?
2. How are networks productive of property relationships? What does this mean in practice?
3. How do materiality, spatiality and legality interact to form networks of property?
4. How are the subjects and objects of property produced through processes of network formation?

I turn now to outline how I developed a theoretical framework to pursue these questions.

2.2.3 Development of theoretical framework

To pursue my research questions, I developed a theoretical framework based on actor-network theory ('ANT'), which is set out in Chapter 4. ANT claims that social

²¹ Davies (n 1) 52.

phenomena are ‘all *effects* generated in patterned networks of diverse (not simply human) materials.’²² As Cloatre puts it, ‘ANT proposes to reimagine society as relational’ and that, ‘ontologically, the world is made of heterogeneous networks that are not exclusively or even ‘particularly’ guided by human actors. Things fall into order in a particular way because of alliances between heterogeneous sets of actors’.²³ ANT provides a theoretical framework which chimes with the questions and concerns of this thesis, and a fuller account of ANT is given in Chapter 4.

The relevance of ANT to my research questions can be summarised as follows. Firstly, ANT de-centres the human subject in its explanation of social phenomena. In particular, it explicitly considers the agency of non-humans in the composition of networks: any human or nonhuman can be an actor and shape networks. Clark therefore claims that ANT resists ‘the fallback of conventional social thought that the stuff of physical existence boils down to whatever sociocultural actors choose to make of it.’²⁴ ANT therefore enables me to explore how elements such as materials, space and legal actors enter property’s composition, and facilitates a move away from the primacy of the human in our explanation of property.

Secondly, ANT provides tools to understand *how* networks are stabilised so as to produce phenomena. Thus, recalling my suggestion that property theory’s deployment of the term ‘network’ is unclear, ANT offers a sensibility to understand how networks are constituted through processes of enrolment, translation and delegation.

Thirdly, ANT facilitates exploration of how subjects and objects are constituted through network formation. As Clark notes,

²² John Law, ‘Notes on the Theory of the Actor-Network: Ordering, Strategy, and Heterogeneity’ (1992) 5 *Systems Practice* 379, 380. Original emphasis.

²³ Emilie Cloatre, ‘Law and ANT (and Its Kin): Possibilities, Challenges, and Ways Forward’ (2018) 45 *Journal of Law and Society* 646, 650.

²⁴ Nigel Clark, ‘What Can Go Wrong When People Become Interested in the Non-Human?’ in Anders Blok, Ignacio Fariás and Celia Roberts (eds), *The Routledge Companion to Actor-Network Theory* (Routledge 2020) 158.

ANT prompts us to conceive of humans and non-humans as interconnected, consubstantial, co-constituted: Which is to say, not simply meeting in some middle ground as pre-given entities – but actually shaping each other in and through their encounters... objects or identities do not precede the jostle of relationality.²⁵

ANT therefore prompts and enables a move away from an understanding of property as a relationship between human subjects in respect of objects. Accordingly, I developed a theoretical framework, set out in Chapter 4, which posits that property is a networked effect, composed through the dynamics of materiality, spatiality, and legal form.

A key difficulty I identified in deploying ANT to chart the differing outcomes of property is ANT's inability to grapple with the *politics* of particular networks. As detailed in Chapter 4, Bhandar claims that ANT's usefulness to the study of property is limited by its lack of engagement with the politics of property.²⁶ My research design attempts to overcome this limitation by distinguishing between 'logics' of property. John Law suggests that 'logics' can be imputed onto processes of network formation to understand how particular networks 'act and recursively organize the full range of social materials'.²⁷ In Chapter 4, building on the work of John Law, Annemarie Mol and Henri Lefebvre,²⁸ I make a distinction between 'lived' and 'abstract' logics of property to enable me to engage with the politics of particular networks, and the varying effects that property can produce. The distinction I draw reflects Lefebvre's conceptions of abstract and lived space.

For Lefebvre, spatial production is intimately bound up with the production of the social. Abstract space, according to Lefebvre, is a spatial manifestation of the abstracting and

²⁵ Clark (n 24) 158–160.

²⁶ Brenna Bhandar, 'Critical Legal Studies and the Politics of Property' (2014) 3 Property Law Review 186.

²⁷ John Law, *Organizing Modernity* (Blackwell 1994) 109.

²⁸ Law (n 27); Annemarie Mol, *The Logic of Care* (Routledge 2008); Henri Lefebvre, *The Production of Space* (Donald Nicholson Smith tr, Oxford: Blackwell 1991).

alienating tendencies of contemporary capitalism.²⁹ In contrast, alternative, emancipatory forms of living can be realised by articulating *lived* spaces in which people can construct their own rich and meaningful relations to one another.³⁰ My research design therefore distinguishes between instances of abstract and lived property in order to situate and critique the effects that particular networks engender. Abstract property, I suggest, amplifies the 'dephysical' dynamics of modern property forms by rendering the objects of property homogenous and commensurable and their specificity redundant. In contrast, networks of lived property generate relationships characterised by mutuality, collective governance and reciprocity, enabling autonomy and meaningful relationships to flourish. Deploying ANT to explore the socio-spatial composition of property opens up new considerations as to the politics of property. By exploring how the subjects and objects of property emerge from processes of network formation, it sheds light on how humans can be constituted as the objects of property, and how human activities can be integrated into property networks as sources of value creation. On the other hand, shows how property can construct human subjects in relational arrangements of mutuality and cooperation.

I turn now to outline how my research questions and theoretical framework are applied to three case studies.

2.2.4 Operationalization: case study analysis

To pursue the research questions set out above, my thesis is structured around three case studies of property in the context of housing. While my initial proposal sought to examine the socio-spatial composition of various instances of property (such as public spaces and infrastructure), workshops and supervision within the School of Law revealed that this was beyond the scope of a single thesis. My attention therefore

²⁹ Henri Lefebvre, 'Space and the State' in Neil Brenner and others (eds), *State/Space: A Reader* (Blackwell 2003).

³⁰ Lefebvre (n 28).

turned to selecting a limited number of case studies through which to unpack the socio-spatial composition of property. Housing studies and socio-legal scholarship have long recognised the importance of home in shaping identity, social relations and ontological security – in essence, in contouring who we are and the nature of the social in which we live.³¹ Moreover, nowhere is the orthodox understanding of property as individuated control of objects more potently evidenced than in conventional forms and practices of housing.³² I concluded that unpacking the socio-spatial composition and the variable effects of property through case studies of housing enabled offered a discrete window to pursue the research questions identified above: to examine whether property can be understood as a networked effect and how networks are productive of property relationality; to explore how materials, spaces and legal actors interact to form property relationships; and to examine how the subjects and objects of property emerge as effects of network formation.

I turn now to consider how I selected appropriate case studies in light of my research questions and theoretical framework.

2.2.4.i Abstract property: the residential mortgage-backed security

In selecting case studies of abstract property, I was initially interested in examples of 'build-to-rent' developments in the UK. 'Build-to-rent' refers to housing developments (usually blocks of flats) built with the intention of renting the units rather than selling them. Build-to-rent has become increasingly prevalent in recent years. In 2012, the UK Government sought to break down 'barriers to institutional investment in private rented

³¹ See, for example, Rosemary Hiscock and others, 'Ontological Security and Psycho-Social Benefits from the Home: Qualitative Evidence on Issues of Tenure' (2001) 18 *Housing, Theory and Society* 50; Hazel Easthope, 'A Place Called Home' (2004) 21 *Housing, Theory and Society* 128; Lorna Fox, *Conceptualising Home: Theories, Laws and Policies* (Hart Publishing 2007); Suzanne Fitzpatrick and Beth Watts, 'Competing Visions: Security of Tenure and the Welfarisation of English Social Housing' (2017) 32 *Housing Studies* 1021.

³² e.g. Craig M Gurney, 'Pride and Prejudice: Discourses of Normalisation in Public and Private Accounts of Home Ownership' (1999) 14 *Housing Studies* 163; Richard Ronald, *The Ideology of Home Ownership: Homeowner Societies and the Role of Housing* (Palgrave Macmillan 2008).

homes'.³³ In 2013, the Department for Communities and Local Government sought to 'kick-start the new private rented sector... characterised by a growing number of large scale, professionally managed developments, owned and managed by institutional investors.'³⁴ I was interested in how, through such initiatives, renting a home is constituted as a strategic income stream for investors and financial markets. More specifically, I was interested in charting how property forms are constituted for investors which situate renters as *objects* of property, reducing human life to abstract income streams to be traded and speculated upon.

Through an initial review of such schemes, I became aware of a distinctive variant of build-to-rent – a 'co-living' scheme dubbed 'The Collective' in Willesden, north-west London. The Collective rents very small 'apartments', which are akin to students' halls of residence, located in a former office building. The building contains several large shared spaces and resources, such as kitchens, dining rooms, co-working spaces, a library, roof terrace and laundry, as well as a restaurant. The owners also organise and host a range of events for residents, such as drinks receptions, yoga and film screenings. The Collective describes this as 'co-living':

Co-living is a way of living in cities that's focused on community and convenience. Live as part of a community, sharing wonderfully designed shared spaces and inspiring events, with the comfort of being able to retreat to your own fully furnished private space at the end of the day. Everything you need to make the most of city life is included in bill; rent, concierge, superfast internet, all utilities and taxes, room cleaning, exciting daily events and gym membership. So you can do the living, and leave the rest to us.³⁵

It struck me that, while the Collective appeared to be offering renters a 'lifestyle', for investors this was a form *objectification*, in which human subjects' lifestyles are constituted as objects of property, and a source of value. This is given form in 'COLIV',

³³ Department for Communities and Local Government, 'Review of the Barriers to Institutional Investment in Private Rented Homes' (2012)

³⁴ House of Commons Library, 'Building the New Private Rented Sector: Issues and Prospects' (2017) 12, quoted in; Joe Beswick and others, 'Speculating on London's Housing Future: The Rise of Global Corporate Landlords in "Post-Crisis" Urban Landscapes' (2016) 20 City 321, 333.

³⁵ <https://www.thecollective.com/co-living>

'the world's first unlisted collective investment vehicle for professional investors investing in large scale, purpose-built co-living buildings in London', set up by fund managers and the owners of The Collective.³⁶ As an investment advisor has noted, 'an investment product like [COLIV] will be well sought after by a wall of global institutional capital looking for income and long-term investment assets.'³⁷

The Collective therefore appeared to offer a case study through which to examine the making of abstract property networks in the context of housing. Through a friend, I was introduced to some residents and given a tour of the building. I conducted some pilot interviews with residents to gauge the prospects of using the site in this research. The residents I spoke to were enthusiastic advocates of the site. However, for my purposes, I concluded that data from the owners and investors was key to understanding how the Collective is presented to investors as, and through, a distinct property form. Despite requests via phone and email in 2018, the owners and managers refused to take part, and I concluded that, without their input, I could not rely on the site as a case study.

My attention therefore turned to a more well-known phenomenon, of which data is readily available: the residential mortgage-backed security ('RMBS'). Upon reviewing the literature to identify potential case studies of abstract property in the context of housing, my search entered the field of financialisation. The RMBS appeared time and again as an example of how financial actors target home as a source of value. As Gotham puts it, the RMBS became 'a critical financial innovation that... allowed private and public actors to finance local property development and housing in the national and international capital markets'.³⁸ Accordingly, the RMBS appeared to be an appropriate

³⁶ See <https://colivfund.com/>.

³⁷ Samantha Partington, 'As Sale of Collective Old Oak Falter, Will Co-Living Too?' (2018) *Property Week*, available at <<https://www.propertyweek.com/residential-and-development/as-sale-of-collective-old-oak-falters-will-co-living-too/5095879.article>>. No page numbers.

³⁸ Kevin Fox Gotham, 'Creating Liquidity out of Spatial Fixity: The Secondary Circuit of Capital and the Subprime Mortgage Crisis' (2009) 33 *International Journal of Urban and Regional Research* 355, 357.

case study through which to unpack the socio-spatial composition of an abstract property form in respect of housing.

While there is a significant amount of research exploring the RMBS, it is rarely considered through the lens of property theory. The RMBS instituted a specific form of abstract property relationality: investors can hold large swathes of homes as if they were any other abstract return, the underlying lived experience – i.e. inhabitation – is actively excluded: value stems precisely from disconnecting from physicality. However, few works have explored how the RMBS is a property relationship which situates homeowners as the abstract objects of property, enabling human life to be speculated upon via financial markets. Accordingly, for the purposes of my research, the RMBS offered a tangible case study through which to unpick how property is constituted as a networked effect.

2.2.4.ii Lived property: cohousing

Lived property, I suggested above, and build upon in Chapter 4, refers to instances of property premised upon building collective governance, fostering mutual use and meaningful relations between inhabitants. In designing this research, I reviewed the literature on alternative housing forms, and in doing so I identified three potential case studies: community land trusts ('CLTs'), cooperatives, and cohousing. I concluded that, while all three examples display aspects of what I describe as 'lived property', cohousing's emphasis on creating a differing form of everyday life – premised upon generating sharing and interaction – offered a more tangible example of lived property. As Jarvis outlines in her review of cohousing, there is 'rich evidence of mutuality, sharing, cooperation, reciprocity, and exchange' among cohousing residents 'facilitated by the infrastructures of daily life' in cohousing developments.³⁹ In contrast, CLTs and

³⁹ Helen Jarvis, 'Saving Space, Sharing Time: Integrated Infrastructures of Daily Life in Cohousing' (2011) 43 *Environment and Planning A* 560, 567.

cooperative's primary focus is on creating affordability and investing residents with control, rather than the creation of sharing and enduring relationships between residents (although I accept that both are likely consequences of the governance structures of CLTs and cooperatives).

The term 'cohousing' is nebulous, referring not to a strictly defined model of housing but a set of ideas and practices which emphasise a greater degree of interaction, shared resources and mutual governance, challenging the 'cultural norms of privacy and private possession'.⁴⁰ In practice, cohousing schemes are often clusters of individual housing units structured around common facilities such as kitchen and dining spaces, recreational spaces, workshops, gardens and/or meeting rooms.⁴¹ It has therefore been suggested that cohousing is defined by the presence of participatory processes, intentional neighbourhood design, common facilities and resident management.⁴² UK Cohousing (a representative body for cohousing developments) suggests that cohousing is characterised by five 'primary principles':

1. Cohousing is co-designed with intentional communities.
2. Cohousing includes both the provision of private and common facilities providing a balance between privacy and community.
3. The size and scale of cohousing is appropriate to support community dynamics for easy informal communal contact; this is usually between 10-40 households.
4. Cohousing embeds collective resident control and stewardship into its legal form and decision making.

⁴⁰ Jarvis (n 39); Kathryn McCamant, Charles Durrett and Ellen Hertzmann, *Cohousing: A Contemporary Approach to Housing Ourselves* (Ten Speed Press 1994); Lucy Sargisson, 'Cohousing: A Utopian Property Alternative?' (2010) Centre for Social and Global Justice Working Paper Series 1; Francesco Chiodelli and Valeria Baglione, 'Living Together Privately: For a Cautious Reading of Cohousing' (2014) 7 *Urban Research and Practice* 20; Sarah Blandy, 'Collective Property: Owning and Sharing Residential Space' in Nicholas Hopkins (ed), *Modern Studies in Property Law - Volume 7* (Hart 2013).

⁴¹ Kath Scanlon and Melissa Fernández Arrigoitia, 'Development of New Cohousing: Lessons from a London Scheme for the over-50s' (2015) 8 *Urban Research & Practice* 106.

⁴² McCamant, Durrett and Hertzmann (n 40) 38.

5. Cohousing communities are inclusive and part of the wider community.⁴³

As discussed in Chapters 6 and 7, 'cohousing' is not a recognised legal form in England and Wales. As Blandy outlines, homes in cohousing developments are generally held on a leasehold basis, and the freehold of the site is held by a resident-controlled company.⁴⁴ This ensures that positive obligations bind successors in title – a feature not currently available to land held on a freehold basis.⁴⁵ While cohousing residents generally own and occupy individual homes, cohousing sites 'attempt to bring into practice a discourse of diversity, solidarity and inclusion, rather than of [homogeneity] and exclusion'.⁴⁶ This is achieved through a number of means.

Firstly, by architecture. Through the design of sites, cohousing groups seek to 'encourage social interaction' and a 'community environment'.⁴⁷ As Jarvis notes, cohousing developments are usually defined by relatively small houses orientated around shared facilities (such as a communal building, gardens and other facilities).⁴⁸ The effect, Jarvis argues, is an increase in the 'proportion and variety of semipublic and public relative to private and semiprivate space', thereby challenging 'cultural norms of privacy and private possession'.⁴⁹ Accordingly, Caldenby et al. argue that cohousing is a form of 'spatial organization', and the experience of cohousing thus far suggests that there is a 'social logic of space' within cohousing sites.⁵⁰ While Caldenby et al. are wary of suggesting that space determines social relations, they contend that 'spatiality and sociality are engaged in a dialectic negotiation' within cohousing sites, and that the

⁴³ See <https://cohousing.org.uk/about-cohousing/>.

⁴⁴ Blandy (n 40) 155.

⁴⁵ *Austerberry v Oldham Corporation* [1885] 29 Ch 750, affirmed in the more recent case of *Rhone v Stephens* [1994] 2 A.C. 310.

⁴⁶ Lidewij Tummers, 'Understanding Co-Housing from a Planning Perspective: Why and How?' (2015) 8 *Urban Research and Practice* 64, 66.

⁴⁷ Maria L Ruiu, 'Differences between Cohousing and Gated Communities. A Literature Review' (2014) 84 *Sociological Inquiry* 316, 322.

⁴⁸ Jarvis (n 39) 560.

⁴⁹ Jarvis (n 39) 563.

⁵⁰ Claes Caldenby, Pernilla Hagbert and Cathrin Wasshede, 'The Social Logic of Space: Community and Detachment' in Pernilla Hagbert and others (eds), *Contemporary Co-housing in Europe: Towards Sustainable Cities?* (Routledge 2020) 163.

central positioning of shared spaces is productive of relationality between residents.⁵¹ Sullivan makes a similar argument, contending that the production of 'community' within cohousing developments is intimately tied up with the production of shared spaces.⁵²

Secondly, residents in cohousing sites make efforts to regularly eat together and take part in group activities, such as maintaining the site, contributing to working groups or committees and residents' meetings. Jarvis claims that these activities 'all flow from a core sense of purpose and meaning that is contingent upon habituated practice', and describes them as a 'community 'glue''.⁵³

Thirdly, some cohousing sites exhibit a shared characteristic or philosophy among residents, such as sites for older people, or are based around a particular goal or belief, such as ecological sustainability.⁵⁴

Research suggests that cohousing brings about positive benefits for residents through the pooling of space and resources such as cheaper housing costs, energy efficiency, access to resources they would not otherwise be able to afford, less frequent domestic labour (particularly that historically expected of women, such as cooking, cleaning and childcare), and a richer social life through greater interaction with others.⁵⁵ Cohousing emerged in Denmark and Sweden in the 1970s and has since spread to France, the UK, Germany, Holland, Italy, Spain, the United States and Canada.⁵⁶ In Denmark,

⁵¹ Caldenby, Hagbert and Wasshede (n 50) 180.

⁵² Jo Williams, 'Designing Neighbourhoods for Social Interaction: The Case of Cohousing' (2005) 10 *Journal of Urban Design* 195; Helen Jarvis, 'Towards a Deeper Understanding of the Social Architecture of Co-Housing: Evidence from the UK, USA and Australia' (2015) 8 *Urban Research & Practice* 93; Clare Cooper Marcus, 'Site Planning, Building Design and a Sense of Community: An Analysis of Six Cohousing Schemes in Denmark, Sweden, and the Netherlands' (2000) 17 *Journal of Architectural and Planning Research* 146.

⁵³ Jarvis (n 52) 99.

⁵⁴ See, for instance, Older Women's Cohousing (<https://www.owch.org.uk/>) and London Older Lesbian Cohousing (<https://lolcohousing.co.uk/>).

⁵⁵ Ruiu (n 47).

⁵⁶ On these origins, see Dick Urban Vestbro, 'From Collective Housing to Cohousing - A Summary of Research' (2000) 17 *Journal of Architectural Planning Research* 164; Lidewij

where it is most prevalent, about 1% of the population live in cohousing projects; 43 sites exist in Sweden; 500 in Germany; 120 in the US; 24 (at various stages of development) in Canada; and 17 completed cohousing sites exist in the UK, with more than 60 others at various stages of development.⁵⁷

However, there is debate as to whether cohousing offers an alternative to conventional property and housing formations. In her study of North American cohousing sites, Sargisson concludes that cohousing is a 'collective version of the American Dream' which is deeply rooted in a 'liberal, property-owning ideology'.⁵⁸ Sargisson argues that cohousing enables residents to own their own homes, live in nuclear families and live 'safe, happy lives in friendly and supportive neighbourhoods'.⁵⁹ Sargisson therefore concludes that cohousing sites are '*modern utopias*' in that they are a form of individualised collectivism, 'comfortable with the values of mainstream culture but seeking a better way of life for their members'.⁶⁰ Others have criticised cohousing schemes on the basis that they constitute private, secessionary developments which are akin to a gated community.⁶¹ The exclusionary aspects of cohousing are also apparent in that, in the UK at least, ownership of a home on most cohousing sites is not cheaper than purchasing a home on a conventional development. As such, far from constituting a radical or desirable alternative, cohousing has been criticised for creating

Tummers, 'The Re-Emergence of Self-Managed Co-Housing in Europe: A Critical Review of Co-Housing Research' (2016) 53 *Urban Studies* 2023.

⁵⁷ Data for the UK from Cohousing UK; data for the rest of the world from Chiodelli and Baglione (n 40) 2.

⁵⁸ Lucy Sargisson, 'Second-Wave Cohousing: A Modern Utopia?' (2012) 23 *Utopian Studies* 28, 50.

⁵⁹ Sargisson (n 58) 50.

⁶⁰ Sargisson (n 58) 51.

⁶¹ Chiodelli and Baglione (n 40); Ruiu (n 47).

developments characterised by ‘social, ethnic and ideological homogeneity’ among residents who tend to be ‘white and well-educated middle-class people’.⁶²

It is important to stress that, for these reasons, I am not interested in cohousing as a model for widespread adoption. Rather, despite the problems and contradictions described above, I suggest that cohousing does represent an alternative form of property in its efforts to generate and sustain belonging between residents, shared rights of access to common resources, and collective governance regimes. Akin to Sargisson’s case studies, cohousing amounts to an attempt to ‘transgress and disrupt the egoistic self of possessive individualism’ by attempting to develop ‘a different and better kind of self: a person with different relationships to possessions, capital, land and other people’.⁶³ In this respect, cohousing developments can be seen as a form of ‘prefiguration’ in which actors ‘live as far as possible as though the conditions for an improved society are already with us’, rather than hold out for an idealised model.⁶⁴ Davies contends that researchers should explore such cases in an attempt to understand how a better world might be constructed – not through adoption of the case in question, but through asking “‘what might be made in the relations of investigation” and “what should be brought into being”’.⁶⁵ Put differently, analysis of the case, despite its contradictions, better places us to understand how alternatives might be constructed. Latour describes this as ‘compositionism’:

With critique, you may debunk, reveal, unveil, but only as long as you establish, through this process of creative destruction, a privileged access to the world of reality behind the veils of appearances. Critique, in other words, has all the limits of utopia: it relies on the certainty of the world *beyond* this

⁶² Chiodelli and Baglione (n 40) 8.

⁶³ Lucy Sargisson, ‘Friends Have All Things in Common: Utopian Property Relations’ (2010) 12 *British Journal of Politics and International Relations* 22, 33.

⁶⁴ Davies (n 1) 39.

⁶⁵ Davies (n 1) 39 quoting; John Law and John Urry, ‘Enacting the Social’ (2004) 33 *Economy and Society* 390, 396.

world. By contrast, for compositionism, there is no world of beyond. It is all about *immanence*.⁶⁶

Accordingly, while imperfect and contradictory, cohousing offers a means through which to explore how a form of lived property is produced and sustained as a networked effect.

With the exception of Blandy, property theorists have paid little attention to how property is constituted as a lived reality in cohousing sites. In her analysis, Blandy explores how property is constituted as a lived process at a cohousing site in the UK.⁶⁷ Departing from traditional doctrinal approaches, Blandy contends that 'rights, governance and everyday practice' intertwine so as to produce property relationality at the site.⁶⁸ My approach therefore follows Blandy by relying upon cohousing as a lens through which to explore the lived constitution of property. However, my analysis of property as a 'lived process'⁶⁹ departs from Blandy in its conceptual and methodological framing. By exploring how property emerges as a networked effect from connections between human and non-human actors, my approach sheds light on how subjects, objects and relationships follow as effects of network formation.

Potential case studies were selected from the Cohousing UK database. My search was guided by the following parameters: on the one hand, I sought a cohousing site that had been established for some time in order to explore how property has endured over time. On the other hand, I sought a cohousing site that had been established relatively recently in order to explore the initial processes of network formation, thus creating a contrast between network creation and endurance. I identified two appropriate sites from the 19 listed on the UK Cohousing Directory: Springhill Cohousing in Stroud – which claims to have been the first new-build cohousing site in the UK, established in

⁶⁶ Bruno Latour, 'An Attempt at a "Compositionist Manifesto"' (2010) 41 *New Literary History* 471, 475. Original emphasis.

⁶⁷ Blandy (n 40).

⁶⁸ Blandy (n 40) 153.

⁶⁹ Blandy (n 40) 153.

2000 – and Copper Lane Cohousing in London, completed in 2014, which claims to be the first cohousing site in London.

To recruit participants, I sent emails to contact email addresses listed on the websites of each site. My emails provided an overview of my research and its aims, as well as details of the ethical safeguards in place. Both emails were responded to by residents who monitored the respective inboxes. My email was then cascaded to all residents at both sites, and participants were self-selecting. Copper Lane comprises six homes and three residents agreed to take part. Two participants were women, and one was a man; all three were in their fifties at the time of the interview, and all had lived at Copper Lane since it was built. Springhill comprises 34 homes and five residents agreed to take part. Three participants were women and two were men. At the time of the interview, one participant was in their forties, three in their sixties, and one in their eighties. Only one participant had been involved in the project since its beginning in early 2000. Three others joined not long after: one moved to the site in 2003, and two others in 2004. The final participant moved to the site in 2016.

Following low take-up, I asked for my calls for participants to be circulated again on two subsequent occasions later in the year. However, participation remained low, and my sample size and sampling method introduced limitations to my methodology. Specifically, self-selection, combined with the small sample size, creates the risk that the accounts I received may not be representative of the views of all residents at each site. As Robinson outlines, agreeing to interview-based research involves ‘extensive intimate self-disclosure’.⁷⁰ Accordingly, ‘this is likely to lead to a sample containing individuals who are more open, more patient and more interested in the topic than the general sample universe.’⁷¹ As Robinson suggests, voluntary participation is central to

⁷⁰ Oliver C Robinson, ‘Sampling in Interview-Based Qualitative Research: A Theoretical and Practical Guide’ (2014) 11 *Qualitative Research in Psychology* 25, 36.

⁷¹ Robinson (n 70) 36.

'ethical good practice', so an element of bias will always remain present despite sample size, requiring researchers to 'be aware of the possibility for bias and consider it's possible impact on findings and generalisability'.⁷²

However, as Crouch and McKenzie note, the importance of representativeness varies depending on the aims of research. If one is looking for enduring structures or patterns across a particular field, representation becomes an important factor. However, in qualitative exploratory research such as mine, which intends to be 'conceptually generative' rather than conclusive, the very notion of a 'sample' can become problematic.⁷³ Crouch and McKenzie claim that in the context of conceptually generative exploratory research, participants are not being sampled as 'persons "of a kind"'.⁷⁴ Rather, they represent

variants of a particular social setting (the real object of the research in question) and of the experiences arising in it. Rather than being systematically selected instances of specific categories of attitudes and responses, here respondents embody and represent meaningful experience-structure links. Put differently, our respondents are "cases", or instances of states, rather than (just) individuals who are bearers of certain designated properties (or "variables").⁷⁵

Accordingly, the value of participants' accounts in this research is not so much as valid representatives of cohousing residents but rather as instances through which to understand how these individuals became implicated in the socio-spatial composition of property relationships, and from their accounts, generate new understandings of property's formation and endurance.

⁷² Robinson (n 70) 36.

⁷³ Mira Crouch and Heather McKenzie, 'The Logic of Small Samples in Interview-Based Qualitative Research' (2006) 45 *Social Science Information* 483, 493.

⁷⁴ Crouch and McKenzie (n 73) 492.

⁷⁵ Crouch and McKenzie (n 73) 492.

2.2.5 Research methods

Data was obtained through two means. On the one hand, my analysis of the RMBS relies upon secondary data available in published research. The rich array of writing on RMBS, coupled with publicly available statistical data, provided me with a foundation to apply my ANT framework to unpick how this property form was constituted. However, reliance on secondary data imposes limitations on my methodology. Firstly, by relying on data collected by others, I clearly lacked any control over the methods used to collect that data. Secondly, the research questions underpinning secondary data inevitably vary from my own, and others' work may have omitted consideration of important factors relevant to my research questions. This was somewhat mitigated by the sheer volume of writing on RMBSs, enabling me to span disciplines and different approaches to the study of securitisation. As Vartanian observes, 'users of secondary data trade control over the conditions and quality of the data for accessibility, convenience, and reduced costs...'.⁷⁶ I concluded that the balance of convenience lie with use of secondary data, despite its limitations, rather collecting primary data from actors who were involved in securitisation, who may be geographically dispersed, and whose recollection may be imperfect several years after RMBSs were at their height.

On the other hand, my analysis of lived property relies on primary data. Firstly, I collected documents relevant to my research questions in respect of both cohousing sites, such as architectural drawings, planning applications and decisions, newspaper articles, and legal documents, such as freehold titles and leases from HM Land Registry. Documents and photos were also shared with me after meeting participants (such as internal policies and handbooks). Secondly, over the course of 2018, I conducted a series of in depth semi-structured interviews with residents of both Springhill and Copper Lane Cohousing. All interviews were recorded and subsequently

⁷⁶ Thomas P Vartanian, *Secondary Data Analysis* (Oxford University Press 2010) 16–17.

transcribed. Recordings were deleted following transcription. Additionally, I was invited to attend a Springhill visitors' day which is open to anyone interested in joining cohousing. This provided a valuable opportunity to talk informally with 10-15 residents about their experiences, and observe a group discussion with prospective purchasers on the mechanics of life in Springhill.

Prior to commencing the interviews, my project was subject to ethical approval by the School of Law via a written application which was completed in light of Birkbeck's 'Guidelines on Research with Ethical Implications'.⁷⁷ My application for approval set out the scope and aims of the project, why participation of individuals was required, and the safeguards I proposed. These included offering potential participants an explanation as to why human participants were required, that the research had worthwhile objectives, and ensuring that participants can take part in an informed manner. I sought to address informed consent by proposing to the College that I verbally explain to participants the aims of the research, what participation entails, and participants' rights, supplementing this with a written Information Sheet and consent form. The Information Sheet identified the people responsible for the research; the time commitment of participation; how I learnt about their site/project; that information will be collected from participants by interviews, and that this information would be recorded and subsequently transcribed; how the information I collect will be used (and that the thesis will be a public document); that confidentiality will be protected by anonymising transcripts and deleting recordings after transcription; that consent is optional and participants may refuse to answer any particular question; that participants are entitled to access any information collected from them at any time; and that participants may ask questions at any time. The consent form reiterated the participant's right to ask

⁷⁷ Available online at <http://www7.bbk.ac.uk/committees/research-integrity/GuidelinesonResearchwithEthicalImplications.pdf>.

questions or withdraw at any time, the right to confidentiality, and required confirmation that they were over 16 years of age.

Ethical approval was given by the School of Law in March 2018, and interviews were completed in the proposed manner: participants were given a copy of the Information Sheet electronically before meeting, and again in hard copy on the day of the interview. They were also asked to sign a consent form confirming their agreement to participate and for the interview to be recorded. The discussion at the Springhill open day posed a dilemma in that I had not anticipated being invited to this event, and although some of my participants were present, not all those attending had previously agreed to take part. I accordingly explained my presence and aims of research to the group, provided copies of my information sheet and confirmed they were happy with my presence. However, I do not reproduce quotes from residents in that discussion given that they had not formally agreed to take part ahead of my visit.

I utilised the interview method to gain a perspective on participants' understandings of their property environment, and, critically, to follow their explanation into consideration of the other actors, devices and techniques at play in producing and stabilising property. Interviews lasted at least an hour and were semi-structured. With the exception of one interview, which occurred at a participant's workplace, interviews were conducted inside participants' homes (or in gardens on sunny days). As Cowan et al report, the advantage of this is that 'the interviewee would be more expressive in that place, and would feel more in control of the interview process.'⁷⁸ Further, being in situ was integral to enabling participants to explain with reference to their surroundings and by showing me specific places, spaces and/or objects that were operative in their account.

⁷⁸ Dave Cowan, Helen Carr and Alison Wallace, *Ownership, Narrative, Things* (Palgrave Macmillan 2018) 32.

My questions were planned around two broad themes: the initial processes of 'network building', and the endurance of that network over time. Accordingly, my questions began by asking about the early stages of the cohousing site. In particular, I asked how the prospective residents met one another, what they desired from cohousing and the extent to which those desires were shared by others in the group. I then asked participants to describe life in their respective sites. My questions subsequently turned to eliciting data about how the features of the cohousing life they describe are given form. I asked about whether rules or frameworks govern relationships between residents. I also queried the role of the design of the site in bringing residents together. My questioning then shifted focus to the endurance of the site. I asked about whether disputes occur and how these are resolved; whether communal life is ever overwhelming; the role of law in maintaining relationships; how the groups ensure that new residents 'buy in' to the cohousing philosophy; and the extent to which the lived reality of communal life accords with their initial expectations. I was conscious not to impose an account on participants by designing a rigid set of questions. In this sense the interviews followed a relatively pragmatic approach, akin to that of Lamont and Swidler.⁷⁹ While my questions were designed to provoke participant's reflections on how their particular case operates, the questions were not followed slavishly, and when appropriate, I followed participants' accounts down diverging paths.

I recognise that reliance on interviews introduces limitations to my methodology, and a number of criticisms of the interview method have been made. Firstly, respondents may attempt to rationalise their explanations to the interviewer. Accordingly, the narrative offered by interviewees may contain 'less contradiction and unpredictability than real lives normally encompass.'⁸⁰ Secondly, there is a risk that participants will

⁷⁹ Michèle Lamont and Ann Swidler, 'Methodological Pluralism and the Possibilities and Limits of Interviewing' (2014) 37 *Qualitative Sociology* 153.

⁸⁰ Lamont and Swidler (n 79).

report what they *think* is expected of them.⁸¹ Fielding and Thomas suggest that a key mitigation against this is communication and fostering a rapport to put the respondent at ease.⁸² This requires the researcher to build 'collaborative, reciprocal, trusting and friendly relationships with those studied'.⁸³ The advantages of this, Fontana and Frey suggest, is 'a greater spectrum of responses and a greater insight into the lives of respondents'.⁸⁴ I therefore attempted to be as open, friendly and as relaxed as possible to build a comfortable and open environment. As suggested above, the setting enabled a degree of control for the interviewee that other settings might not have allowed for. Finally, interviews as method have been criticised due to the disconnection between language, thought and action.⁸⁵ However, as Fielding and Thomas suggest, assuming that language is an accurate reflection of both thought and action is highly problematic, because of the proliferation of evidence that suggests what people say they will do, or have done, is a problematic indicator of what they actually will do or have done.⁸⁶ A related criticism contends that interviewees cannot possibly be telling the truth because the interviewee themselves are socially and discursively constructed.⁸⁷

2.2.6 Data analysis

While ANT offered an overarching ontological frame for data analysis, ANT is not prescriptive as to the techniques employed by researchers to conduct data analysis. Accordingly, it is for the researcher to deploy techniques which 'allow the identification and description of the full range of associations among the actors involved in a studied

⁸¹ Nigel Fielding and Hilary Thomas, 'Qualitative Interviewing' in Nigel Gilbert (ed), *Researching Social Life* (SAGE Publications 2001) 126–127.

⁸² Fielding and Thomas (n 81).

⁸³ Mats Alvesson, *Interpreting Interviews* (SAGE Publications 2010) 15.

⁸⁴ Andrea Fontana and James Frey, 'Interviewing: The Art of Science' in Norman K Denzin (ed), *The Handbook of Qualitative Research* (Sage Publications 1994) 370.

⁸⁵ Fielding and Thomas (n 81) 138–139.

⁸⁶ Fielding and Thomas (n 81) 139.

⁸⁷ Martyn Hammersley, 'Ethnography: Problems and Prospects' (2006) 1 *Ethnography and Education* 3, 9.

situation'.⁸⁸ In designing my research, I opted for a thematic analysis of my data to understand the dynamics of the networks under investigation. Thematic analysis entails examining research data (whether interview transcripts or other texts) 'to find repeated patterns of meaning' by collating data around specific 'themes'.⁸⁹ A theme is any 'patterned response or meaning' in the data which 'captures something important... in relation to the research question'.⁹⁰ Breaking down and organising the data around specific themes enables the creation of an 'analytic narrative' and argument in relation to the research questions.⁹¹ Braun and Clarke suggest thematic analysis is well suited to constructivist perspectives which seek to understand relationships and meanings as contingent effects.⁹² Thematic analysis therefore complements ANT's ontological viewpoint in that, by breaking down research data and organising it around specific themes, the researcher is better placed to describe how a particular network is constituted by charting how connections between heterogenous actors are made and sustained; thematic analysis has also been deployed in various ANT studies.⁹³

Themes can either be identified inductively from the data, or deductively from a pre-existing theoretical framework.⁹⁴ Kiger and Varpio suggest that deductive identification 'is useful for honing in on a particular aspect of the data or a specific finding that could

⁸⁸ Marisa Ponti, 'Uncovering Causality in Narratives of Collaboration: Actor- Network Theory and Event Structure Analysis' (2012) 13 *Forum: Qualitative Social Research*. No page numbers.

⁸⁹ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 77, 86.

⁹⁰ Braun and Clarke (n 89) 82.

⁹¹ Braun and Clarke (n 89) 92.

⁹² Braun and Clarke (n 89).

⁹³ For example, Chris Holligan, 'Disenfranchised Violent Young Offenders in Scotland: Using Actor-Network Theory to Explore an Aetiology of Knife Crime' (2015) 49 *Sociology* 123; Bev France, Sally Birdsall and Laurence Simonneaux, 'Analysing the Multiplicity of Voices in the Agora: Using Actor-Network Theory to Unravel a Complex Issue' (2017) 7 *International Journal of Science Education, Part B: Communication and Public Engagement* 323; Emily Ward, 'An Actor-Network Theory Model of Property Development' (2018) 11 *Journal of European Real Estate Research* 246.

⁹⁴ Michelle E Kiger and Lara Varpio, 'Thematic Analysis of Qualitative Data: AMEE Guide No. 131' (2020) 42 *Medical Teacher* 846, 846.

be best illuminated or understood in the context of a pre-existing theory or frame'.⁹⁵ In contrast, inductive identification results in a much broader analysis that can lead the research away from the research questions, but which may produce a 'more expansive analysis of [an] entire body of data'.⁹⁶ Given that the aim of this research is to explore how property can be understood as a networked effect, and specifically, the role of materials, space and legal form in the making of such networks, I opted for a deductive approach, and identified five relevant themes from my theoretical framework:

1. Network creation/formation.
2. Network endurance.
3. Materiality.
4. Spatiality.
5. Legality.

These themes acted as central pillars around which data was collated and analysed. My analysis began by reading through the transcripts and other materials multiple times, before extracting and collating the data around the themes of materiality, spatiality and legality. In its first iteration, this took the form of physically manipulating the data and distinguishing the differing themes via annotation and highlighters. This facilitated a more systematic approach in which I extracted data into separate documents which reflected each theme. This provided me with a thematically organised set of data in respect of each case.

There was some overlap between my themes, in that some data was capable of being included across themes. For instance, the leases that I consider in Chapters 6 and 7 were important singular objects within the respective networks, and were therefore included in my collation of data around the theme of materiality. But when opened up,

⁹⁵ Kiger and Varpio (n 94) 846.

⁹⁶ Kiger and Varpio (n 94) 846.

the leases' content was capable of being extracted and organised around my respective themes (with for example, some aspects speaking to materiality, and others to space). Another example is the technology of credit rating considered in Chapter 5, which plays an important role as an object, and can therefore be referred to the theme of materiality. However, it also engages the theme of spatiality in that it helps investment to overcome distances. Such overlap was not necessarily a problem – indeed, it helped add nuance to my analysis of network formation in that it highlighted the heterogenous capacities of particular actors. Accordingly, when such overlap occurred, I collated data around all relevant themes rather than attempting to distinguish a single, 'defining' theme.

However, deriving themes from my theoretical framework introduced a weakness to my research design, in that I was less prepared to accommodate themes that emerged from the data. This occurred in respect of temporality. After my initial round of organising and the data, it struck me that my data presented interesting and important points as to the role of time which my framework did not accommodate. Accordingly, after separating my data into separate documents organised around the three themes of materiality, spatiality and legality, I subsequently restarted my analysis, but this time in respect of time. This provided me with a sixth theme around which to collate data. While deductive themes introduced this limitation to my approach, I concluded that it was outweighed by the focus the themes introduced to my analysis. An alternative inductive approach carried the risk that my analysis was taken far beyond my research questions – particularly given that multiple alternative questions could be asked of my case studies.

Once thematically organised, my attention turned to further analysis and interpretation of the data to produce an account of how the respective networks under investigation were formed, and how they endure. This was an iterative process guided by the central tenets of ANT. For Latour, ANT entails analysis of 'traceable associations' between actors (a term that extends to any 'thing' that participates in generating such

associations).⁹⁷ In terms of data analysis, this requires identification of 'point-to-point' connections, and the means and efforts through which these connections are made.⁹⁸ My analysis therefore centred on exploring the empirically traceable associations between actors, and I took a two-stage approach to this. I began by working within each theme, analysing connections between actors that were observable from the collated data. This helped inform analysis of specific instances of the network, therefore helping me gain traction on my research questions on the role of materials, space and legality in the making of property. Secondly, I turned to consider those connections which were only observable when data from differing themes were brought together. This aspect of my analysis was aided by my decision to collate data around more than one theme where relevant as I could pinpoint preliminary overlaps relatively easily. For instance, some data in respect of Springhill Cohousing were collated both with time and space, which subsequently led me to conclude that temporal production was bound up with spatial production – an interpretation that was not apparent when considering the data of each respective theme in isolation. This helped me gain traction on my broader question on whether property can be understood as a networked effect, as I was able to take a more holistic view of the cases as a whole and not just their distinct material, spatial or legal features.

Finally, my analysis was intimately bound up with writing an account of the networks in question. Accordingly, despite my intentions, I did not follow a structure whereby data analysis could be sharply distinguished from writing up. Rather, my analysis continued and was honed through the process of writing and revising the thesis.

⁹⁷ Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford University Press 2005) 108.

⁹⁸ Latour (n 97) 132.

2.3 Broader methodological concerns

I conclude this chapter by discussing further limitations of my approach not considered above.

2.3.1 Limitations of case study analysis

The selection of case study analysis was largely dictated by my reliance upon ANT as a theoretical framework. ANT requires that the researcher ‘follows the actors’ and ‘explain how a particular set of connections happen to become stable and durable’.⁹⁹ To that end, ANT requires close engagement with specific sites or cases. However, in taking a case study approach, my research is open to criticism in respect to the generalisability of its findings. Case study approaches are often criticised on the basis that analysis of a limited number of instances of a phenomenon cannot be used to make generalised conclusions as to the nature or dynamics of the phenomenon in question.¹⁰⁰ The criticism is significant as it cuts to questions of validity and reliability – critics of case studies suggest that, if findings cannot be used to make generalised inferences, there is a question as to whether the findings accurately describe the case in question.¹⁰¹ However, for Ruddin, this criticism is attributable to an incorrect comparison of case study analysis to statistical analysis.¹⁰² For Ruddin, case study analysis should not be seen as an approach that is intended to make generalised inferences about an entire group, population, or phenomenon in the same manner as broad statistical studies. Rather, for Ruddin, case study analysis is a technique that,

⁹⁹ Cloatre (n 23) 653.

¹⁰⁰ Roger Gomm, Martyn Hammersley and Peter Foster, ‘Case Study and Generalization’ in Roger Gomm, Martyn Hammersley and Peter Foster (eds), *Case Study Method* (Sage Publications 2011).

¹⁰¹ Bent Flyvbjerg, ‘Five Misunderstandings About Case-Study Research’ (2006) 12 *Qualitative Inquiry* 219; Lee Peter Ruddin, ‘You Can Generalize Stupid! Social Scientists, Bent Flyvbjerg, and Case Study Methodology’ (2006) 12 *Qualitative Inquiry* 797.

¹⁰² Ruddin (n 101).

through the analysis of particular instances, allows broader theorizing and questioning to become possible:

Case study reasoning should be seen as a strong form of hypothetico-deductive theorizing, not as a weak form of statistical inference. We do not infer things “from” a case study; we impose a construction, a pattern on meaning, “onto” the case.¹⁰³

A further rebuttal to the criticism of generalisability lies in a rejection of the belief in the universality of social phenomena. As Gomm et al. outline, a number of scholars reject the contention that findings can or should be generalised on the basis that generalisation assumes that the social world is governed by universal ‘laws’.¹⁰⁴ To that end, generalisation ‘involves unacceptable assumptions: determinism; the possibility of inductive logic; the idea that the validity of accounts can be context-free; the existence of exception-less laws; and reductionism’.¹⁰⁵ Accordingly, in rejecting ‘that the social world is governed by laws’ they also reject the validity of generalisation. This argument chimes with the ontological lens of ANT, which contends that there is no universal ‘context’ – such as ‘the social’ – which can be referred to in the study of network formation. Instead, the focus is on studying particular networks in detail. While my approach may therefore be criticised for its limited focus to three case studies, my approach, I suggest, is conceptually generative rather than definitive, in that it enables further theorising, and tentative conclusions, as to the ontological nature of property in land.

2.3.2 Limitations of ANT

As noted above, critics suggest that ANT cannot accommodate analysis of politics and power. In its emphasis on ‘thick description’ of how networks are formed and operate,

¹⁰³ Ruddin (n 101), references omitted; see also Gomm, Hammersley and Foster (n 100) which explores how case studies enable the creation of “working hypotheses.

¹⁰⁴ Gomm, Hammersley and Foster (n 100).

¹⁰⁵ Gomm, Hammersley and Foster (n 100) 99; see also Eric WK Tsang, ‘Generalizing from Research Findings: The Merits of Case Studies’ (2014) 16 *International Journal of Management Reviews* 369.

critics contend that ANT scholars ‘fail to examine in detail the moral and political issues’ underlying networks.¹⁰⁶ Generally, critics suggest that the exclusive attention on networks, and the absence of references to outside structures and forces, renders ANT unable to consider the ‘political articulation’ of networks.¹⁰⁷ Thus, for Rudy, while emphasis on describing the operation of networks is a key focus of ANT, ‘the question of power over whom (defined in relational/network terms), and with what consequences for others, has tended to go unasked’.¹⁰⁸ Bhandar applies this criticism directly to ANT’s application to property, arguing that ANT does not bring critical purchase to questions of ‘concepts of alienation, exploitation, and the use of property law to preserve wealth, entitlement and social power’.¹⁰⁹

However, I suggest that the critique of ANT as ‘apolitical’ is to mischaracterise ANT’s approach to questions of power. It is not the case that ANT, in its insistence on analysing networks, is unconcerned with power. Rather, power is considered an *effect* of network formation and endurance, rather than a pre-existing force. To that end, as Law argues, ANT is intimately concerned with power and apprehending its operation, but approaches the question of power as an *effect* rather than a *cause*.¹¹⁰ Accordingly, ANT will be unsatisfactory to those who consider power as residing in forces or structures that act upon the social, rather than an effect that must be explained. Nonetheless, to ensure that questions of politics and power remain in focus in my research, I explore how particular ‘logics’ are present in networks, which enables me to foreground how particular manifestations of property institute particular relationships and effects, as noted above, and consider in greater detail in Chapter 4.

¹⁰⁶ Chris McLean and John Hassard, ‘Symmetrical Absence/Symmetrical Absurdity: Critical Notes on the Production of Actor-Network Accounts’ (2004) 41 *Journal of Management Studies* 493, 510.

¹⁰⁷ Erik Swyngedouw and Nikolas C Heynen, ‘Urban Political Ecology, Justice and the Politics of Scale’ (2003) 35 *Antipode* 898, 902.

¹⁰⁸ Alan P Rudy, ‘On ANT and Relational Materialisms’ (2005) 16 *Capitalism, Nature, Socialism* 109, 120.

¹⁰⁹ Bhandar (n 26) 193.

¹¹⁰ Law (n 22) 6.

Secondly, critics of ANT contend that the attribution of agency to non-humans underplays the importance of human actors, and results in a deterministic account of networks. For example, Whittle and Spicer contend ANT's insistence on the capacities of networks and the agency of non-humans amounts to an alternative form of essentialism:¹¹¹

ANT appears to naturalize organizational processes by appealing to innate capacities and characteristics that exist independently of human interpretation, by relying on artificial divisions between the social and natural world and by suggesting that the power of well-engineered networks is total and determinate.¹¹²

Accordingly, critics suggest that overemphasising the potency of non-humans results in them being afforded a 'higher' status relative to humans, and this amounts to an embracing of the technological determinism which ANT purports to reject.¹¹³ This is often tied to a broader claim that, because of its insistence on the capacities of networks, and the related claim that there is nothing outside of networks, ANT is another 'grand narrative'.¹¹⁴

However, critiques of ANT's view of non-human agency is often premised on a mistaken belief that ANT views non-human agency as an inherent property of the thing in question. This is a mischaracterisation. Rather, as I detail in Chapter 4, ANT contends that agency is *distributed* in that certain actors have potency as a result of the translations and delegations of other (potentially non-human) actors – it does not claim that a particular object has an inherent capacity to act. Rather, ANT unpicks how an object *can* act because of its location within relational arrangements with other actors

¹¹¹ Andrea Whittle and André Spicer, 'Is Actor Network Theory Critique?' (2008) 29 *Organization Studies* 611.

¹¹² Whittle and Spicer (n 111) 617.

¹¹³ Harry M Collins and Steven Yearley, 'Epistemological Chicken' in Andrew Pickering (ed), *Science, Practice and Culture* (University of Chicago Press 1992); Frédéric Vandenberghe, 'Reconstructing Humans: A Humanist Critique of Actant-Network Theory' (2002) 19 *Theory, Culture and Society* 51.

¹¹⁴ Nick Lee and Steve Brown, 'Otherness and the Actor Network: The Undiscovered Continent' (1994) 37 *American Behavioral Scientist* 772; Luis Fernando Baron and Ricardo Gomez, 'The Associations between Technologies and Societies: The Utility of Actor-Network Theory' (2016) 21 *Science, Technology and Society* 129.

(both human and non-human). However, the potential to offer deterministic accounts of actor-networks is a more convincing criticism, and potential limitation of its use.

Thirdly, critics note that the researcher is in an overly powerful position in deciding who and what is relevant in an analysis of a network's dynamics.¹¹⁵ Specifically, ANT provides the researcher with a great deal of power in deciding which actors to follow and where to stop, requiring 'a practice of ordering, sorting and selection'.¹¹⁶ This is compounded by a lack of tools within ANT with which to decide what actors are important or unimportant, and which actors should be focused on.¹¹⁷ This creates a potential for the researcher's biases and partialities to fuel the distinctions they make between 'relevant' and 'non relevant' actors.¹¹⁸ The use of ANT therefore introduces the risk that my analysis and decisions as to what actors are relevant or not in a particular network are informed by my own preconceptions of how property, and how that particular network, will operate. Essentially, I run the risk of confirming my own biases. I have attempted to guard against this by being aware that selection/rejection of an actor as relevant is, despite ANT's claim, a decision that necessarily engages my own prejudices and ideas as to how the network operates. In practice, when I have rejected or emphasised the dynamics of a certain actor, I have sought to do so on the basis of data that rejection or emphasis is appropriate, rather than presuming the importance or otherwise of particular actors.

2.4 Conclusion

In this chapter, I set out the methodology of this research. In summary, this thesis investigates whether property can be understood as a networked effect, and how non-human actors, such as objects, spaces and legal tools, enter the making of such

¹¹⁵ Rudy (n 108).

¹¹⁶ McLean and Hassard (n 106) 500.

¹¹⁷ Rudy (n 108) 122–123.

¹¹⁸ McLean and Hassard (n 106) 501.

networks. Moreover, it explores how the subjects and objects of property, rather than being pre-existing 'ingredients' of property, are outcomes of network formation. This investigation is undertaken through the ontological lens of ANT, and I elaborate a theory of property based on its key tenets. My research questions are pursued through case study analyses of contrasting instances of property, shedding light not only on property's relational composition, but also the dramatically varying effects property is capable of causing. In the next chapter, I explore the foundations of contemporary property theory, and identify latencies in current scholarship which I suggest prompt the need to explore property as a networked effect, before setting out a theoretical approach to property informed by ANT in Chapter 3.

Chapter 3

Exploring the foundations of property theory

3.1 Introduction

In this chapter, I unpack the foundations of contemporary property theory's assumptions as to the nature and composition of property relationships, and explore the extent to which researchers have challenged conventional understandings of the nature of subjects, objects and social life in analyses of property. I argue that property theory remains constrained by a lingering adherence to the view that humans are bounded and coherent 'entities' from which social and legal relations flow. As Grear suggests, this vision of the liberal-legal subject is characterised by 'a socially decontextualized, hyper-rational, wilful individual systematically stripped of embodied particularities', thereby 'serving the mediation of power linked to property and capital accumulation'.¹ Grear's understanding of the liberal-legal subject is reflected in dominant conceptions and practices of property.

Firstly, the conception of the subject as wilful and rational as described by Grear underpins an understanding of objects and other non-humans as passive receptors of human will. Modern property law and theory, as Graham contends, is characterised by an absence of place and physicality – a trend described she describes as 'dephysicalisation', in which non-humans are rendered irrelevant in property relationships.² As Pottage argues, this understanding of social life reduces analyses of

¹ Anna Grear, 'Sexing the Matrix: Embodiment, Disembodiment and the Law - towards the Re-Gendering of Legal Rationality' in Jackie Jones and others (eds), *Gender, Sexualities and Law* (Routledge 2011); quoted in Rosemary Hunter, 'Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism' in Margaret Davies and Vanessa Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate 2013) 13.

² Nicole Graham, *Lawscape: Property, Environment, Law* (Routledge 2011).

property to ‘a finite set of basic ontological elements’.³ Secondly, the ‘decontextualization’ of the subject supports a view of the subjects of property as separate from time and space – both of which are viewed as universal, external backdrops against which human relationality plays out. Thirdly, Grear’s suggestion that the conception of a bounded rational subject as intimately linked to the mediation of power and accumulation, highlights how the conception of the liberal legal subject supports a particular conception of property. Specifically, the assumption that ‘society’ is reducible to encounters between subjects against the ‘backdrop’ of objects and ‘linear social space’ fuels an ‘understanding of property as a correlation of use and exclusion’.⁴ For Gordon, the result is

a maddeningly persistent tendency to suppress and deny the collective and collaborative elements, the necessity of mutual dependence, inherent in social endeavour, and a consequently enormous distortion in our common capacities to understand and regulate our social life.⁵

In this chapter, I unpack how the subject-object distinction came to dominate contemporary understanding of property’s ontology. Firstly, I explore how blurred lines between subject and object, and the agency of non-humans, are apparent historical property practices. The chapter then considers how early modern thought drew a sharp distinction between subjects and objects, and fabricated a teleological conception of time, both of which underpin contemporary understandings and practices of property. In the second half of the chapter, I explore the extent to which contemporary property scholars have moved beyond the subject-object distinction in explaining property’s constitutive dynamics, and consider the varying approaches offered to understand property as a contingent outcome, process and lived relationship. I argue that property scholarship has yet to fully depart from the subject-object distinction in its analysis of

³ Alain Pottage, ‘Instituting Property’ (1998) 18 *Oxford Journal of Legal Studies* 331, 337.

⁴ Pottage (n 3) 337.

⁵ Robert W Gordon, ‘Paradoxical Property’ in John Brewer and Susan Staves (eds), *Early Modern Conceptions of Property* (Routledge 1995).

property's relational composition. Specifically, I suggest that assumptions as to the inherent properties of subjects and objects, and a conception of time and space as linear 'backdrops' to property, are bound up in much of contemporary theory. In reviewing contemporary work, I identify four areas for development in the move away from a human centred understanding of property: firstly, apprehension of the agency of materials; secondly, exploring the role of space; thirdly, decentring law in our explanations of property; fourthly, the development of alternative methodological tools.

3.2 Fabricating persons and things: the foundations of Western property theory

In this section, I explore how contemporary property thinking came to be dominated by the subject-object distinction.

English legal thinking historically blurred the distinction between persons and things in the creation and endurance of property relationships.⁶ Historically, entitlements to land were mediated through the concept of 'seisin'. Seisin was not simply ownership or control of land. Rather, seisin reflected a blending of title and possession. To be 'seised' of the land reflected both one's possession and legal right. Accordingly, the separation of possession and title was often fatal: 'the owner who is not seised not only loses his remedies one by one, but he seems hardly to have ownership'.⁷ As such, it was difficult, sometimes impossible, to convey or create rights over land without possession as there was no abstract right 'disassociated from the physical possession of a tangible thing'.⁸ Instead, the 'thing' played an active role in constituting property relationships. This is apparent in historical conveyancing processes. To convey

⁶ For an overview of this, see Mark Wonnacott, *Possession of Land* (Cambridge University Press 2006).

⁷ Frederic William Maitland, 'The Mystery of Seisin' in HAL Fisher (ed), *The Collected Papers of Frederic William Maitland: Volume I* (Cambridge University Press 1911) 362.

⁸ Maitland (n 7); John C Payne, 'The English Theory of Conveyances Prior to the Land Registration Acts' (1955) 7 *Alabama Law Review* 227.

ownership in law one had to transfer or 'deliver' seisin – whether the thing was land or a chattel. As Fry LJ put it in *Cochrane v Moore*:⁹

The law recognised seisin as the common incident of all property in corporeal things, and tradition or the delivery of that seisin from one man to another as essential to the transfer of the property in that thing, whether it were land or a horse, and whether by way of sale or of gift, and whether by word of mouth or by deed under seal.

This is further highlighted by Maitland's suggestion that 'the way to convey a thing was to convey it, i.e., hand it over, in specie, as far as possible. So, when land was to be conveyed, the land itself was handed over, as well as might be'.¹⁰ This took effect in the *delivery* of seisin (or 'livery of seisin') – a performance/ritual in which the transferor put the transferee into possession by physically taking them on to the land and symbolically handing them a clump of the land, a twig or some other thing representing the legal estate.¹¹ Pottage observes that 'rituals of this sort were intended "to impress the event on the memory of all those present"'.¹² Memory and materiality were constitutive of property in that, if there was a subsequent dispute in respect to a conveyance, parties resorted to the recall of witnesses and the objects of the conveyance.¹³ As such, 'title to land...depended for its stability upon the vicissitudes of recollection', and the conveyance was 'marked in memory by its association with the symbolic object'.¹⁴ Livery of seisin was the dominant mode of transferring free tenure in the medieval period, and until the Statute of Frauds in 1676, it was not possible to transfer a freehold estate at law without the act of physically 'delivering' seisin.¹⁵

⁹ [1890] 25 QBD 57 (CA), at 66-67.

¹⁰ Philip Mechem, 'The Requirement of Delivery in Gifts of Chattels and of Choses in Action Evidenced by Commercial Instruments' (1926) 21 Illinois Law Review 457, 345.

¹¹ For an overview, see SE Thorne, 'Livery of Seisin' (1936) 52 Law Quarterly Review 345.

¹² Alain Pottage, 'The Measure of Land' (1994) 57 The Modern Law Review 361, 361; quoting Michael T Clanchy, *From Memory to Written Record: England 1066-1307* (Basil Blackwell 1993) 254–255.

¹³ Alain Pottage, 'The Measure of Land' (1994) 57 Modern Law Review 361.

¹⁴ Pottage (n 13) 361.

¹⁵ Payne (n 8). See also John M Kaye, *Medieval English Conveyances* (Cambridge University Press 2009). However, Thorne, n (11), is critical of accounts of both early English and Germanic law that emphasise the importance of physically delivering the transferee onto the land, and

Accordingly, deeds were evidential rather than constitutive of legal rights,¹⁶ and as a property relationship, ownership was constituted through a ‘composite’ of people and the materiality of the land itself. The interconnections between subject and object were therefore such that the subject could not be meaningfully removed from the object. This materialism was not unique to property law. A contract was not an abstract agreement but a ‘thing’ – only enforceable if that thing (the contract) had been physically delivered. As Payne puts it, ‘when delivered the instrument was not the *evidence* of a promise but the *obligation itself*.’¹⁷ Akin to seisin, the object of the agreement was not evidence nor a representation of an agreement – its physicality and enrolment in ritual *constituted* the agreement.¹⁸

The agency of materials and ritual in forming property is further evidenced by Seed’s work on the ceremonies of possession used by colonial states to constitute ownership of newly ‘discovered’ land.¹⁹ During processes of colonisation, Europeans utilised different materials, techniques and performances to signify and constitute ownership of land vis-à-vis one another. These included ‘planting crosses, standards, banners and coats of arms...marching in processions, picking up dirt, measuring the starts, drawing

argues that the ability to transfer land was possible through other symbolic acts or through writing. Wonnacott, above, also points to legal fictions and the operation of law in the thirteenth century that enabled the transfer of land without physical delivery. Further, the trust enabled equitable conveyances to sidestep the requirement for livery of seisin until the Statute of Frauds in the seventeenth century enabled the grant of land through writing alone: see Avisheh Avini, ‘The Origins of the Modern English Trust Revisited’ (1996) 70 *Tulane Law Review* 1139.

¹⁶ It was not until the Real Property Act 1845 that deeds were required to transfer freehold estates: Payne (n 8) 240. Today the law requires that the transfer of land is manifested in writing, executed in a deed and registered; physical delivery of the land is neither required nor effective to convey a legal estate. See, respectively, s 2 of the Law of Property (Miscellaneous Provisions) Act 1989, s 52 of the Law of Property Act 1925, s 27 of the Land Registration Act 2002 and s 51 of the Law of Property Act 1925.

¹⁷ Payne (n 8) 237, my emphasis.

¹⁸ Echoes of this lie in the continuing requirement for a deed to be ‘delivered’ per s 1(3)(b) of the Law of Property (Miscellaneous Provisions) Act 1989.

¹⁹ Patricia Seed, *Ceremonies of Possession in Europe’s Conquest of the New World: 1492-1640* (Cambridge University Press 1995).

maps'.²⁰ The English relied on fences and dwelling rather than a ceremony per se: the act 'of constructing a dwelling place created the right of possession. The continuing presence and habitation of the *object* – the house – maintained that right.'²¹ The Spanish, in contrast, relied on notarised speeches, written and delivered in a specific form. Seed's work highlights that property relations are not coherent 'social' or 'legal' flows between people. Rather, such relationships are performed, actualised and mediated *through* non-humans and materials. Put differently, Seed highlights that the human subjects of property are outcomes of non-human arrangements. However, the early modern period marked a rupture with explicitly materialist conceptions and practices of property considered thus far. This rupture was realised through new understandings of subjects and objects, and a notion of time as a linear process. I consider each in turn.

3.2.1 Distinguishing nature and culture, person and thing

Early modern European thought fabricated dichotomies between nature and culture, and person and thing, which divided the world into opposing categories: 'human beings and "the rest"'.²² Sixteenth-century scientific thought emphasised quantification and the observable properties of materials, therefore establishing nature as an inert category and field of human inquiry.²³ As Graham notes, the scientific method of Galileo drew a sharp distinction between subject (the human investigator) and object (the non-human under inquiry).²⁴ In doing so, Graham contends that 'the objects of scientific investigation' became 'the "things" of nature'.²⁵ As such, the scientific method situated

²⁰ Seed (n 19) 2.

²¹ Seed (n 19) 19. Original emphasis.

²² Graham (n 2) 27.

²³ Fritjof Capra and Ugo Mattei, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (Berrett-Koehler 2015) 3.

²⁴ Graham (n 2) 29.

²⁵ Graham (n 2) 29.

nature 'as a machine made up of discrete, measurable parts'.²⁶ Latour has described this as a process of 'purification' – the creation of 'two entirely distinct ontological zones: that of human beings on the one hand; that of nonhumans on the other'.²⁷ Graham notes how this marked a sharp break from medieval notions of ritual and connection.²⁸

The distinction drawn by the scientific method was not neutral. Subjects were situated as *superior* to objects, and in command of nature. Davies outlines how, according to Kantian philosophy, subjects are moral 'ends in themselves', whereas objects are merely means to an end.²⁹ This establishes an 'ethical priority of subjects over objects'.³⁰ The ability to reason is essential to the modern conceptualisation of the subject: as a moral being, humans possess dominion over the non-human.³¹ In contrast, the 'thingness' of nature follows from its inability to reason, and accordingly, the inability to reason renders nature inferior. The nature/culture and person/thing distinctions were therefore not based simply on a 'binary structure' but rather '*hierarchal distinction*'.³² According to Graham, the scientific revolution 'carried with it a new ontological order and a new people-place relation' in which humans are superior and therefore *masters* of nature.³³ This ontological order was – and remains – central to the creation of modern forms of property relationships: nature is something to be harnessed, cultivated, exploited, or in the nomenclature of the scientific revolution, *improved*.³⁴

²⁶ Capra and Mattei (n 23) 5.

²⁷ Bruno Latour, *We Have Never Been Modern* (Catherine Porter tr, Harvard University Press 1993) 10–11.

²⁸ Graham (n 2) 29.

²⁹ Margaret Davies, 'Material Subjects and Vital Objects — Prefiguring Property and Rights for an Entangled World' (2016) 22 *Australian Journal of Human Rights* 37, 39.

³⁰ Davies (n 29) 39.

³¹ Davies (n 29) 13.

³² Graham (n 2) 31. My emphasis.

³³ Graham (n 2) 32.

³⁴ Eric R Claeys, 'Productive Use in Acquisition, Accession, and Labour Theory' in James Penner and Henry E Smith (eds), *Philosophical Foundations of Property Law* (Oxford University

The subject/object distinction, and the hierarchal distinction it represented, was bound up in novel forms of dispossession in the early modern period. European anxiety over dispossessing native inhabitants who occupied 'newly discovered' land was overcome by the view that such inhabitants were not *subjects*, evidenced by their failure to use objects to exploit the land. Occupation as a *subject*, according to European sensibilities, entailed the exploitation of nature. Because native inhabitants 'failed to turn trees into chairs',³⁵ they were neither subjects nor occupiers, 'participating rather of the nature of beasts than men' living 'like deer in herds [sic]'.³⁶ More than a political tool, however, the subject-object distinction became accepted as an ontological truth, and as the basis upon which to explain property. As Esposito notes, the categories of persons and things are mutually reinforcing in the explanation of property: 'since a thing is what belongs to a person, then whoever possesses things enjoys the status of personhood and can exert his or her mastery over them'.³⁷ As Esposito puts it, 'few other formulations have exercised an effect of this magnitude for so long. The entire human experience has been cut off by a line that allows for no other possibilities'.³⁸

3.2.2 Subjects, objects and temporality

In this section, I consider how the subject-object distinction described above emerged concurrently with a distinct temporal register. While it is difficult to conceive of time other than an inevitable linear process, Keenan suggests 'time must be understood not as an objective, universal and quantitative measurement of progress or existence, but

Press 2013) 17–21; Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000* (Cambridge University Press 2014) ch 4.

³⁵ Fitzmaurice (n 34) 74.

³⁶ Robert Gray, *A Good Speed to Virginia* (William Welbie 1610); quoted in Fitzmaurice (n 34) 74.

³⁷ Roberto Esposito, *Persons and Things: From the Body's Point of View* (Polity Press 2015) 17.

³⁸ Esposito (n 37) 17.

rather as a culturally specific understanding of how events relate to each other'.³⁹ In separating nature and culture, modern thought fabricated a specific understanding of time as a universal and linear process. As Grabham observes, the Enlightenment categorised 'nonscientific truths as *outside* reason'.⁴⁰ This was realised 'through the temporal mechanism of consigning such truths to archaism, stating not that they were false, but that they were "out of date."⁴¹ Grabham suggests that this allows modern thought 'to hold in place two fields of time'.⁴² On the one hand, 'an ahistorical field populated by universal and necessary things or forces of nature'.⁴³ On the other, 'a much more contingent field of human history, detached from things'.⁴⁴ The 'temporal framework' of modern thought is therefore characterised by the 'arrow of time,' with definitive temporal breaks, and, most importantly, an understanding of time as something that *passes*.⁴⁵ Accordingly, time became situated as an irreversible and natural linear process, distinguished by two fields: past and present.⁴⁶

Early modern property thinking was bound up in this temporal register. Firstly, time was discursively implicated. Early modern conceptions of property became situated in notions of 'progress'.⁴⁷ As Fitzpatrick notes, within Enlightenment thought, property was 'the foundation of civilization, the very motor-force of the origin and development of society, the provocation to self-consciousness and the modality of appropriating

³⁹ Sarah Keenan, 'Smoke , Curtains and Mirrors : The Production of Race Through Time and Title Registration' (2017) 28 *Law and Critique* 87, 4.

⁴⁰ Emily Grabham, *Brewing Legal Times: Things, Form, and the Enactment of Law* (University of Toronto Press 2016) 25. My emphasis.

⁴¹ Grabham (n 40) 25.

⁴² Grabham (n 40) 23.

⁴³ Grabham (n 40) 23.

⁴⁴ Grabham (n 40) 23.

⁴⁵ Grabham (n 40) 23 quoting; Latour (n 27) 67.

⁴⁶ Grabham (n 40) 23 see also; Carol J Greenhouse, *A Moment's Notice: Time Politics Across Cultures* (Cornell University Press 1996).

⁴⁷ Brenna Bhandar, 'Critical Legal Studies and the Politics of Property' (2014) 3 *Property Law Review* 186 See also; Brenna Bhandar, 'Anxious Reconciliation(s): Unsettling Foundations and Spatializing History' (2004) 22 *Environment and Planning D: Society and Space* 831.

nature'.⁴⁸ This is evident in the enclosure movement – in which rights to common land were extinguished and ownership 'rationalised' into larger parcels of land – and in the conquest of the 'New World' – either understood as a land without a past, or land inhabited by 'primitive' societies.

Secondly, time was implicated in the creation of property's legal forms. The subject-object distinction constitutes an ontological closure in that the components of social life are understood to be defined and limited. However, the formation of modern property forms also entailed the closure of *time*. As noted above, property's temporality was orientated to the past in that title to land was constituted by the 'vicissitudes of recollection'.⁴⁹ A conveyance 'lived on' by associating title with the symbolic object of the transfer, which lay within, Pottage suggests, local networks of memory.⁵⁰ Memory therefore constituted the archive or register, orientated to the past, against which property claims were mediated. However, the 'arrow of time' inherent to modern thought helped to produce a teleological conception of property.⁵¹ In particular, through the advent of land registration, property eventually became *future oriented*. Land registration was modelled on registration of ship ownership, whereby registration was intended to 'comprehensively' represent the nature of title to the ship.⁵² To that end, registration was ultimately constitutive of title rather than representative. This technology was applied to English colonies before being deployed in England. For Pottage, registration sought to 'remove property from its natural habitat, from the realm of practical presuppositions and expectations' by displacing property 'from networks of organic or practical memory'.⁵³ Pottage describes this as a 'reconstitution' of the

⁴⁸ Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge University Press 2001) 50; quoted in Bhandar, 'Critical Legal Studies and the Politics of Property' (n 47) 189.

⁴⁹ Pottage (n 12) 361.

⁵⁰ Pottage (n 12) 361.

⁵¹ Bhandar, 'Anxious Reconciliation(s): Unsettling Foundations and Spatializing History' (n 47).

⁵² Sarah Keenan, 'From Historical Chains to Derivative Futures: Title Registries as Time Machines' (2019) 20 *Social & Cultural Geography* 283, 289.

⁵³ Pottage (n 13) 361.

temporality associated with property in that title is deposited 'in an administrative archive, accessible and decipherable by reference only to the index of the archive'.⁵⁴ As such, registration constitutes property relationality by a title's presence in the registry, and purports to erase the past while protecting the future. As Keenan outlines:

[Land registration] produces a temporality which is uniquely oriented around and protective of its users.... The curtain protects registered proprietors from the past, orienting them toward their own indefeasible futures. The mirror produces a fictional reflection of the registered proprietor and his/her land, a fiction which is then actualised, despite any real but unregistered counterclaim to the land. This outcome is literally guaranteed by the insurance principle. From the perspective of the registered proprietor, the world external to the registry can blur away into insignificance. As the duration and content of title is determined solely by reference to the registry rather than to any unregistered event, the registered proprietor can safely fall out of sync with the external world.⁵⁵

By ensuring title is future orientated and swept clean of historical baggage, registration reflects and emphasises the Enlightenment view of property as mastery over the physical world. However, this conception of property is achieved through fabricating distinctions between subjects and objects, and leaves 'little room to examine the ways [the human and non-human] emerge together in a variety of combinations, or how so called human agency draws its force by attempting to divert or attach itself to other kinds of energy or logic'.⁵⁶ As such, it operates to decide beforehand the components and structure of social life and therefore limits analysis.

I turn now to explore the extent to which property theory has moved beyond the primacy of the subject in apprehending property's relational basis. In this literature review, I explore how property theorists have challenged the dominance of the subject-object distinction, and identify approaches that move property beyond the centrality of the human. I claim that much property theory has uncritically received the subject-object distinction, and its associated conception of time, as the explanatory basis of

⁵⁴ Pottage (n 12) 361.

⁵⁵ Keenan (n 52) 10.

⁵⁶ Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (University of California Press 2002) 29.

property relationships. I conclude by outlining how an understanding of property as a networked effect moves us beyond the limited ontological lens of subjects and objects, and outline particular areas for development.

3.3 Moving beyond subjects and objects: contemporary property theory

In this section, I explore the various approaches within contemporary theory which seek to unpack the relational basis of property, and the extent to which they move beyond the subject-object distinction. I highlight the questions provoked by these accounts, as well as their weaknesses. I begin by considering the 'progressive approach' to property and the questions it raises in respect of the role of legal form in the composition and endurance of property relationships. Secondly, I explore how relational approaches to property have moved the analysis away from legal form to relationships between people. While this is an important shift, I suggest that relational approaches have shifted the vocabulary of property without necessarily shifting the analysis of property's constituent elements. Thirdly, I review literature which apprehends property as a lived process, including performativity theory. While this research marks an important shift to analysing property as an active process, I suggest that it does not adequately account for how property endures. Fourthly, I consider how property scholarship has examined the role of space in constituting and supporting property. I argue that significant methodological questions remain as to the role of spatiality in constituting property. Fifthly, I explore the 'dynamics approach' advanced by Blandy, Bright and Nield. While presenting a renewed focus on the temporality of property, I argue that this approach relies on an unsophisticated understanding of time as the backdrop to human relationality. Finally, I explore Davies' approach to the 'vitality' of objects in the composition of property, which emphasises the need to consider the agency of non-humans in the making and endurance of property relationships. I conclude the section by identifying three latencies in property scholarship, which I respond to by developing an understanding of property as a networked effect in the next chapter.

3.3.1 The progressive approach and property's relationship to legal form

Progressive property scholars take issue with the dominance of ownership in conceptions and practices of property.⁵⁷ The dominance of ownership, these scholars suggest, stems from the application of an economic lens to property through which the rights incidental to ownership (principally the ability to exclude others) are considered essential to maximising utility and efficiency.⁵⁸ This imperative, they suggest, operates to situate ownership as economically and morally superior to other forms of property. However, progressive property scholars argue that a prioritisation of ownership is neither an accurate reflection of property's dynamics, nor politically desirable. Instead, progressive scholars argue that property relationships can and should be calibrated to promote human flourishing and dignity.⁵⁹ As Bray puts it, 'property law should seek to improve the character of the social relationships and the health of the communities from which it emerges.'⁶⁰

Progressive property has made a valuable contribution to rebutting suggestions that ownership is the inevitable form property relations take, as well as the contention that ownership is the most desirable form of property. However, there are significant limitations in the progressive approach's understanding of how property relationships are produced and sustained. Principally, the progressive approach is characterised by an uncritical reception of the subject-object distinction as the 'building blocks' of social life. This underpins a simplistic conception of property as nothing more than a legal relationship between people with respect to a thing. It is, as Cloatre and Cowan

⁵⁷ For example, Ezra Rosser, 'The Ambition and Transformative Potential of Progressive Property' (2013) 101 California Law Review 107; Gregory S Alexander and others, 'A Statement of Progressive Property' (2008) 94 Cornell Law Review 743; Joseph William Singer, *Entitlement: The Paradoxes of Property* (Yale University Press 2000).

⁵⁸ Timothy M Mulvaney, 'Progressive Property Moving Forward' (2014) 5 California Law Review 349, 351.

⁵⁹ Alexander and others (n 57) 744.

⁶⁰ Zachary Bray, 'The New Progressive Property and the Low-Income Housing Conflict' (2012) 4 Brigham Young University Law Review 1109, 1117.

suggest, 'a top-down, law-first orientation'.⁶¹ Accordingly, for progressive property scholars, re-casting property is simply a matter of redefining the incidents to legal relationships – access rather than exclusion, stewardship rather than control. Put differently, in maintaining that property is little more than a 'bundle of rights', the progressive argument merely amounts to a claim that the content and/or composition of that bundle ought to be different.

As Pottage observes, legal scholars too often posit 'the existence of 'law' as an instance or phenomenon whose existence is too evident to require justification'.⁶² The progressive approach is characteristic of this failure: no attention is paid to how property relationships might be constituted by means other than law. Such faith in the capacities and effect of legal form is underpinned by a simplistic set of assumptions about persons, objects and social life. This is not to suggest ignoring or abandoning law in the making of property. As Thorpe notes in respect of ownership, this is a relationship which concerns 'a feeling of belonging to a particular place', and while that is not the same as legal title, it is '*not entirely separate from law*'.⁶³ As such, property theory should question how law itself is constituted in the making of property, rather than take law as the point of departure. I therefore suggest that the progressive approach does little to develop our understanding of the relational composition of property. It fails to consider how property might be an *outcome* of networked relations, how subjects and objects might follow as an effect of such relations, and how materiality or spatiality might enter such processes.

⁶¹ Emilie Cloatre and Dave Cowan, 'Legalities and Materialities' in Andreas Philipopoulos-Mihalopoulos (ed), *Research Handbook in Law and Theory* (Routledge 2019).

⁶² Alain Pottage, 'The Materiality of What?' (2012) 39 *Journal of Law and Society* 167.

⁶³ Amelia Thorpe, "'This Land Is Yours": Ownership and Agency in the Sharing City' (2018) 45 *Journal of Law and Society* 99, 106. My emphasis.

3.3.2 Property as a social relationship

Gray and Gray suggest that ‘most property theorists nowadays accept the idea that “property” is not a thing or resource, but rather a power relationship...The term “property” is simply an abbreviated reference to a quantum of socially permissive power exercised in respect of a socially valued resource’.⁶⁴ Gray and Gray’s account of property is not only relational, it is also relative, in that ‘there may well be gradations of “property” in a resource; and the amount of “property” which various persons may be accorded simultaneously in the same resource can be calibrated from a maximum value to a minimum value’.⁶⁵ Writing separately, Kevin Gray also claims that “[p]roperty” is the name given to a legally (because socially) endorsed constellation of power over things and resources. Property is not a thing at all, but a socially approved power-relationship in respect of socially valued assets.’⁶⁶ Hann reflects this relational view of property, and emphasises that property relations are ‘better seen as social relations between people’ rather than merely legal relations.⁶⁷

In principle, thinking about property in relational terms offers a fruitful departure from the subject-object distinction and a move towards understanding property as a process from which relational effects are constituted. In particular, Gray and Gray have disrupted the idea that property amounts to nothing more than a ‘raw exclusionary power’ in respect of a particular thing, place or resource.⁶⁸ However, I suggest that Gray and Gray’s conceptualisation of property nonetheless relies on an insufficiently interrogated division between persons and things. While Gray and Gray’s approach brings relations between persons and things to the fore, it is characteristic of Verdery

⁶⁴ Kevin Gray and Susan Francis Gray, ‘Private Property and Public Propriety’, *Property and the Constitution* (Bloomsbury Publishing 1999) 12.

⁶⁵ Gray and Gray (n 64) 12.

⁶⁶ Kevin Gray, ‘Equitable Property’ (1994) 47 *Current Legal Problems* 157, 160.

⁶⁷ Chris Hann, ‘Introduction: The Embeddedness of Property’, *Property Relations: Renewing the Anthropological Tradition* (Cambridge University Press 1998) 4, original emphasis.

⁶⁸ Gray and Gray (n 64) 15.

and Humphrey's criticism of relational approaches: both "persons" and "things" are clearly bounded, have integrity, and are easily recognizable as separate kinds of entities.⁶⁹ Gray and Gray's approach is defined by such assumptions: their approach is characterised by an ontology of relations *between* people *over* things, with both 'people' and 'things', subjects and objects, posited as the stable and coherent building blocks of social life. In particular, they ignore how property might in fact be constitutive *of* the subject, and instead presume that it is reducible to a relationship *between* subjects. Moreover, Gray and Gray give no consideration to how the objects and spaces of property function, other than as mere receptors for human relationships. As Verdery and Humphrey suggest, if relational perspectives rely upon an 'unproblematic distinction' between subjects and objects, such perspectives reproduce and sustain 'an object-relations view of the world'.⁷⁰

Perhaps more problematic is that, while purporting to apprehend property in relational terms, it can be argued that Gray and Gray ultimately understand rights as the building blocks of property's ontology. For instance, there is little to distinguish Gray and Gray's claim that "the "property" accorded to any particular person in respect of any particular resource is identifiable as a point located across a spectrum of differing intensities of socially approved user control"⁷¹ from a legal right. Legal rights can similarly be conceptualised as a distinct quantum of power or protection enforceable against others. However, Gray and Gray seek to distinguish their understanding of property from a legal right in that the control an individual may claim in respect of a resource is socially constituted rather than simply an effect of law. But if property is 'socially constituted', Gray and Gray ignore the more profound question of *how* that 'social' constitution takes place. In neglecting that question, Gray and Gray's approach cannot

⁶⁹ Katherine Verdery and Caroline Humphrey, 'Introduction: Raising Questions about Property' in Katherine Verdery and Caroline Humphrey (eds), *Property in Question: Value Transformation in the Global Economy* (Berg 2004) 6.

⁷⁰ Verdery and Humphrey (n 69) 6.

⁷¹ Gray and Gray (n 64) 13.

respond to Thorpe's question of 'where does property come from, and why do others respect property claims?'.⁷² Accordingly, in shifting the language of property away from rights to relationships, the question becomes 'what is a relationship, and how is it made?'.⁷³

3.3.4 Property as a process

Recent scholarship has emphasised that property is a lived relationship that is actively produced. Blandy, for example, has argued that focusing solely on the legal instruments of property does not accurately capture how property relationships are constituted and lived.⁷³ Instead, Blandy argues that 'empirical observations emphasise and confirm that property is both an attitude of mind and a process based on continual enactment on the ground', revealing a picture of property 'as not simply externally imposed and enforced through law but as continuously recreated and maintained by social interactions'.⁷⁴ To that end, Blandy analyses how property is 'constituted by those who live it' in the context of a cohousing site in England.⁷⁵ Blandy argues that 'the 'real' property status in the cohousing development is constituted by the residents' everyday practices and their conscious decisions leading to parallel rules, most appropriately described as collective property and governance.'⁷⁶ However, Blandy's analysis of property's composition is overly focused on the work and interactions of human subjects. As such, it suggests that property is the exclusive outcome of human work, dependent upon inhabitants maintaining and enforcing a complex range of site-

⁷² Amelia Thorpe, 'Hegel's Hipsters: Claiming Ownership in the Contemporary City' (2018) 27 *Social and Legal Studies* 25, 26.

⁷³ Sarah Blandy, 'Collective Property: Owning and Sharing Residential Space' in Nicholas Hopkins (ed), *Modern Studies in Property Law - Volume 7* (Hart 2013); Sarah Blandy, 'Socio-Legal Approaches to Property Law Research' (2014) 3 *Property Law Review* 166.

⁷⁴ Blandy, 'Socio-Legal Approaches to Property Law Research' (n 73).

⁷⁵ Blandy, 'Collective Property: Owning and Sharing Residential Space' (n 73) 153.

⁷⁶ Blandy, 'Collective Property: Owning and Sharing Residential Space' (n 73) 154.

specific rules.⁷⁷ There is no exploration of how, for example, materiality, space or other elements might enter into the constitution of property relationships.

Similar to Blandy, Blomley argues that property should be apprehended as an active process.⁷⁸ Blomley draws on performativity theory to argue that 'social reality is a relational effect, not a prior ground, that is brought into being by the very act of performance itself'.⁷⁹ To that end, 'statements about the world, such as the ownership model, are not outside that world; they also make that world'.⁸⁰ Blomley relies on performativity theory to build an approach which accounts for the role of non-humans in the construction and endurance of property relationships. At the core of performativity theory is the claim that representations are not mere descriptions of the world: they participate in building the reality they describe.⁸¹ Accordingly, language is 'not something that subjects use in order to describe objects; it is that which constitutes both subjects and objects'.⁸² Blomley gives the example of the state. The state, he suggests, is made by a wide array of discursive practices such as immigration policies, military interventions, and cultural debates'.⁸³ Such performances are constitutive of the phenomena rather than merely descriptive.

Blomley contends that performativity theory overcomes questions of whether property acts through 'the force of ideas', or whether it is made real by the work of lawyers and legal form.⁸⁴ Specifically, he suggests that performativity can attend to how representations of property participate in actually constituting property. Blomey gives

⁷⁷ Blandy, 'Collective Property: Owning and Sharing Residential Space' (n 73).

⁷⁸ Nicholas Blomley, 'Performing Property: Making the World' (2013) 26 *The Canadian Journal of Law & Jurisprudence* 23; Nicholas Blomley, 'The Boundaries of Property: Complexity, Relationality, and Spatiality' (2016) 50 *Law and Society Review* 224.

⁷⁹ Blomley, 'Performing Property: Making the World' (n 78) 32.

⁸⁰ Blomley, 'Performing Property: Making the World' (n 78) 32.

⁸¹ See generally Judith Butler, *Bodies That Matter: On the Discursive Limits of 'Sex'* (Routledge 1993).

⁸² Luiza Bialasiewicz and others, 'Performing Security: The Imaginative Geographies of Current US Strategy' (2007) 26 *Political Geography* 405, 57; quoted in Blomley, 'Performing Property: Making the World' (n 78) 33.

⁸³ Blomley, 'Performing Property: Making the World' (n 78) 33.

⁸⁴ Blomley, 'Performing Property: Making the World' (n 78) 36.

the example of building a fence with his neighbour, and argues that he and his neighbour emerge as 'subjects of property' through the performance of fence building. Here Blomley draws on Judith Butler, who suggests that performance is

but a process of reiteration by which both 'subjects' and 'acts' come to appear at all. There is no power that acts, but only a reiterated acting that is power in its persistence and instability'.⁸⁵

Blomley acknowledges that, by maintaining that all social reality is the outcome of performance, it could be argued that all performances are equally possible, and that any performance of property is possible.⁸⁶ Blomley suggests that such a position is naïve. Performativity, he claims, does not merely assume that an act or description has performative effect. Instead, performativity includes analysis of how *certain performances* are able to constitute a particular effect or relationship. Here Blomley draws on Butler again to note that successful performances are iterative and citational:

Performativity...“must be understood not as a singular or deliberate ‘act,’ but, rather, as the reiterative and citational practice by which discourse produces the effects that it names.” The performative power of a fence (or a judicial pronouncement, real estate advertisement, map or other of property’s enactments, including Robert Frost’s poetry, or children’s stories) cannot be explained by some originating act of will, but is always derivative, taking hold and becoming real in the world to the extent that it successfully cites other such performances and, in so doing, compels future similar performances.⁸⁷

This, Blomley suggests, explains the efficacy of the ownership model:

The ownership model, in this sense, has performative force not as a “model,” in abstraction, but because it is more or less plugged into a world in which it is deemed “true.” Citational failures, conversely, are less likely to have performative effect, and thus to become reality.⁸⁸

Significantly, in charting the formation of property relationships via performativity theory, Blomley argues that 'performativity does not suppose a divide between human

⁸⁵ Butler (n 81) 9; quoted in Blomley, 'Performing Property: Making the World' (n 78) 32.

⁸⁶ Blomley, 'Performing Property: Making the World' (n 78) 36.

⁸⁷ Blomley, 'Performing Property: Making the World' (n 78) 32; quoting Butler (n 81) 2.

⁸⁸ Blomley, 'Performing Property: Making the World' (n 78) 36.

agents that arrange and assemble, and things that have been arranged'.⁸⁹ Performance occurs through the linking or arrangement of human and non-human entities – 'a fence performs property when it is hooked up to other entities'.⁹⁰ In this respect, 'performance occurs not only by words and ideas but also through particular relations between bodies and things.'⁹¹ The 'composite' of 'things, ideas, acts, people' that come together in a successful performance of property, Blomley suggests, can be described as 'an assemblage or an "agencement"—a "combination of heterogeneous elements that have been carefully adjusted to one another"'.⁹² As a methodological lens to the study of property, Blomley suggests that 'performativity follows how these assemblages are put together, stabilized and made real'.⁹³

Blomley's work brings renewed focus to property's relational ontology. He seeks to disrupt the subject-object divide by attending to how property follows from connections between human and non-human entities, rather than simply as an 'output' of human will. However, there are several limitations to Blomley's approach. Firstly, Blomley takes an uncritical approach to law and legal form. His central argument is that it is necessary to trace how property relationality is brought about by performance. More specifically, he argues that it is necessary to chart the entities and processes through which performance is given traction. To that end, Blomley explores the agency of particular materials and elements in performing property, such as fences, locks, mud, doors. Such elements, Blomley suggests, have capacities when enrolled with *other* entities. Law, however, is treated differently in Blomley's account. Specifically, law is

⁸⁹ Blomley, 'Performing Property: Making the World' (n 78) 39.

⁹⁰ Blomley, 'Performing Property: Making the World' (n 78) 39.

⁹¹ Blomley, 'Performing Property: Making the World' (n 78) 39.

⁹² Blomley, 'Performing Property: Making the World' (n 78) 39; quoting Michel Callon, 'What Does It Mean to Say That Economics Is Performative?' in Donald MacKenzie (ed), *Do Economists Make Markets? On the Performativity of Economics* (Princeton University Press 2007) 319.

⁹³ Blomley, 'Performing Property: Making the World' (n 78) 39.

imbued with an inherent capacity to act in that it possesses an ‘organizing power’.⁹⁴ Critical accounts have rejected this approach to law. Cloatre and Cowan, for instance, argue for a dissolution of ‘law’ as an independent and pre-given source of power. Instead, they argue for an account of law which views it as ‘a field always in making and deeply entangled in other forms of social making and unmaking or unsettlement’.⁹⁵ However, Blomley pays no attention to law’s contingencies, or indeed to how law *itself* must be performed and actualised through relationships to the other entities and performances.

Secondly, there are ambiguities in Blomley’s argument in respect to the ‘citational’ nature of performances. As noted above, Blomley argues that there is no social reality prior to performances, and to that end, he argues that property does not pre-exist its performances. He further notes that not all performances of property are successful. To work, a performance has to be ‘citational’. He notes that ownership ‘works’ because ‘it is more or less plugged into a world in which it is deemed “true.”’⁹⁶ As such, he argues that performances must cite other, successful performances to work. However, this undermines his argument that social reality does not pre-exist its performances. If the ownership model is already deemed to be ‘true’, how is that truth stabilised and made real? This is a ‘chicken and egg’ like quandary – what comes first: the performance of property, or the truth and accepted practice which it must cite? There is no clear indication in Blomley’s analysis. In any event, the shift to explaining property via the citation of an *external* truth undermines his argument that it is necessary to attend to the actors and connections which produce and stabilise property. By relying on pre-existing truths which performances must cite, Blomley moves away from analysing those entities and actors on their own terms, and instead explains their efficacy in

⁹⁴ Blomley, ‘Performing Property: Making the World’ (n 78) 38.

⁹⁵ Cloatre and Cowan (n 61) 438.

⁹⁶ Blomley, ‘Performing Property: Making the World’ (n 78) 36.

relation to the extent that they cite a practice which is *already* deemed to be true and have stability. Blomley thus has recourse to the very abstractions that he suggests should not be used to explain property.

Thirdly, Blomley's work lacks consideration of property's temporal dynamics. The performative approach offers little help in explaining how property relationships *endure*. Blomley suggests that it takes sustained work to enact a successful performance, but offers no analysis of how, once assembled, a performance remains stable, and the extent to which a performance might engender the very temporality it requires to endure.

Finally, performativity does not explain how we come to be bound up and affected by performances of property to which we are not a party. The two examples Blomley cites – his experience of building a fence, and the enclosure movement – are instances in which, as he puts it, individuals emerge as subjects of property *through* performance. As such, Blomley's theory of property has an inherent immediacy to it – it is attentive to our physical role in the assembling of entities to produce property (building a fence, and losing access to a common). Performativity, however, offers no explanation for how we are implicated in property relationships against our will. Financial property forms, for example, implicate us in arrangements which, as Maurer puts it, 'redefine the subject of property' as a 'risk profile'.⁹⁷ These property forms, such as securities and derivatives, collapse the subject-object distinction, and 'make possible equivalencies among objects of property by rendering these objects into the same kind of thing – abstractions of value embodied in imaginary shares.'⁹⁸ However, in being rendered the *object* of property, we play no active role. Accordingly, in privileging active participation

⁹⁷ Bill Maurer, 'Forget Locke? From Proprietor to Risk-Bearer in New Logics of Finance' (1999) 11 *Public Culture* 47, 366.

⁹⁸ Maurer (n 97) 366.

in performances, Blomley's theory of performativity appears to offer no explanation as to how we are passively implicated in property forms.

3.3.5 Space and place in property

Property scholars have attended to how property is co-constituted in networks of space. In this section, I consider how this scholarship develops our understanding of property beyond the centrality of the human, and also explore its shortcomings.

3.3.5.(i) Property and belonging

Cooper has explored the 'work' property practices perform to produce what she described as a 'variegated' social – 'a spectrum of relations, norms, and practices' which interlock through space.⁹⁹ Cooper undertook this analysis in respect of Summerhill School – a boarding school which is collectively governed by its students and teachers.¹⁰⁰ Cooper characterised the property regime at Summerhill as being premised on openness, but which, in a variety of ways, could be reversed. Cooper concluded that we should view property 'as a set of networked relations in which the subject is embedded, rather than as simply exercising mastery or control over an object'.¹⁰¹ In generating this network, Cooper argued that the use of space was central, and identified five 'dimensions of property' to guide her analysis:

Firstly, 'belonging', which, for Cooper, is the most significant part of a property practice.¹⁰² Belonging has two meanings in Cooper's analysis: a relationship where a person holds rights over a thing; alternatively, property can be underpinned by a relationship of connection which is constitutive of part and whole. Rather than a

⁹⁹ Davina Cooper, 'Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property' (2007) 32 *Law and Social Inquiry* 625, 627.

¹⁰⁰ Cooper (n 99); Cooper also explores the property regime of the school in *Everyday Utopias: The Conceptual Life of Promising Spaces* (Duke University Press 2014).

¹⁰¹ Cooper (n 99) 636.

¹⁰² Cooper (n 99) 629.

relationship of dominion over a thing, the second understanding of belonging explores ‘the attributes, qualities, or characteristics of a thing’ and how these interact with the subject.¹⁰³

Secondly, ‘codification’, which Cooper suggests is the process in which a thing comes to be constituted as an object of property, and caught up in a particular set of norms and understandings. During codification, the object(s) of property ‘comes to condense or represent a far more complex set of relationships’, with the result that the thing is located ‘within wider regulatory and epistemic structures’.¹⁰⁴ Cooper notes that codification will vary depending on the form of belonging underpinning the relationship. For instance, a particular property practice may encode ‘the thing as commodity – defined, made meaningful, and valued by its market relationship’.¹⁰⁵ In contrast, another practice may encode the ‘thing’ with alternative norms and understandings, such as those that characterise Summerhill school – reciprocity, openness and mutual control. Cooper’s work would suggest that codification is ontological: in the production of norms and understandings, codification produces the core attributes of the object of property – so much so that encoding, in large part, produces a conception of what the object *is*. For instance, for Summerhill’s owners, ‘the school grounds function as a potentially severable, commodifiable thing (and, as such, as alienable)... as well as a core attribute of what Summerhill *is* (that is, as constitutive of the school)’.¹⁰⁶

Critically, Cooper suggests that ‘layers of coding’ may ‘overlap’.¹⁰⁷ For instance, Summerhill School is simultaneously encoded with one form of meaning for its students and another for its owners – so much so that the object (i.e. the school) is caught up in competing understandings of what it *is* – a commodity for its owners, a space

¹⁰³ Cooper (n 99) 630.

¹⁰⁴ Cooper (n 99) 630.

¹⁰⁵ Cooper (n 99) 630.

¹⁰⁶ Cooper (n 99) 630.

¹⁰⁷ Cooper (n 99) 630.

constitutive of identities and lived relationships for students and staff. To that end, Cooper's analysis highlights that property helps generate multiple and overlapping relationships, different meanings – and even realities – for different subjects in that the same object can be caught up in contrasting conceptions of meaning and norms.

Thirdly, Cooper suggests that the making of property relationships involves 'definition' which 'encompasses attempts to fix legal boundaries around the thing as well as around relationships to it'.¹⁰⁸ Fourthly, that the constitution of property depends upon practices that bestow 'recognition' upon the relationship. Recognition ensures that 'things, relations, and claims'¹⁰⁹ take on the quality of property (i.e. that a particular use or behaviour is provoked or prevented). Recognition can be achieved through 'authoritative practices' which 'bestow recognition' or produced through citational practices that cite 'prevailing norms'.¹¹⁰ Cooper's fifth and final dimension of property is 'power'. She notes that codification must 'make a difference' for property to be generated and sustained: 'recognition that carries no weight, that is, in a sense, a "failed performative" ... cannot effectively encode relations of belonging as property.'¹¹¹

While Cooper's account seeks to move beyond the primacy of the subject in explaining property, I suggest that it requires refinement in a number of key respects. Firstly, key questions remain in respect of what Cooper describes as 'codification'. As noted above, Cooper suggests that 'codification' is the means by which 'a thing comes to condense or represent a far more complex set of relationships'.¹¹² Cooper argues that codings can overlap, and the same object can be caught up in multiple and competing meanings. Such overlap is present in many property arrangements. A rented home is a different thing to the landlord (an asset) than it is to the tenant (a home). And it is

¹⁰⁸ Cooper (n 99) 630 References omitted.

¹⁰⁹ Cooper (n 99) 631.

¹¹⁰ Cooper (n 99) 631.

¹¹¹ Cooper (n 99) 631.

¹¹² Cooper (n 99) 630.

different yet again to a mortgage lender – and different again to investors who might fund the lender. In short, there is a wide range of possible relationships between actors with respect to the objects of property, and these meanings and relationships may be simultaneously present, creating different conceptions and practices of property to the object in question. However, Cooper offers little insight into how overlaps interact, how conflicts might occur, and how subjectivity is affected. Overlapping ‘codings’ are clearly a feature of many property relationships, and therefore require further analysis.

Secondly, Cooper offers little methodological purchase into *how* codification happens. If codification is the process by which a broad array of relationships are condensed into a thing, it is unclear as to how this process can be apprehended in methodological terms. Furthermore, Cooper’s methodology remains centred on the subject in that there is little exploration of the role of non-humans in the codification of property relationships. Some objects are singled out as important – but no explanation is given as to how that object might act in the constitution the property relationship. This is key gap in Cooper’s approach, and a point I return to in the analysis of Davies’ work below. Thirdly, Cooper does not attend to the role of time in the creation and endurance of property relationships. How, for example, does the property regime at Summerhill School implicate new students and teachers on their arrival? Is it merely a product of concerted human will?

In summary, while Cooper suggests that property is ‘a set of networked relations in which the subject is embedded’,¹¹³ I suggest that Cooper’s understanding of how such networks are composed is clouded by conceptual and methodological ambiguities as to the role of codification, the capacities of objects, and the role of time.

¹¹³ Cooper (n 99) 636.

3.3.5.(ii) Holding up property

Keenan builds on Cooper's work to develop a spatialised account of property. Keenan argues that it is necessary to shift 'the focus away from the subject and on to the broader spaces, relations and networks that constitute property'.¹¹⁴ Keenan argues that property is a relationship of belonging which must be 'conceptually, socially and physically supported or 'held up''.¹¹⁵ Keenan identifies space as the central medium through which property relationships are held up: 'property is a spatial formation that occurs when relations of belonging are held up by the spaces in and through which those relations exist'.¹¹⁶ Keenan argues that 'holding up'

...invokes a wide range of social processes, structures and networks that give force to relations of belonging. To have property in an object and to be properly orientated in space both requires spaces that hold up those relations – spaces that are conceptually, socially and physically shaped towards them: *spaces of belonging*.¹¹⁷

This analysis, Keenan suggests, turns our attention to what space is 'doing when a subject is embedded in it',¹¹⁸ and, in turn, how property comes to be constituted:

This understanding of property thus focuses not on the subject but on the space that surrounds, includes and constitutes the subject – on the various networks of relations that shape space such that it holds up some relations of belonging and not others¹¹⁹

Individual control over a thing, such as ownership of a house, is constituted as *property* 'because the various social, cultural, legal and other networks in which we are embedded recognize our relationship as such'.¹²⁰ Keenan therefore argues that examining the composition and dynamics of property requires that we explore 'the

¹¹⁴ Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge 2015) 71.

¹¹⁵ Keenan (n 114) 72.

¹¹⁶ Keenan (n 114) 65.

¹¹⁷ Keenan (n 114) 7.

¹¹⁸ Keenan (n 114) 72.

¹¹⁹ Keenan (n 114) 73.

¹²⁰ Sarah Keenan, 'Subversive Property: Reshaping Malleable Spaces of Belonging' (2010) 19 *Social & Legal Studies* 423, 430.

broader spaces, relations and networks that constitute property'.¹²¹ Keenan's key political claim is that if property is held up by space, the spaces of property can be altered and recalibrated in ways that challenge the status quo.

However, questions remain unresolved in Keenan's work. Firstly, there is methodological ambiguity. Keenan suggests that 'holding up' 'invokes a wide range of social processes, structures and networks that give force to relations of belonging'.¹²² However, the metaphor of 'holding up' offers little methodological purchase from which to explore how the networks which constitute property come to be produced, formatted and sustained. If property is a networked effect, Keenan offers little insight into the composition of such networks.

Secondly, in conceptualising property as a relationship of belonging, Keenan's approach may be limited to analyses of property in which the subject is directly or actively embedded. Keenan briefly refers to financial property forms, and notes that financial markets are characterised by 'short term' relations of belonging.¹²³ However, this is difficult to conceptualise in Keenan's scheme of property. Recalling her argument that property is a relationship of belonging which is held up by space, financial property forms are characterised by dis-embeddedness and detachment rather than belonging: they blur the line between subject and object, ensuring that both are fungible and commensurate. Rather than being held up in space, financial property forms *overcome* linear time and space so as to enable speculation on underlying objects (buildings, land, activities) from almost any location, and in a manner which blends past, present and future. 'Holding up' offers little help to analyse the ontology and operation of these property forms, and therefore does not assist in responding to the research questions outlined in the previous chapter.

¹²¹ Keenan (n 120) 426.

¹²² Keenan (n 114) 7.

¹²³ Keenan (n 114) 89.

3.3.6 The dynamics approach

The dynamics approach to property advanced by Blandy, Bright and Nield argues that our understanding of property can be enriched by apprehending property relationships as lived relationships.¹²⁴ Rather than focusing exclusively on legal form, the dynamics approach emphasises that the norms and understandings which characterise property relationships lie in a ‘network’ of sources which can only be appreciated by analysing property as a lived relationship.¹²⁵ The dynamics approach emphasises property’s temporal dimensions in that the norms or understandings that characterise property will often bind successors in title – despite the absence of legal instruments – and ‘may be shaped and re-shaped and yet sustained over time’.¹²⁶ In this respect, the dynamics approach suggests that focusing on the legal instruments of property merely offers a static image of a relationship at the time of its creation.

However, the dynamics approach requires refinement if it is to adequately capture property’s temporal aspects. Principally, the dynamics approach posits time as a linear process through or against which property relationships endure. Critical accounts of time, in contrast, explore how temporalities are actively *produced*. Grabham rejects an account of time as a ‘overarching principle or universal ontological ground’ and argues that temporalities ‘do not exist as ethereal, nonmaterial “forces”’.¹²⁷ Instead, Grabham contends that temporal effects are produced (or ‘brewed’) and that ‘time is the identifiable result of a provisional hooking together of elements into something that, in modern terms, looks cohesive’.¹²⁸ Grabham therefore calls for an analysis of ‘temporalization’ – the ‘practices that go into making time’ in order to accurately

¹²⁴ Sarah Blandy, Susan Bright and Sarah Nield, ‘The Dynamics of Enduring Property Relationships in Land’ (2018) 81 *Modern Law Review* 85.

¹²⁵ Blandy, Bright and Nield (n 124) 96.

¹²⁶ Blandy, Bright and Nield (n 124) 86.

¹²⁷ Grabham (n 40) 34, 26.

¹²⁸ Grabham (n 40) 34–35.

understand how time is a relational effect constituted through networks of human and non-human elements (including legal form).¹²⁹

The agency of objects in the creation of temporal effects is illustrated by Latour's classic example of 'the sociology of a door closer'.¹³⁰ Latour considers the problem of ensuring that a door remains closed. He notes that a human porter could be employed and tasked with closing the door. Equally, it could be addressed by a non-human hinge which ensures the door remains closed. Latour argues that the human and the non-human create differing temporal effects. In the case of the porter, the effect (opening and closing the door) is temporally *concentrated* in the present in that the closure of the door is dependent upon the porter's presence and diligence.¹³¹ Employing a porter thus produces a present, but has no ability to produce a future: very little can be done to prevent the porter failing in his duties after many days of reliability.¹³² In contrast, the non-human hinge produces *continuity* and endurance.¹³³ With the exception of routine maintenance, the hinge produces an 'inertia', and the door will always be closed – the effect is thus sustained, and 'time is folded'.¹³⁴ Grabham builds on Latour to argue that we should account for the role of non-humans in the creation of temporality, and 'the ways in which objects open up new legal as well as other worlds.'¹³⁵

In presenting time merely as a backdrop or context against which property plays out, the dynamics approach does not offer a complete account of how the making of property is, in part, dependent upon the making of time. If temporality is a relational effect, and property is a relationship characterised by endurance and flux, Grabham and Latour's work suggests that it is necessary to consider how time itself is produced

¹²⁹ Grabham (n 40) 26.

¹³⁰ Jim Johnson [Bruno Latour], 'Mixing Humans and Nonhumans Together The Sociology of a Door-Closer' (1988) 35 *Social Problems* 298.

¹³¹ Johnson (n 130) 301.

¹³² Johnson (n 130) 301.

¹³³ Johnson (n 130) 301.

¹³⁴ Johnson (n 130) 301.

¹³⁵ Grabham (n 40) 36.

to achieve that endurance. As Latour notes, differing methods – and differing (potentially non-human) actors – can be achieved to generate and fold time. This suggests that the creation of varying forms of time might be bound up in the creation and dynamics of property relationships. Accordingly, while the dynamics approach suggests calls for attention to ‘the diverse network of sources influencing rights and responsibilities in enduring property relations’,¹³⁶ little attention is paid to how temporality might follow as an effect from such networks, instead presenting time as a universal context to social life.

3.3.7 Materiality, subjects and objects

Property research has paid insufficient attention to how non-humans enter into the constitution, dynamics and endurance of property relationships. This had led Davies to call for an ‘ontological shift’ to our approach to property which recognises the ‘interconnectedness’ of humans and non-humans.¹³⁷ However, Classens argues that

legal and property scholars have mostly trained their analysis on the social dynamics of property resulting from the legal, regulatory, and sociocultural context that enables it rather than on the material itself.¹³⁸

At the core of Davies’ argument is a rejection of an *a priori* distinction between subjects and objects. In turn, this underpins a rejection of property as a relationship between subjects in respect to objects. Instead, Davies argues that there is ‘flow between the subjective and the objective worlds’.¹³⁹ Davies therefore turns to the active role of objects and other ‘non-humans’ play creating and formatting property relationships.¹⁴⁰ She suggests that qualities that come to be associated with both subjects and objects are not inherent to those categories but rather emerge through interplay between the

¹³⁶ Blandy, Bright and Nield (n 124) 87. Emphasis added.

¹³⁷ Davies (n 29) 38.

¹³⁸ Michael Classens, ‘The Matter of Matter: Making Property in the Holland Marsh’ (2018) 31 *Society and Natural Resources* 246, 248.

¹³⁹ Davies (n 29) 42.

¹⁴⁰ Davies (n 29) 38.

two. This, she suggests, is disruptive to property theory: objects are not merely subservient to subjects. Instead, they play an active or vibrant role in the dynamics of social life and of property.

Davies illustrates the interplay between subject and object through the work of Michel Serres and his theory of the quasi-object. Davies cites Serres' example of a ball at the centre of a game. The ball only has value if it is held by a player of the game: 'it is what it is only if a subject holds it'.¹⁴¹ However, Davies notes that the ball only becomes meaningful if the game is played by a group of people, in which case, Davies suggests, it is the 'the ball that shapes the game, the ball becomes the subject and the body the object':

Let us consider the one who holds it. If he makes it move around him, he is awkward, a bad player. The ball isn't there for the body; the exact contrary is true: the body is the object of the ball; the subject moves around this sun. Skill with the ball is recognized in the player who follows the ball and serves it instead of making it follow him and using it. It is the subject of the body, subject of bodies, and like a subject of subjects. Playing is nothing else but making oneself the attribute of the ball as a substance. The laws are written for it, defined relative to it, and we bend to these laws.¹⁴²

Thus, Davies suggests, 'the subject is not the sole determinant of order and meaning. Rather, the object – and the ball is a particularly apt example – influences the movements of the subjects as well as the 'laws' that govern behaviour'.¹⁴³ Davies relies on Serres' example to claim that the insistence that human subjects have inherent qualities that enable us to control the material world is problematic: 'we are subjected to it as much as we are controllers of it'.¹⁴⁴ In particular, Davies argues that the metaphor of the game illustrates that meaning, relationships and effect emerge from association and connection between subject and object, and are not inherent to either category:

¹⁴¹ Michel Serres, *The Parasite* (Lawrence R Schehr tr, University of Minnesota Press 2007), quoted in Davies (n 29) 42.

¹⁴² Serres (n 141) 226; quoted in Davies (n 29) 43.

¹⁴³ Davies (n 29) 43.

¹⁴⁴ Davies (n 29) 43.

Rather than dividing the subject from the object, we begin to see the ties, associations and relationships that connect them. The subject is the object's object – the subject is not only for herself, or for other subjects, but for the object. And indeed the object becomes 'like' a subject of subjects – the central part of the interactional network which moves the game forward.¹⁴⁵

Davies argues that this is not to fetishise objects. Rather, she calls for a recognition of the relationships and dependencies between subjects and objects. Significantly, Davies emphasises that any qualities that subjects and objects might have emerge as *effects* from their connection – 'rather than think of subject and object as pre-social...they can be seen as positions within a socio-physical environment.'¹⁴⁶ To that end, Davies argues that 'the association of 'subject' with the human mind or spirit and the association of 'object' with passive physical matter can no longer be sustained.'¹⁴⁷

The recognition of the interconnectedness between subject and object is disruptive to our understanding of property. If subjects and objects emerge as effects, Davies argues that the 'atomism' that underpins conventional approaches to property relationships cannot be sustained when we attend to our interconnectedness with the material world:

what happens to our rights when we move from an image of the world in which human beings are the primary organising principle, to a view of the world in which we are one part of an ecological complex? Where is the appropriate location for ownership when our own interconnected materiality is as significant as our abstract rational capacities, and when we understand our bodily selves and our subjective identities to be at least partly constituted in physical relationships.¹⁴⁸

Davies suggests that this ontological position reveals a very different picture of property:

By contrast, if we think of the subjects of property as 'inter-beings' or as connected through 'social flesh', a quite different image of property emerges. Removing a key plank of traditional property theory - the self-owning,

¹⁴⁵ Davies (n 29) 46.

¹⁴⁶ Davies (n 29) 43.

¹⁴⁷ Davies (n 29) 43–44.

¹⁴⁸ Davies (n 29) 47.

autonomous subject - means that we need to situate property in a more mobile inter-subjective and emergent dynamics.¹⁴⁹

Davies charts the methodological implications for property scholarship in collapsing the subject-object divide. She calls for a 're-physicalisation' of property – an analysis that explores how property emerges 'from relations between human and non-human spheres'.¹⁵⁰ This, she says, is to chart property's 'connected ontology'.¹⁵¹ Examining property's emergence from connectivity between humans and non-humans includes analysis of how property is situated in place and space.¹⁵² Davies notes that

...property is increasingly seen not only as inscribed onto space, but also in an important respect emergent from particular locations and practices... It is a reciprocal rather than a unidirectional arrangement, in which the specific qualities of land, knowledge of the land, and human care for the land can be seen as integral to property.¹⁵³

Such an approach to property, Davies suggests, 'results in an idea of property and an idea of the human subject that is never prior to those relationships'.¹⁵⁴

Davies also plays close attention to the politics of property. For Davies, analysing property's ontology is not merely a theoretical exercise. Davies suggests that acknowledging property's relationality better places us to 'pre-figure' property for alternative ends:

There is an ethical dimension to this connectivity which is, simply, that the goal of long-term human and planetary sustainable flourishing demands a non-exploitative understanding of property, one where objects are not categorised according to who owns them, but in a way that recognises their significance in an ecology of both living and non-living things.¹⁵⁵

Recognising and understanding property's relational ontology, and recognising our connectedness to the material world, has significance for property in practice. Such a

¹⁴⁹ Davies (n 29) 51.

¹⁵⁰ Davies (n 29) 52.

¹⁵¹ Davies (n 29) 52.

¹⁵² Davies (n 29) 53.

¹⁵³ Davies (n 29) 53.

¹⁵⁴ Davies (n 29) 53.

¹⁵⁵ Davies (n 29) 52.

recognition can, she suggests, underpin property relationships which are ‘responsive to place and context, and subject to both collective human need and the interests of the environment’ instead of ‘being a universal form applied unthinkingly in very different contexts’.¹⁵⁶ Accordingly, Davies’ work marks a significant development in relational understandings of property. Contrary to what liberal thinking purports, objects – the traditional subjects of property – are not passive. Rather, they play an active role in the formation of such relations and are co-constitutive of property relationality. More than this, however, they are ‘vibrant’, and can act in surprising ways, potentially resisting the imposition of liberal property doctrines. Davies theory offers a fruitful means through which to respond to my research questions. However, Davies’ work is limited by a lack of empirical analysis, instead being built upon a theoretical analysis of Serres’ work.

3.4 Conclusion: latencies in property scholarship

In this chapter, I charted how the fabrication of a distinction between subjects and objects, and past and present, underpins modern conceptions of property. Further, in reviewing contemporary property research, I argued that assumptions as to the primacy of the human and the legal, coupled with assumptions about the incapacity of objects and spaces, are present in much contemporary work. I argued that these assumptions operate to foreclose analysis of property’s relational ontology. Instead, property is understood as a relationship between people in respect of passive ‘things’. In particular, three key gaps have been identified.

Firstly, contemporary property scholarship lacks engagement with the agency and vitality of materials in the formation of property relationships. Property scholarship, I have suggested, is characterised by person-thing ontology in which humans are the exclusive ‘source’ of the relationship, reflecting the Enlightenment fabrication of human superiority over nature. As such, property scholarship has yet to sufficiently explore the

¹⁵⁶ Davies (n 29) 53.

role and agency of non-human actors in the composition and endurance of property relationships.

Secondly, while property scholarship has attended to the role of spatial forms in the making and sustaining of property, key methodological questions remain in respect of space and property. Keenan talks of space 'holding up' property, and Cooper argues that space is 'encoded' with property norms. However, neither approach attends to *how* space becomes encoded with property, or how property is 'held up' by space. To that extent, the ability of these approaches to explain property's relational basis is limited. Further research is needed to apprehend and unpack the mutual constitution of space and property.

Thirdly, property scholarship should decentre legal form in its analysis of property relationships. Contemporary accounts of property privilege law with an inherent capacity to act and produce property relations, tacitly accepting the purported features of law as self-evident truths. Accordingly, property scholarship does not currently offer an adequate conceptual basis to apprehend how legal effect is itself generated, and how that effect helps produce and sustain property. Examining property as a lived relationship, that is constituted in part by legal form, without presupposing the capabilities or effects of law, presents difficulty in methodological terms. Cloatre and Cowan offer a productive way to apprehend the formation and efficacy of legal relations that can complement the study of property. They call for the dissolution of law as a 'defined social field, whose existence is at any point a given and independent source of norms'.¹⁵⁷ Instead, they call for an analysis which situates law as entangled with other forms of social making and unmaking or unsettlement':

Legal processes can be seen as relational and constantly in the making, as practices transform the very objects they seek to engage – from minute artefacts to subjective understandings of law. Through their emphasis on the

¹⁵⁷ Cloatre and Cowan (n 61) 438.

fluidity of objects and on the relationality of the social, materiality-inflected approaches to law therefore open useful perspectives in interrogating how law is deployed, in apprehending its complex effects and exploring its modes of action.¹⁵⁸

Unlike the progressive approach which posits law's inherent capabilities, Cloatre and Cowan focus on the spaces and places 'where law is experienced, [practised], translated, reappropriated and in turn redefined by its many users'.¹⁵⁹ They describe this as a shift from apprehending 'law' to studying the making of 'legalities'. This offers a productive way to study the role of legal form in the making and endurance of property relationships.

Addressing these latencies in property scholarship is not only important as a theoretical exercise. Property's dynamics are central to the quality and nature of social life. It is, as Davies suggests, an inherently political formation.¹⁶⁰ It sits at the core of how we conceive of ourselves and collective life, and shapes the use and exploitation of resources. Understanding how property is made and how it constitutes relationships along specific social and political registers is inherent to understanding how social life is made, and how it might be made differently. As Blomley suggests, the 'radical potential' of property is that it sits at the heart of neoliberal philosophy and exploitation, yet remains diverse and open to remaking.¹⁶¹

In the next chapter, I develop a methodological response to the study of property which responds to the concerns identified in this chapter and enables a response to the research questions in Chapter 2. I argue that actor-network theory ('ANT') enables an analysis of the material, spatial and legal dynamics that enter into the production of property. Critically, ANT facilitates analysis of how property is productive of radically different effects – relational, temporal and social. This approach enables me to situate

¹⁵⁸ Cloatre and Cowan (n 61) 438.

¹⁵⁹ Cloatre and Cowan (n 61) 447.

¹⁶⁰ Davies (n 29).

¹⁶¹ Nicholas Blomley, 'Un-Real Estate: Proprietary Space and Public Gardening' (2004) 36 *Antipode* 614, 615.

the centrality of property to social life in that property is at the forefront of both exploitation and alternatives. On the one hand, it enables me to explore how financial forms of property are constructed so as to exploit value from a wide range of 'things' and facilitate governance 'at a distance' by the production of a particular spatial and temporal order.¹⁶²

On the other, ANT enables exploration of what Davies describes as the 'pre-figuring' of property alternatives: 'to imagine the future with an eye on the present' and to 'oscillate...between imaginings and practice, and to find resources within the complex ideational resources available within Western culture to support alternative narratives'.¹⁶³ Critically, on realising alternative property practices, Classens suggests that 'taking seriously the prospect of a nonanthropocentric property paradigm means, minimally, a revision to the axiomatic principle of the contemporary anthropocentric property paradigm that property is a relation between people in regard to land.'¹⁶⁴ ANT enables a move beyond the trappings of the subject-object divide and the property narratives it sustains, instead enabling recognition of the possibility that 'land is more partner than property'.¹⁶⁵

¹⁶² Sarah Keenan, 'Property as Governance: Time, Space and Belonging in Australia's Northern Territory Intervention' (2013) 76 *Modern Law Review* 464.

¹⁶³ Davies (n 29) 55.

¹⁶⁴ Classens (n 138) 256.

¹⁶⁵ Classens (n 138) 256.

Chapter 4

An actor-network approach to the study of property relationships

4.1 Introduction

In this chapter, I build on the latencies in property scholarship identified in the previous chapter, and develop a theoretical approach to the study of property informed by actor-network theory ('ANT'). ANT contends that social life is constituted by connections which are not themselves 'social'.¹ Further, ANT suggests that these connections can be traced and unpicked through the metaphor of the network. A central (and controversial) claim of ANT is that networks are composed of 'heterogenous' actors – i.e. not just humans. As such, through their ability to shape networks, non-humans are understood as having agency.²

The central claim in this chapter (and this thesis) is that ANT enables an analysis of property as a networked effect through which the subjects, objects and norms that define a property relationship are constituted. Because of its focus on the heterogeneity of networks, I suggest ANT enables a response to the latencies in property scholarship identified in the previous chapter. Firstly, ANT facilitates a move away from the primacy of human subjects in explanations of property. Rather than starting with the subject, ANT enables exploration of how network formation constructs human subjects. Accordingly, instead of focusing on human will, ANT suggests that human subjects are

¹ Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford University Press 2005).

² Latour (n 1) 63.

outcomes of property rather than ‘organising principles’.³ Secondly, ANT brings focus to the capacities and agencies of non-human actors in the creation and endurance of property. This includes apprehension of both materiality and spatiality in the formation of networks. ANT therefore enables exploration of the role of non-humans in the making of property relationships. Thirdly, ANT facilitates a move away from the centrality of legal form in property theory and analysis. If property is an *outcome* of network formation, ANT enables consideration of the role of legal actants in the dynamics of networks, and how networks are constitutive of legality.

This chapter is structured as follows. Firstly, I outline how ANT apprehends the constitution of social life, and I explore its account of subjects, objects, and agency. Secondly, I detail how property can be understood through the lens of ANT, and I detail how it offers theoretical purchase to the latencies identified in the previous chapter and the research questions outlined in Chapter 2. Finally, following Law and Mol, I develop my approach by imputing ‘logics’ onto processes of network formation which act to organise networks in particular ways. I suggest that this enables me to refine ANT and explore the politics of property.⁴

4.2 Overview of ANT

In this section, I provide an overview of ANT. I begin by outlining the key tenets of ANT, before exploring three distinct aspects to its apprehension of the social: firstly, how ANT apprehends the role of non-humans in networks, and rejects an *a priori* divide between subjects and objects. Secondly, I consider how ANT explains action and agency as outcomes of actor-networks. Finally, I consider how particular actors are

³ Margaret Davies, ‘Material Subjects and Vital Objects — Prefiguring Property and Rights for an Entangled World’ (2016) 22 *Australian Journal of Human Rights* 37, 45.

⁴ John Law, *Organizing Modernity* (Blackwell 1994); Annemarie Mol, *The Logic of Care* (Routledge 2008).

able to control the ordering of other actors within a network, described by ANT theorists as 'obligatory passage points'.

ANT offers an alternative ontological and methodological approach to the composition of social phenomena by suggesting that the social is produced through the formation of networks or associations of heterogeneous (i.e. both human and non-human) actors.⁵ As Cloatre stresses, ANT contends that there is no ontological prior to networks: society's existence lies in the composition of 'heterogeneous relationality'.⁶ As Latour puts it, 'literally there is nothing but networks' and 'there is nothing in between them'.⁷ Accordingly, the association of heterogeneous elements into a durable network produces the effect, thing, or relation under analysis. A network is therefore the 'summing up' of actors into one locus that endures beyond the interactions that formed it, and productive of something greater than the actors themselves, such as a government department, or a scientific fact.⁸ Critically, in considering the composition and effects of networks, humans are not necessarily 'guiding' networks, nor are humans necessarily imbued with more agency than non-humans.⁹ Instead, ANT explores our imbrication with materials and other non-humans in constituting personhood, in assessing power, and in the production of the social.¹⁰ While a network is made through the association of heterogeneous elements, a network is also an *actor*

⁵ For an overview see Latour (n 1); John Law, 'Notes on the Theory of the Actor-Network: Ordering, Strategy, and Heterogeneity' (1992) 5 *Systems Practice* 379; Annemarie Mol, 'Actor-Network Theory: Sensitive Terms and Enduring Tensions' (2010) 50 *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 253.

⁶ Emilie Cloatre, 'Law and ANT (and Its Kin): Possibilities, Challenges, and Ways Forward' (2018) 45 *Journal of Law and Society* 646, 650.

⁷ Bruno Latour, 'On Actor-Network Theory: A Few Clarifications' (1996) 47 *Soziale Welt* 369, 370.

⁸ Michel Callon and Bruno Latour, 'Unscrewing the Big Leviathan: How Actors Macro-Structure Reality and How Sociologists Help Them to Do So' in Karin Knorr Cetina and AV Cicourel (eds), *Advances in Social Theory and Methodology: Toward an Integration of Micro and Macro-Sociologies* (Routledge & Kegan Paul 1981) 283.

⁹ Cloatre (n 6) 650.

¹⁰ Bruno Latour, 'Where Are the Missing Masses: The Sociology of a Few Mundane Artifacts' in Wiebe E Bijker and John Law (eds), *Shaping Technology/Building Society: Studies in Sociotechnical Change* (MIT Press 1992).

(hence the term 'actor-network') with, potentially, abilities to enrol new actors, determine connections and shape other phenomena and relationships.

Power, size, and efficacy are all understood as emerging from connections between entities that form a network.¹¹ Science is the classic example and the context in which the theory was developed. The authors of early science and technology studies ('STS') argued that a conventional sociological approach and exploring the 'social' factors 'behind' a phenomenon could not explain the construction of scientific knowledge.¹² Attention turned instead to the vast array of actors at play in the production of science. In particular, STS scholars claimed that conventional sociology could not *explain* the means through which phenomena – such as a scientific fact – were produced and stabilised. STS scholars instead argued that phenomena such as scientific knowledge were made through the engineering of heterogeneous elements (humans, but also a great deal of materials), held together in a contingent yet stable association (or network) which is greater than the sum of its parts.¹³ This led to the radical conclusion that there is no *social* explanation of science – not because science is necessarily not social – *but because there is no 'social' explanation of anything*.¹⁴ Instead, the social is a term that itself has to be explained.

ANT expanded this argument to *all* objects of sociological analysis, claiming that the positing of 'social' forces not only fails to explain science, but also fails to explain markets¹⁵, law¹⁶, technology¹⁷, urbanism,¹⁸ and so on, with the same underlying

¹¹ Callon and Latour (n 8).

¹² Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (n 1) 100–101.

¹³ John Law, 'On the Social Explanation of Technical Change: The Case of the Portuguese Maritime Expansion' (1987) 28 *Technology and Culture* 227.

¹⁴ Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (n 1) 99.

¹⁵ Michel Callon, *The Laws of the Markets* (Michel Callon ed, Blackwell Publishers/The Sociological Review 1998); Michel Callon, Yuval Millo and Fabian Muniesa (eds), *Market Devices* (Blackwell Publishers/The Sociological Review 2007); Desiree Fields, 'Constructing a New Asset Class: Property-Led Financial Accumulation after the Crisis' (2018) 94 *Economic Geography* 118.

¹⁶ Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'État* (Polity 2010); Emilie Cloatre, *Pills for the Poorest: An Exploration of TRIPS and Access to Medication in Sub-*

ontological premise: the social must be *explained* as ‘it is what is glued together by many other types of connectors’.¹⁹ Accordingly, ANT claims that ‘the social’ is the product ‘of any type of aggregate; ‘from chemical bonds to legal ties, from atomic forces to corporate bodies, from physiological to political assemblies.’²⁰ ‘Social’ relations and phenomena are therefore understood as a contingent ‘effect of a *network of heterogeneous materials*’.²¹ The making of such networks is precarious, stabilisation is contingent, and a durable and potent network is an achievement.²²

I turn now to consider how, in exploring the agency of non-humans, ANT challenges the subject-object divide, and the understanding of property such a divide supports.

4.2.1 Non-humans and the subject-object divide

In this section, I outline how ANT apprehends the role of non-humans in the formation and endurance of networks, and how ANT understands the distinction between subjects and objects.

Saharan Africa (Palgrave Macmillan 2013); Emilie Cloatre and Dave Cowan, ‘Legalities and Materialities’ in Andreas Philipopoulos-Mihalopoulos (ed), *Research Handbook in Law and Theory* (Routledge 2019).

¹⁷ Marianne de Laet and Annemarie Mol, ‘The Zimbabwe Bush Pump: Mechanics of a Fluid Technology’ (2000) 30 *Social Studies of Science* 225; Madeleine Akrich, ‘The De-Scriptio of Technical Objects’ in Wiebe E Bijker and John Law (eds), *Shaping Technology/Buiding Society* (The MIT Press 1992); John Law, ‘On the Methods of Long Distance Control: Vessels, Navigation, and the Portugese Route to India’ in John Law (ed), *Power, Action and Belief: a new Sociology of Knowledge? Sociological Review Monograph 32* (Routledge 1986).

¹⁸ Ignacio Fariás and Thomas Bender (eds), *Urban Assemblages: How Actor-Network Theory Changes Urban Studies* (Routledge 2010); Colin McFarlane, ‘Assemblage and Critical Urbanism’ (2011) 15 *City* 204; Louise David and Ludovic Halbert, ‘Finance Capital, Actor-Network Theory and the Struggle Over Calculative Agencies in the Business Property Markets of Mexico City Metropolitan Region’ (2014) 48 *Regional Studies* 516.

¹⁹ Latour (n 1) 5.

²⁰ Latour (n 1) 5.

²¹ Law (n 5) 382.

²² Bruno Latour, *The Pasteurization of France* (Harvard University Press 1988) 212; Rolland Munro, ‘Actor-Network Theory’ in Stewart R Clegg and Mark Haugaard (eds), *The SAGE Handbook of Power* (SAGE Publications 2009).

While ANT insists that all phenomena are the product of heterogeneous networks, perhaps the more controversial move of ANT is its apprehension of who and what ‘acts’ in such networks. Latour claims that the subject-object distinction, discussed in the previous chapter, obscures how materials and other non-human entities enter into the constitution of personhood, power and social relations.²³ ANT proponents therefore reject an *a priori* distinction between subject and object and the associated suggestions that action is exclusively attributable to the human subject. Instead, ANT claims that an actor is *anything* that acts. As such, non-humans are understood as entering into networks and contouring their dynamics.²⁴ This is described by ANT theorists as the principle of ‘generalised symmetry’.²⁵ Thus, for Latour, ‘things are unfairly accused of being just “things”,²⁶ and are the ‘missing masses’ of social analysis.²⁷ This point is developed by Mol, who suggests that ANT ‘opens up the possibility of seeing, hearing, sensing and then analysing the social life of things’.²⁸

ANT does not amount to a simplistic claim that it is necessary to consider how humans deploy things in particular ways – nor that things determine human behaviour.²⁹ Instead, as Bakker and Bridge contend, ANT offers a ‘relational and distributed view of materiality that provides a way to unpack apparent permanencies and stabilities, and to show how the competencies and capacities of ‘things’ are not intrinsic but derive from association’.³⁰ A classic example illustrating the dynamics of materials in the formation

²³ Latour (n 1).

²⁴ Jim Johnson, ‘Mixing Humans and Nonhumans Together The Sociology of a Door-Closer’ (1988) 35 *Social Problems* 298; Bruno Latour, ‘Pragmatogonies’ (1994) 37 *American Behavioral Scientist* 791; John Law and Annemarie Mol, ‘Notes on Materiality and Sociality’ (1995) 43 *The Sociological Review* 274.

²⁵ Alan P Rudy, ‘On ANT and Relational Materialisms’ (2005) 16 *Capitalism, Nature, Socialism* 109.

²⁶ Bruno Latour, ‘When Things Strike Back: A Possible Contribution of “science Studies” to the Social Sciences’ (2000) 51 *British Journal of Sociology* 107, 117.

²⁷ Latour, ‘Where Are the Missing Masses: The Sociology of a Few Mundane Artifacts’ (n 10).

²⁸ Mol (n 5) 255.

²⁹ Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (n 1) 70; see also Munro (n 22) 130.

³⁰ Karen Bakker and Gavin Bridge, ‘Material Worlds? Resource Geographies and the “Matter of Nature”’ (2006) 30 *Progress in Human Geography* 5, 16.

and endurance of networks is 'the sociology of the door closer', referred to in the previous chapter.³¹ The door closer, Latour contends, is the outcome of a series of displacements and translations in which the work of entering and exiting a building has been shifted to other actors. As such, a non-human (the hinge) has capacities to modify affairs and shape human action and relations. Take another example of Latour's – attaching heavy weights to hotel keys to ensure they are not taken home by guests.³² The actions of the guest are constituted by delegations and translations which *align* the action of the guest with the goals of the hotel.³³ In both examples, the force of non-humans engenders relational effects, and materials connect human actors in a specific way. Accordingly, the mediating presence of non-humans, held together in an association or network, is – in part – generative of agency, power and 'social' relations.³⁴

In addition to claiming that non-humans participate in the construction of the social, ANT also rejects claims that human subjects and non-human objects have inherent, pre-determined capacities and properties. Instead, ANT suggests that the very categories of 'subject' and 'object' are outcomes of network formation. As Cloatre puts it, ANT suggests that humans are 'hybrids' who are 'constituted through the connections they make with materialities'.³⁵ Thus, for Latour, our 'personness' is often constituted through imbrication with the non-human, such as the array of

official and legal papers which designate 'you' as being someone... If you doubt the ability of those humble paper techniques to generate quasi-subjects, try living in a large European city as an 'undocumented alien' or extricating yourself out of the FBI's grip because of a misspelling of your name.³⁶

³¹ Johnson (n 24).

³² Bruno Latour, 'Technology Is Society Made Durable' (1990) 38 *The Sociological Review* 103.

³³ Munro (n 22).

³⁴ Law, 'Notes on the Theory of the Actor-Network: Ordering, Strategy, and Heterogeneity' (n 5) 382.

³⁵ Cloatre (n 6) 646.

³⁶ Latour (n 1) 208.

Similarly, for Law,

people are who they are because they are a patterned network of heterogeneous materials. If you took away my computer, my colleagues, my office, my books, my desk, my telephone I wouldn't be a sociologist writing papers, delivering lectures, and producing 'knowledge'.³⁷

Davies also contends that the categories of subject and object are outcomes of connections between humans and non-humans. As Davies puts it, ANT-inspired approaches offer an understanding of subjects and objects as 'positions within a socio-physical environment' rather than pre-existing categories.³⁸ Accordingly, Davies claims that 'everything, including the subject, is defined by reciprocity and relations, by text, by location in a material world, by power and its effects, and by networks'.³⁹ Latour dismisses the contention that the more 'advanced' a human collective becomes, the greater the separation between society and technology grows – he claims that the opposite is true: *modern* collectives are characterised by relations between the human and the technical that 'are so intimate, transactions so many, and mediations so convoluted, that there is no longer any plausible way to differentiate for good a collective body, an artefact and a subject'.⁴⁰

ANT's account of subjects and objects potentially presents a robust challenge to the ontological assumptions of conventional property theory. ANT suggests that constituent elements of property – subjects and objects – are *effects* of network formation rather than inherent, pre-given distinctions. Rather than the passive receptors of human relationality, objects may participate in the construction of property. I return to this point below.

³⁷ Law (n 5) 383–384.

³⁸ Davies (n 3) 43.

³⁹ Davies (n 3) 51.

⁴⁰ Latour, 'Pragmatogonies' (n 24) 793. New biomedical technologies highlight this messiness, (an embryo is potentially a person but also a subject of property and contract).

4.2.2 Who is acting: agency, action, translation

ANT has developed a 'dislocated' or distributed notion of agency. In exploring how actors are associated together to produce relationships, effects, and power, ANT suggests that agency is *distributed* through the connections of the network. Action or agency is therefore not a unique feature of the human subject, but (dis)located among the components of the network:

Action should remain a surprise, a mediation, an event. It is for this reason that we should begin, here again, not from the 'determination of action by society', the 'calculative abilities of individuals', or the 'power of the unconscious' as we would ordinarily do, but rather from the under-determination of action, from the uncertainties and controversies about who and what is acting when 'we' act.⁴¹

Accordingly, action is read as 'the terminus point of a great number of agencies', and when an actor acts (and whether that actor is a person or non-human thing), it is not clear immediately what (or where) the *origin* of that action is, precisely because of the connections in which an actor is bound up.⁴² The understanding of action as an outcome of the agencies within a network carries with it methodological implications: the origins of action and agency, of a phenomenon, are always traceable, and their travels can be rendered visible.⁴³ Accordingly, in tracing the 'movements and connections'⁴⁴ that constitute agency and a network's capacities, ANT takes researchers beyond what might be the obvious locus of explanation. For example, if one begins to trace the source of a specific action, such as entering and exiting a building, and accounting for the agencies and actors shaping that event, one quickly ends up moving through blueprints made in one time and place, regulations formed in another, and the development of hydraulic pistons somewhere else. These individual components are not necessarily strong enough to affect behaviour – but associated

⁴¹ Latour (n 1) 45.

⁴² Latour (n 1) 196.

⁴³ Latour (n 1) 53.

⁴⁴ Cloatre (n 6) 654.

together, they take on an agency or capacity that is bigger than individual parts. Latour describes this as ‘maintaining the origins of society in the present’⁴⁵ in that action is ‘a node, a knot, and a conglomerate of many surprising sets of agencies that have to be slowly disentangled’.⁴⁶ This is not to suggest the existence of determinism: on the contrary the point is *that there is no single agent determining action*, and instead action is the result of a range of actors, potentially located in different places, associated together, contingently, within a network.⁴⁷ Critically, as Mitchell notes, this ‘does not mean introducing a limitless number of actors and networks, all of which are somehow of equal significance and power. Rather, *it means making this issue of power and agency a question, instead of an answer known in advance.*’⁴⁸

Law and Mol explore the architectural legacy of Robert Moses to highlight how networks are imbued with agency through the association of dislocated actors. Moses’s bridges in New York were constructed to discourage usage by buses – a mode of transport relied upon by the poor and black population.⁴⁹ As Winner puts it, the bridges ensured that

Automobile-owning whites ... would be free to use the parkways for recreation and commuting. Poor people and blacks, who normally used public transit, were kept off the roads because the twelve-foot tall buses could not handle the overpasses.⁵⁰

The effect of excluding poor and black people from Jones’ beach was therefore not merely located in the mind of Moses, nor in humans actively and continually working to

⁴⁵ Bruno Latour, ‘The Powers of Association’, *Power, Action and Belief: A New Sociology of Knowledge?* (Routledge & Kegan Paul 1986) 276.

⁴⁶ Latour (n 1) 44.

⁴⁷ Latour (n 1) 173. Latour also gives the example of the lecture theatre as an outcome of other agencies: see page 195. I use the word ‘localised’ here to refer to a network that has a spatially distinct existence. The composition of the network, however, may well include actors that are spatially disparate. Indeed, Latour’s point is to refute a global/local distinction.

⁴⁸ Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (University of California Press 2002) 52. My emphasis.

⁴⁹ Law and Mol (n 24) 280.

⁵⁰ Quoted in Law and Mol (n 24) 280. The tyranny of Moses’s remaking of New York in the earlier half of the twentieth century is a perennial theme in the work of Marshall Berman: see Marshall Berman, *Modernism in the Streets: A Life and Times in Essays* (David Marcus and Shellie Sclan eds, Verso Books 2017).

frustrate the route of buses, but rather in the connections between, among other things, blueprints, concrete and buses. This association was *productive* of an agency, the continuing operation of which depended upon the continuing connectedness of the heterogeneous elements that produced the network.

Conversely, at the same time Moses was transforming New York, in Vienna there was a movement to take housing out of the logics and practices of the market through the development of housing led by the local authority to be let at affordable rents. These housing developments were not merely 'symbolic' of Viennese socialist ideology, but a strategy to *generate* a new socialist life – materials were the means through which a '*neue Menschen*' ('new people') could be realised.⁵¹ It was the agency of the housing itself that formed part of a strategy to generate effects that would upturn distinctions between private and public, and engender a '*Arbeiterkultur*' ('socialised workers culture'). Housing complexes included shared laundries, bathing facilities, childcare, libraries, meeting spaces, swimming pools, cooperative stores, youth and mothers' consultation clinics and more.⁵² A corresponding simplicity in the design of individual apartments was intended to encourage interaction. The realisation of a new socialist society was thus not located in edicts, proclamations, ideology or hidden forces, but rather in washing machines, cement, children's toys and architectural designs. This network of elements, ordered as part of a strategy, was no different in principle to the work of Moses underway on the other side of the Atlantic: the agency of artefacts can be productive of wildly different *political* outcomes through their enrolment in relational networks.⁵³ Thus, when one looks to how it was that the New York poor were excluded from Jones' beach or how the inhabitants of Viennese social housing came to connect

⁵¹ Helmut Gruber, *Red Vienna: Experiment in Working-Class Culture, 1919-1934* (Oxford University Press 1991).

⁵² Eve Blau, *The Architecture of Red Vienna* (The MIT Press 1999) 180.

⁵³ There is a parallel here to the use of "new towns" by socialist governments after the Second World War to generate a socialist society: Jack C Fisher, 'Planning the City of Socialist Man' (1962) 28 *Journal of the American Institute of Planners* 251.

with one another, agency is not located in unknowable forces, nor is it the exclusive product of the human mind. Instead, these particular behaviours and effects were generated through a confederation of actor. A central claim of ANT is that, in all networks, agency emerges through the connection of actors, and through translation.

4.2.3 Obligatory passage points

ANT suggests that some actors are particularly potent in the formation of networks. Specifically, particular actors can define relationships between other entities in a network, and control 'the enrolling and ordering of other actors'.⁵⁴ ANT theorists refer to such actors as 'obligatory passage points'.⁵⁵ An obligatory passage point could literally be a passage point, such as a door or a walkway that influences and contours the agencies and operation of other actors – but it is not limited to its literal meaning. Rather, an obligatory passage point refers to *any* actor that plays a determining role in the dynamics of a network, such as an institution,⁵⁶ a pricing model,⁵⁷ or an influential academic article.⁵⁸ Obligatory passage points are able to define the nature of relationships, generate connections, and 'transmit' these across space.⁵⁹ As such, there is a close link to the etymology of 'oblige'. 'Oblige' combines the Latin term 'ob' – meaning 'towards, against, in the way (of)' – with 'ligāre', meaning to bind, tie or

⁵⁴ Catriona Rooke, Emilie Cloatre and Robert Dingwall, 'The Regulation of Nicotine in the United Kingdom: How Nicotine Gum Came to Be a Medicine, but Not a Drug' (2012) 39 *Journal of Law and Society* 39, 42; see also Michel Callon, 'Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of St Brieuc Bay' in John Law (ed), *Power, Action and Belief: a new Sociology of Knowledge?* (Routledge 1986).

⁵⁵ Callon (n 54).

⁵⁶ e.g. Dave Cowan, Helen Carr and Alison Wallace, *Ownership, Narrative, Things* (Palgrave Macmillan 2018) situate housing associations as obligatory passage points in the constitution of shared ownership.

⁵⁷ Koray Çalişkan and Michel Callon, 'Economization, Part 2: A Research Programme for the Study of Markets' (2010) 39 *Economy and Society* 1.

⁵⁸ Tony Porter, 'Tracing Associations in Global Finance' (2013) 7 *International Political Sociology* 334.

⁵⁹ Cloatre, for instance, discusses the techniques that seek to establish drug registration in Ghana as the means through which drugs enter the country's market: Cloatre (n 16); Further, Callon explores how scientists built a network of relations through problematising and combing the dreams of scallops and humans to produce route to a distinct 'scientific' research programme Callon (n 54).

restrain.⁶⁰ Obligatory passage points can therefore be understood as moving or binding actors towards particular behaviours and/or connections to other actors. As such, obligatory passage points introduce a degree of path dependency to actor networks. Liebowitz and Margolis write that path dependency materialises where the inception of a particular technology or standard has significant potent effects on the ultimate unfolding of the network.⁶¹ In doing so, path dependency alters the potential resources and uses that are open to users at a later point in time.⁶²

I turn now to develop an ANT approach to property relationships in the light of my research questions.

4.3 An actor-network approach to property relationships

I suggest that ANT enables a move away from conventional understandings of property as a social or legal relationship. Specifically, through the lens of ANT, property can be understood as a *networked effect*, given form through the association of a heterogenous range of actors. By situating property as a contingent outcome of networks in which non-humans have agentic capacities, ANT can be relied upon to further Davies' suggestion to explore how property emerges 'from relations between human and non-human spheres'.⁶³ ANT is therefore a productive means through which to confront the latencies in contemporary property scholarship identified in Chapter 3. In this section, I outline how ANT enables clearer integration of the role of materiality, spatiality, and legality in our explanation and understanding of property. I consider each element in turn.

⁶⁰ TF Hoad (ed), *The Concise Oxford Dictionary of Etymology* (Oxford University Press) 318–319.

⁶¹ SJ Liebowitz and Stephen E Margolis, 'Path Dependence, Lock-In, and History' (1995) 11 *Journal of Law, Economics and Organization* 205.

⁶² Liebowitz and Margolis (n 61) 210.

⁶³ Davies (n 3) 52.

4.3.1 Materiality

In Chapter 3, I claimed that contemporary property scholarship lacks engagement with the agency and vitality of materials in its explanation of property relationships. Specifically, I suggested that property scholarship is characterised by a person-thing ontology, in which humans are posited as the exclusive 'source' of property. ANT facilitates a twofold contribution to addressing this latency. Firstly, ANT's attention to the agency of materiality in the formation and dynamics of networks can help shed light on how materials act in the constitution of property relationality. In this respect, ANT enables me to respond to Davies' call for a 're-physicalisation' of property.⁶⁴ In calling for such a move, Davies suggests that

This doesn't necessarily entail an emphasis on the physical properties of property - its thingness - but rather on its emergence from relations between human and non-human spheres. The thing is returned to the understanding of property, but is not in itself property. Thus, rather than regard the thing as purely fungible and interchangeable, its distinctness in a connected ontology can be brought out.⁶⁵

Accordingly, I suggest that ANT facilitates an analysis of how property emerges from connections between the human and non-human, and how 'things' *act* in the formation of networks which constitute property.

Furthermore, in exploring the agency of materials, ANT facilitates analysis of how the divide between subjects and objects of property is a fabrication. As noted in the previous chapter, Davies argues that property theory must recognise that human beings are not bounded and separate from the world, and instead move towards an understanding of the human subject as 'intrinsically connected'⁶⁶ to both the human and non-human worlds. As Davies summarises, 'everything, including the subject, is defined by reciprocity and relations, by text, by location in a material world, by power

⁶⁴ Davies (n 3) 52.

⁶⁵ Davies (n 3) 52.

⁶⁶ Davies (n 3) 49.

and its effects, and by networks'.⁶⁷ This means that 'subjectivity is plastic and dynamic – formed in many ways and highly mutable'.⁶⁸

As noted above, ANT contends that subjects and objects are not pre-existing categories, but rather emerge from processes of network formation. ANT therefore offers a sensibility to chart how the qualities that we associate with 'subjects' and those associated with 'objects' 'do not precede their interconnection' but are instead effects of network formation.⁶⁹ Thus, rather than understanding subjects and objects as the constituents upon which property acts, ANT enables exploration of how the categories of 'subject' and 'object' are outcomes of the networks constituting property. By implication, this understanding of subjects and objects enables a response to a particular question within property theory: how are the 'norms' or 'understandings' that characterise property relationships produced and sustained? As seen in Chapter 3, property theorists have explored this question through varying lenses. For Cooper, norms are the product of 'codification'.⁷⁰ For Blandy, Bright and Nield, the norms and understandings inherent to a property relationship stem from a 'network' of sources, including legal form and the de facto understanding and practices of the parties.⁷¹ For progressive property scholars, such norms are the exclusive effect of legal form. In contrast, ANT enables consideration of how the norms or understandings that characterise a property relationship are not external to subjects. Rather, by exploring both how non-humans 'act', and how the subjects and objects of property are constituted in processes of network formation, ANT sheds light on how, in the production of subjects, the understandings or norms of property relationships become part of the subject.

⁶⁷ Davies (n 3) 51.

⁶⁸ Davies (n 3) 51.

⁶⁹ Davies (n 3) 43.

⁷⁰ Davina Cooper, 'Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property' (2007) 32 *Law and Social Inquiry* 625.

⁷¹ Sarah Blandy, Susan Bright and Sarah Nield, 'The Dynamics of Enduring Property Relationships in Land' (2018) 81 *Modern Law Review* 85.

4.3.2 Spatiality

I claimed in the previous chapter that ambiguities remain in respect of property scholarship's apprehension of the role of space in the production of property. Principally, I claimed that while the work of Keenan and Cooper brings space to the fore, it remains unclear *how* space supports the constitution of property. ANT's approach to space, I suggest, moves property theory onto the terrain of explaining how space helps constitute property relationships. As Law suggests, it is commonplace 'to say that objects are located within pre-existing Euclidean space, and that the latter simply sets the conditions of possibility for objects.'⁷² However, Law suggests that ANT can reveal the *work* that goes into producing space. This theme is pursued by Murdoch, who suggests that it is the dynamics of network formation which constitutes spatiality.⁷³ For Murdoch, in the process of associating actors, networks 'configure space' in that 'each network traces its own particular space-time which reflects both the variety of the materials used in construction and the relations established between the combined elements.'⁷⁴ In configuring space, networks arrange spaces 'so that certain types of action can be conducted'.⁷⁵ Accordingly, while space is 'partly physical', it is 'wholly relational'.⁷⁶

ANT's approach to spatiality can develop our understanding of how space becomes imbued with capacities to provoke or prohibit particular behaviours and uses by its attention to processes of network formation. If, as Keenan suggests, space 'holds up' property, or, as Cooper suggests, space becomes 'encoded' with property norms, ANT enables the development of a more sophisticated account by facilitating analysis of

⁷² John Law, 'Objects and Spaces' (2002) 19 *Theory, Culture & Society* 91, 96.

⁷³ Jonathan Murdoch, 'The Spaces of Actor-Network Theory' (1998) 29 *Geoforum* 357.

⁷⁴ Murdoch (n 73) 361.

⁷⁵ Murdoch (n 73) 361.

⁷⁶ Murdoch (n 73) 361.

how 'holding up' or 'codification' is achieved through the associations, delegations and translations which provide space with the capacities to act.

4.3.3 Legal form

Finally, I suggest that ANT enables a response to the ambiguities identified in respect to property and legal form outlined in the previous chapter. Cloatre and Cowan argue that, in order to understand the fluidity of law and how it enters the production of social life, it is necessary to move away from claims that law is an independent body of norms which govern social life.⁷⁷ Instead, they argue that it is necessary to attend to what Ewick and Silbey describe as 'legalities': 'the meanings, sources of authority, and cultural practices that are commonly recognized as legal'.⁷⁸ For Cloatre and Cowan, analysis of legalities requires exploration of the 'fluid spaces of legal meanings, expression and ambivalence'.⁷⁹ In distinction to Ewick and Silbey, Cloatre and Cowan argue that it is necessary to focus on how materiality mediates and translates actors' experiences and practices of legal meaning. Accordingly, by analysing property as an outcome of network formation, consideration can extend to how that network is given form and endurance through 'legal' materials and meanings – or how legalities are produced as part of the production of property.

In the next section, I turn to refine ANT's approach to property by exploring how 'logics' can be imputed onto processes of network formation, better enabling analysis of the politics of property.

4.4 Refining ANT: logics of property

In Chapter 2, I noted that Bhandar has criticised ANT's usefulness for the study of property. Bhandar contends that, in its focus on the composition of phenomena, ANT

⁷⁷ Cloatre and Cowan (n 16).

⁷⁸ Cloatre and Cowan (n 16) 439.

⁷⁹ Cloatre and Cowan (n 16) 440.

does not offer any critical purchase on the politics of property. In this section, I address Bhandar's criticism through the work of Law and Mol. Following Law and Mol, I argue that critical purchase can be introduced to ANT's apprehension of property by exploring how networks manifest different 'logics' of ordering and association.

Law argues that 'modes of ordering' are present in actor-networks which, he suggests, form an important part of 'the ordering of human and non-human relations'.⁸⁰ Law is not suggesting that these are 'external' forces acting upon networks. Rather, Law argues that 'modes of ordering' are an analytical tool to understand the patterns within different networks, and their outcomes and effects. As he puts it, modes of ordering 'do not *drive* those networks. They aren't outside them. Rather, they are a way of talking of the patterns into which the latter shape themselves.'⁸¹ As such, they are 'tools for sensemaking'⁸² in that

they represent a way of imputing coherences or self-reflexive 'logics' that are not simply told, performed and embodied in agents, but rather speak through, act and recursively organize the full range of social materials.⁸³

Similarly, Mol suggests that, within a single phenomenon, there are multiple vectors which can be emphasised and realised in different times and contexts. In relation to care, for instance, Mol contends that there are competing *logics* within the provision of care that are productive of very different outcomes.⁸⁴ Imputing 'logics' or 'modes of ordering' within networks offers a fruitful way to overcome the limitations of ANT outlined by Bhandar in respect to the study of property. Rather than abandon questions as to the politics of property, exploring the logics or modes of ordering present in network formation draws attention to the nature of the effects and patterns produced by networks. Accordingly, following Law and Mol, I distinguish between differing *logics of*

⁸⁰ Law, *Organizing Modernity* (n 4) 83.

⁸¹ Law, *Organizing Modernity* (n 4) 83. Original emphasis.

⁸² Law, *Organizing Modernity* (n 4) 84.

⁸³ Law, *Organizing Modernity* (n 4) 109.

⁸⁴ Mol (n 4).

property as ‘tools for sensemaking’⁸⁵ in my analysis of networks formation. This enables me to ground an analysis of the effects of particular formations, and how networks of property constitute people and things in vastly differing arrangements, thus introducing a distinct political analysis to ANT.

To make a distinction between differing property logics I draw on the work of Henri Lefebvre. Lefebvre argued that the nature and characteristics of social life are intimately connected with the production of space.⁸⁶ For Lefebvre, social transformation is bound up in spatial transformation. To that end, Lefebvre argues that space is not an inert backdrop to the social. Rather, Lefebvre claims that space produced through the entwinement of the lived experience of space, conceptions of space, and perceptions of space.⁸⁷ Lefebvre emphasises the processual nature of social life, and how effects such as alienation or emancipation are produced through spatial form. In particular, Lefebvre’s work emphasises that different logics or modes of ordering *space* are productive of different social effects. Two key distinctions of spatial production theorised by Lefebvre are ‘lived space’ and ‘abstract space’. According to him, lived space can give rise to emancipatory and meaningful ways of relating to one another. In contrast, he claims that abstract space gives rise to an alienating form of social existence.

Lefebvre’s argument that differing techniques of spatial production gives rise to differing forms of social life chimes with the processual focus of ANT, and with the suggestion in Chapter 2 that differing practices of property are productive of radically different social effects. I therefore suggest that Lefebvre’s distinction between abstract space and lived space can be extended to conceptualise a difference between an *abstract* logic of property on the one hand and a *lived* logic of property on the other. By

⁸⁵ Law, *Organizing Modernity* (n 4) 84.

⁸⁶ Henri Lefebvre, *The Production of Space* (Translated, Oxford: Blackwell 1991).

⁸⁷ Lefebvre (n 86).

exploring how these contrasting logics are present in the constitutive networks of property, analysis can focus on property's effects as much as its ontology, therefore drawing attention to questions of politics and power as called for by Bhandar. I turn now to develop the contrasting features of abstract and lived property.

4.4.1 Abstract property

A key aspect of Lefebvre's thinking is the linking of the production of space to regimes of capital accumulation.⁸⁸ For Lefebvre, 'abstract space' is a manifestation of the alienating forces of contemporary capitalism, and the creation of abstract space is a tool of domination over social or lived space. Lefebvre gives the space of the state as a key example: through producing a homogenous 'territory', state space is 'organized according to a rationality of the identical and the repetitive that allows the state to introduce its presence, control, and surveillance in the most isolated corners'.⁸⁹ Lefebvre contrasts the abstract space of contemporary capitalism with the absolute, lived space of history. He suggests that absolute space is a mode of space that is unmediated by the technologies of private property or the market: 'Absolute space, religious and political in character, was a product of the bonds of consanguinity, soil and language, but out of it evolved a space which was relativized and historical'.⁹⁰ However, Lefebvre outlines how a diverse range of techniques of measurement and representation operated to reduce space to a commodity. Cartesian thought, linear perspectives and the development of a 'visual-geometric' disciplining of space, manifested in Euclidean spatial thought, constructed space as a vacuum, a bounded territory or container that can be harnessed, sold and exchanged like any other

⁸⁸ Wilson explores the role of abstraction in Lefebvre's body of work in Japhy Wilson, "The Devastating Conquest of the Lived by the Conceived": The Concept of Abstract Space in the Work of Henri Lefebvre' (2013) 16 *Space and Culture* 364.

⁸⁹ Henri Lefebvre, 'Space and the State' in Neil Brenner and others (eds), *State/Space: A Reader* (Blackwell 2003) 86; quoted in Wilson (n 88) 370.

⁹⁰ Lefebvre (n 86) 48.48.

'thing'.⁹¹ Such techniques, Lefebvre argues, 'serve as reducers of the reality they claim to represent'.⁹² These technologies facilitate the quantification of space, enabling its division, measurement and comparison, and ultimately, homogenisation.⁹³

By rendering space a 'thing' that can be traded, swapped, speculated upon, Lefebvre contends that abstract space produces hegemony. This entails, as far as possible, denying the concrete, lived reality and social life of space.⁹⁴ As Lefebvre puts it, 'Abstract space is *not* homogenous; it simply has homogeneity as its goal, its orientation, its 'lens'. And, indeed, it renders homogenous.'⁹⁵ It is a form of space that conceals and prevents, programming behaviour and the future, constraining what is possible:

Abstract space, which is the tool of domination, asphyxiates whatever is conceived within it and then strives to emerge... This space is a lethal one which destroys the historical conditions that gave rise to it, its own (internal) differences, and any such differences that show signs of developing, in order to impose an abstract homogeneity.⁹⁶

Accordingly, for Lefebvre, the instituting of abstract space 'reifies alienation'.⁹⁷ There is little to be 'lived' in abstract space, 'for lived experience is crushed, vanquished by what is 'conceived of''.⁹⁸

Taking abstract space as my point of departure, I argue that a logic of abstraction can usefully be imputed onto networks of property. As explored in Chapter 3, the genealogy of property law is such that it now offers a set of tools, instruments and technologies to enable the ownership of objects and spaces without any regard to the specificity of the thing owned. Graham describes this as 'dephysicalisation' – a trend in which property has come to be defined by abstract rights between people in which the physicality and

⁹¹ For an overview see Wilson (n 88).

⁹² Lefebvre (n 86) 338.

⁹³ Łukasz Stanek, *Henri Lefebvre on Space* (University of Minnesota Press 2011) 152.

⁹⁴ Lefebvre (n 86) 289.

⁹⁵ Lefebvre (n 86) 287. Original emphasis.

⁹⁶ Lefebvre (n 86) 370.

⁹⁷ Lefebvre (n 86) 50.

⁹⁸ Lefebvre (n 86) 51.

specificity of place is entirely unimportant.⁹⁹ For Pottage, land registration marks a critical technology of abstraction which removed the constitution of property from a 'network of relations' and reduced its existence 'to paper'.¹⁰⁰ Property's intersections with finance also reflect a logic of abstraction in the creation of property forms. For instance, Bryan and Rafferty explore the development of property devices such as the joint stock company, shares and derivatives, all of which engender an amplification of dephysicalisation in that ownership is reduced to holding 'an abstract quantum of value'.¹⁰¹ In these arrangements, the objects of property are constructed as commensurable, with no regard for the specificity of the thing itself. This enables any 'thing' to be held in universal abstract terms, prioritising comparable financial value.

The enclosure of the commons is a useful example to illustrate how a logic of abstraction can be imputed onto networks of property. The history of the commons lies in feudal Europe's regime of land holding in which those without land had rights of use for, among other things, foraging, grazing animals and hunting.¹⁰² While it would be wrong to characterise feudal Europe as an emancipatory form of property relationality, the commons offer an example of property in which relationships were constituted through the use of the space, unmediated by the conceptions of planners and developers, or the entitlements of individual ownership.¹⁰³ However, the 'enclosure' of the commons – the extinction of the rights of access held by commoners – ended this form of land use, and instead instituted a form of property relationality characterised by abstraction. Enclosure packaged space into discrete alienable bundles devoid of inhabitation and use, and transformed the social life bound up in such space by cutting off access. Enclosure was achieved by the engineering of various actors into a

⁹⁹ Nicole Graham, *Landscape: Property, Environment, Law* (Routledge 2011) ch 5.

¹⁰⁰ Alain Pottage, 'The Measure of Land' (1994) 57 *The Modern Law Review* 361, 363.

¹⁰¹ Dick Bryan and Michael Rafferty, *Capitalism with Derivatives: A Political Economy of Financial Derivatives, Capital and Class* (Palgrave Macmillan 2006) 74.

¹⁰² JM Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700 - 1820* (Cambridge University Press 1993).

¹⁰³ Neeson (n 102).

patterned network. Spatial surveying and cartographical tools transformed land 'into a spatially bounded property [i.e. thing] that was engineerable, saleable and taxable according to an absolute Euclidean spatial measure.'¹⁰⁴ Enclosure therefore 'involved the creation of a grid-like graticule, in an abstract, absolute, uniform Euclidean space, made up of the lines of latitude and longitude upon which locations are plotted'.¹⁰⁵ Novel legal tools were devised to actualise a reduction of the patchwork of legal and customary claims to common land to one individual owner. Often this took the form of private Acts of Parliament,¹⁰⁶ but legal effect had to be given force through a variety of actors: humans, in the form of Enclosure Commissioners, but also an array of non-humans.¹⁰⁷ For instance, land was carved up and contained through the uses of fences, hedges and roads to prevent the movement, access and taking.¹⁰⁸ Blomley highlights how the hedge in particular materialised 'a new set of controversial discourses around land and property rights'.¹⁰⁹ Accordingly, if enclosure can be understood as the association of space, materials and law into a stable network, a logic of abstraction can be imputed onto that process of network formation.

4.4.1 Lived property

I turn now to consider the alternative logic of property I have distinguished from Lefebvre's thinking: lived property.

¹⁰⁴ Kenneth R Olwig, 'Epilogue to Landscape as Mediator: The Non-Modern Commons Landscape and Modernism's Enclosed Landscape of Property' in Benedetta Castiglioni, Fabio Parascandolo and Marcello Tanca (eds), *Landscape as Mediator, Landscape as Commons: International Perspectives on Landscape Research* (Cleup 2015) 200.

¹⁰⁵ Olwig (n 104) 200.

¹⁰⁶ It was possible to achieve enclosure at law through agreement, but obviously this presented huge practical difficulties. Wordie suggests that parliamentary enclosure became the chief mechanism through which to enclose land from the mid-18th century onwards because almost all land that could have been enclosed by agreement by this time already had been enclosed: JR Wordie, 'The Chronology of English Enclosure, 1500 - 1914' (1983) XXXVI *The Economic History Review* 483, 487.

¹⁰⁷ MW Beresford, 'Commissioners of Enclosure' (1946) a16 *The Economic History Review* 130; John Chapman, 'Enclosure Commissioners as Landscape Planners' (1993) 15 *Landscape History* 51.

¹⁰⁸ Nicholas Blomley, 'Making Private Property: Enclosure, Common Right and the Work of Hedges' (2007) 18 *Rural History* 1.

¹⁰⁹ Blomley (n 108) 5.

For Lefebvre, the transformation of social life was bound up with everyday spatial experience. As Klaus Ronneberger puts it, Lefebvre's 'intellectual project was, above all, a "revalorization of subjectivity" and [a] quest for spaces that allow for autonomy and creativity.'¹¹⁰ For Lefebvre, space is a locus, a production, encapsulating and transmitting not only relations of power and abstraction, but also that of the body and the collective. Social change is therefore bound up in the building of lived spaces which are free from the abstracting tendencies and power of capitalist production in which life could flourish. Accordingly, Lefebvre argued that life can be transformed by articulating *lived* spaces in which people can construct rich and meaningful relationships. Koch's interpretation of Lefebvre suggests that forms of lived space can 'serve to encourage, foster, suggest, and allow other relations to self, others, and environment that include creative-productive activity and active engagement with one's environment.'¹¹¹ In contrast to the programmatic tendencies of abstract space, and the reduction of lived experience to a distinct, commensurable unit of investment, forms of lived space therefore provide autonomy and capacity for heterogeneity. As above, I want to extend Lefebvre's thinking around lived space to suggest that a lived logic of property can be usefully imputed to understand the formation of certain networks and the property relationality they engender.

I suggest that networks of lived property exhibit some of the key elements of lived space. Firstly, a lack of prescriptive norms. While all networks format the agencies and actors which are caught up in them, lived property, I suggest, does not prescribe or proscribe behaviours. If abstract property involves containing and reducing, lived property is a logic of network formation that emphasises what Law describes as

¹¹⁰ Klaus Ronneberger, 'Henri Lefebvre and Urban Everyday Life: In Search of the Possible' in Kanishka Goonewardena and others (eds), *Space, Difference, Everyday Life: Reading Henri Lefebvre* (Routledge 2008) 135.

¹¹¹ Daniel Koch, 'On Architectural Space and Modes of Subjectivity: Producing the Material Conditions for Creative-Productive Activity' (2018) 3 *Urban Planning* 70, 79.

conditions of *possibility* rather than conditions of *impossibility*.¹¹² Alternatively, this can be understood as a distinction described by Murdoch as the making of networks of *negotiation* versus networks of *prescription*.¹¹³ The former are defined by the prescription of norms, imposing rigidity and predictable behaviours. Networks of negotiation, however, are 'fluid, interactional and unstable'.¹¹⁴ Further, I argue that lived property is characterised by an emphasis on the specificity of the thing, emphasising the value of uses that the thing might engender. Rather than abstract rights over things held by individuals, networks of lived property revolve around the specificity and importance of the thing in contouring relations.

Accordingly, I suggest that a logic of lived property can be imputed to certain networks exhibiting forms of relating that encourage interaction, collective experience and autonomy. It is a logic of networking or association that relies upon making resources open and generative, heterogeneous and lived. If the logic of conventional liberal private property is the individual and is preventative (i.e. maintaining the domain of the individual), lived property creates a foundation upon which things can occur.

4.5 Conclusion

In this chapter, I have set out a theoretical approach to the study of property informed by actor-network theory. I have suggested that property can be understood as a networked effect, composed through heterogeneous elements. My theoretical framework, I suggest, responds to the latencies identified in contemporary property theory identified in the previous chapter. In summary, ANT's apprehension of non-humans in the formation of property, its exploration of how subjects and objects are constituted through network formation, and its approach to distributed agency, enable

¹¹² Law, 'Objects and Spaces' (n 72) 92.

¹¹³ Murdoch (n 73).

¹¹⁴ Murdoch (n 73) 362.

me to move beyond the subject-object divide, and instead explore how property is constituted by networks, and constitutive of varying abstracting and lived effects.

To gain traction on the variability of property's effects, I have argued that 'logics' can usefully be imputed onto processes of network formation. This enables me to contend with the politics of property formations, and explore how particular variations and modalities of network formation are productive of varying forms of subjectivity, life and exploitation. Drawing on the work of Lefebvre, I distinguished between an abstract logic of property on the one hand, and a lived logic of property on the other. While both forms of property are, ontologically, composed through the same means, imputing 'logics' onto their formation is an analytical tool to understand the patterns among different networks, and their outcomes and effects. In this way, recalling Davies, my approach to property's relational or connected ontology better places us to understand property's variability, and how it is both central to novel forms of exploitation, but can also be re-made to alternative ends. Put simply, by comparing how property can be productive of radically different effects enables better understanding of how property is both exploitative *and* open to re-making.

The next chapters turn to empirical analyses of contrasting instances of property. Applying the theoretical framework outlined in this chapter, I explore the relational composition of three examples of lived and abstract property. Recalling the discussion in Chapter 2, my theoretical framework, combined with case study analyses, have been designed to respond to my research questions on how property can be understood as a networked effect, and what this means in practice; how materiality, spatiality and legality interact to form networks of property; and how the subjects and objects of property produced through processes of network formation.

The next chapter – Chapter 5 – begins with analysis of an abstract property form: the residential mortgage-backed security ('RMBS'). This chapter charts how, through processes of network formation, property emerges as a networked effect from which the categories of 'subject' and 'object' follow. I chart how the RMBS's constitutive

network produced humans as the objects of property, and also engendered a temporality which blurred present and future. Chapter 6 turns to the formation of lived property. I explore the techniques of network building which construct norms and understandings around sharing and interaction at a London cohousing site. This chapter explores the actors and techniques through which property emerges as an effect of network formation, and how such effects are contingent upon the existence and stability of the network. My analysis takes us beyond the limitations outlined in Chapter 3 by focusing attention on the actors and processes that connect to form property relationality. Chapter 7 focuses on the endurance of lived property by analysing a longstanding cohousing site in south west England. My ANT approach sheds light on how law enters the creation and endurance of property and, following the work of Hunter and Blandy, I explore how leases operate to underpin the endurance of norms that have no technical legal basis through their dynamics as 'socio-legal objects', into which meaning and normativity can be put. Finally, Chapter 7 also explores the temporality of property. Following Grabham and Latour, I argue that the time of property follows as an effect of network formation. In contrast to the dynamics approach advocated by Blandy, Bright and Nield, ANT reveals how time is created through the relationship of human and non-human actors, rather than a universalising linear backdrop against which subjects and objects exist.

Chapter 5

Making abstract property: the residential mortgaged-backed-security

Finance is a derived modality of economy that does not preoccupy itself with dealing in things, like bushels of wheat or barrels of crude oil; rather, it elaborates and derives new economy vehicles (equities, bonds, futures, options) from existing economic activities.¹

5.1 Introduction

In this chapter, I explore the composition of an abstract property form: the residential mortgage-backed security ('RMBS'). The RMBS entitles its holder to receive income from an aggregated pool of residential mortgage obligations. RMBSs are decades old, but in the early 2000s their creation boomed, constituting an interface between mortgage lenders and investors which opened up housing to global financial flows. For lenders, the RMBS enabled mortgages to be sold on to fuel further lending. For investors, the RMBS offered a high yield opportunity that could be calibrated to specific risk requirements.

RMBSs are a distinct example of abstract property. They enabled investors to relate to underlying homes as if the homes were nothing more than abstract figures of risk and return. This created a particular form of property relationship between investors and the underlying asset characterised by abstraction or 'dephysicalisation': the physicality of land becomes irrelevant, rendered an 'abstract quantum of value'.² I suggest that the

¹ Vincent Antonin Lépinay, *Codes of Finance: Engineering Derivatives in a Global Bank* (Princeton University Press 2011) 2.

² Dick Bryan and Michael Rafferty, *Capitalism with Derivatives: A Political Economy of Financial Derivatives, Capital and Class* (Palgrave Macmillan 2006) 74.

RMBS disrupts the conventional understandings of subject and object and linear time that inform property theory. As outlined in Chapter 3, conventional, liberal thought conceptualises property as a relationship between subjects in respect of objects, set against the universal backdrop of time. However, RMBSs do not conform to this image. Instead, the RMBS constructed the human subject as an object of property, and in doing so, facilitated the extraction of value from the human need for inhabitation. Moreover, instead of representing the image of time as a linear 'backdrop', the RMBS generated a peculiar property temporality in which payments to be made in the *future* were constituted as a contemporaneous form of value.

Securitisation also exemplifies the growing dominance of financial assets, institutions and logics in economic production and everyday life – a trend described as 'financialisation'.³ For the purposes of this research, the RMBS presents a useful case study through which to unpack both the relational ontology of property and the effects that this particular form of property engendered. I utilise the methodological approach outlined in the previous chapter to explore the RMBS's constitutive, networked dynamics. This enables me to situate how property, as a relational effect, is produced and sustained, and to pursue the research questions outlined in Chapter 2.

While my focus is confined to the relational ontology of property, by implication this chapter also develops our understanding of financialisation. I argue that financialisation should be understood through the lens of property, in that financialisation is characterised by the construction of novel property forms underpinned by an ever-increasing array of income streams. In turn, I suggest that exploring how property forms are made sheds light on how financialisation is achieved and *vice versa*. In

³ Greta Krippner, 'The Financialization of the American Economy' (2005) 3 *Socio-Economic Review* 173; Natascha van Der Zwan, 'Making Sense of Financialization' (2014) 12 *Socio-Economic Review* 99; Philip Mader, Daniel Mertens and Natascha van Der Zwan (eds), *The Routledge International Handbook of Financialization* (Routledge 2020).

taking an ANT approach to the study of financial property, this chapter builds connections to STS inspired approaches to the study of finance.

The chapter is structured as follows. Firstly, I provide an overview of financialisation scholarship. I note that some researchers have questioned the expansiveness of financialisation as a concept and have called for its refinement. In response to this, I suggest that financialisation can be usefully understood through the lens of property. Specifically, financialisation is defined by the creation and deployment of property devices around a potentially limitless class of income streams and activities. The RMBS, in allowing investors to derive value from home owners' future mortgage repayments, is a key example of this dynamic.

Secondly, I turn to explore how the RMBS, as a distinct form of abstract property, was produced. Utilising the ANT inspired approach outlined in the previous chapter, I unpack the dynamics of network formation which constituted the RMBS as a property relationship. This includes analysis of how links between borrower and lender were forged, how the home was translated into abstract figures of risk, and how mobility and detachment were achieved. My analysis renders visible the work that goes into making the security as a property relationship, and thus sheds light on property's relational ontology. Rather than coherent social or legal relationships between people, my analysis highlights that property is a networked effect, produced and sustained through the enrolment and translation of human and non-human elements. Moreover, my approach highlights that, through processes of network formation, the subjects and objects of property are constituted, as are the temporal effects necessary to sustain the relationship.

Finally, recalling Cooper's work in Chapter 3, I consider the 'productive life' of this property form. I explore how the RMBS exposed the home to financial markets, rendering human subjects the objects of property. I argue that the RMBS, and abstract financial property forms more broadly, mark a significant shift from contemporary understandings and practices of liberal legal property.

5.2 Financialisation: an overview

Researchers have argued that, since the 1970s, the global economy has undergone a process of 'financialisation'. Financialisation, according to Krippner, amounts to a growing tendency for profits to be made through financial channels rather than through trade or commodity production.⁴ While financialisation is not a new phenomenon,⁵ Christopherson, Martin and Pollard argue that the intensity of contemporary financialisation amounts to a 'realignment of capitalism towards financial markets and imperatives' to the extent that finance 'has ceased simply to assist the running and operation of the real economy of goods and services, but rather has come to dominate, even displace, the latter'.⁶

Economic data reflects a dramatic growth of the financial sector in many national economies. In the UK, for instance, the growth rate of value added to gross domestic product ('GDP') by the financial sector has been double the value added by non-financial activities over the past sixteen years, and the value of the total stock of financial assets is now almost 70 times the value of GDP.⁷ Further afield, the ratio of financial assets to fixed assets in European national economies grew by 60% for financial corporations between 1991 and 2016.⁸ For non-financial firms, the ratio of financial assets to fixed assets grew by 40% in the same period.⁹ Thus, as Fields observes, 'even where "real" commodities are involved, profits increasingly accrue

⁴ Krippner (n 3).

⁵ Giovanni Arrighi, *The Long Twentieth Century: Money, Power, and the Origins of Our Times* (Verso 1994).

⁶ Susan Christopherson, Ron Martin and Jane Pollard, 'Financialisation: Roots and Repercussions' (2013) 6 *Cambridge Journal of Regions, Economy and Society* 351, 351–352; see also Thomas I Palley, 'Financialization: What It Is and Why It Matters' (2007) *Political Economy Research Institute Working Paper Series*; Costas Lapavistas, 'The Financialization of Capitalism: "Profiting without Producing"' (2013) 17 *City* 792; Manuel B Aalbers, 'The Great Moderation, the Great Excess and the Global Housing Crisis' (2015) 15 *International Journal of Housing Policy* 43.

⁷ Veronika Stolbova and others, 'Financialization of Europe: A Comparative Perspective' (2017) *ISI Growth Working Paper 22/2017* July 7–8.

⁸ Stolbova and others (n 7) 9.

⁹ Stolbova and others (n 7) 9.

through their monetization and integration in financial channels'.¹⁰

Christophers suggests that analyses of financialisation can broadly be placed in one of three categories.¹¹ Firstly, exploration of the effects of finance on the processes and structures of capital accumulation, and how profits are sought from financial sources and institutions.¹² Secondly, exploration of the growth of a corporate governance which prioritises shareholder value above all else.¹³ This work extends to exploring how non-financial companies and organisations generate profit from financial processes and financial markets.¹⁴ Thirdly, exploration of finance's impact on daily life and lived experience. This work explores how credit and debt are lived realities, and how individuals have become active in financial markets to secure their welfare.¹⁵ Researchers contend that there is an increased reliance of households and individuals on the financial system for the provision of basic needs.¹⁶ To that end, it is argued that financial logics and practices have become embedded in everyday life.¹⁷

However, researchers have also questioned the usefulness of financialisation as a concept. For Ouma, financialisation

has been turned into an abstract force *sui generis*, morphing from *explanandum* into *explanans*. In this regard, it has shared the fate of other

¹⁰ Desiree Fields, 'Contesting the Financialization of Urban Space: Community Organizations and the Struggle to Preserve Affordable Rental Housing in New York City' (2015) 37 *Journal of Urban Affairs* 144, 148.

¹¹ Brett Christophers, 'The Limits to Financialization' (2015) 5 *Dialogues in Human Geography* 183.

¹² Krippner (n 3); Greta R Krippner, *Capitalizing on Crisis: The Political Origins of the Rise of Finance* (Harvard University Press 2011); Arrighi (n 5); Costas Lapavitsas (ed), *Financialization in Crisis* (Haymarket Books 2013).

¹³ eg Julie Froud and others, *Financialization and Strategy: Narrative and Numbers* (Routledge 2006); Costas Lapavitsas and Jeff Powell, 'Financialisation Varied: A Comparative Analysis of Advanced Economies' (2013) 6 *Cambridge Journal of Regions, Economy and Society* 359.

¹⁴ Lapavitsas (n 6) 793.

¹⁵ Christophers (n 11) 186.

¹⁶ Paul Langley, *The Everyday Life of Global Finance: Saving and Borrowing in Anglo-America* (Oxford University Press 2008); Dick Bryan and Michael Rafferty, 'Financial Derivatives as Social Policy beyond Crisis' (2014) 48 *Sociology* 887; Ray Forrest and Yosuke Hirayama, 'The Financialisation of the Social Project: Embedded Liberalism, Neoliberalism and Home Ownership' (2015) 52 *Urban Studies* 233.

¹⁷ Fiona Allon, 'Speculating on Everyday Life: The Cultural Economy of the Quotidian' (2010) 34 *Journal of Communication Inquiry* 366; Bryan and Rafferty (n 16); Forrest and Hirayama (n 16).

concepts such as “capitalism”, “the market”, “globalization” or “neoliberalism”.¹⁸

Similarly, for Christophers, financialisation does not possess any coherence, ‘increasingly standing only for a vague notion of ‘the (increased) contemporary importance of finance’ and accordingly argues that ‘its enrolment today risks raising more questions than it answers’.¹⁹

Other researchers have acknowledged these criticisms, and argued that if financialisation is to be a useful concept, researchers must unpack the means by which finance exploits value from the ‘real’ economy. Fields, for example, suggests that treating financialisation as an abstract, universalising ‘force’ robs the term of any explanatory value. Instead, for Fields, understanding financialisation requires exploring how finance itself is constituted:

Too often, financialization is treated as an explanation in and of itself, leaving finance itself ‘black-boxed’.... Such work fails to illuminate the concerted effort, supporting infrastructures, and practices that allow financializing projects to come to fruition (or disruptions causing them to fail).²⁰

To develop her argument, Fields took an approach to finance informed by science and technology studies (‘STS’), and sought to unpack the processes by which investors acquired homes which were repossessed by lenders during the 2008 financial crisis, and which have subsequently been let to families, and the rental income securitised.²¹ Fields’ analysis highlights how these homes were caught up in a ‘market assemblage’ and ‘disentangled from their association with crisis and dispossession, and embedded within a different set of connections’ that resulted in the ‘pacification’ of the homes as a

¹⁸ Stefan Ouma, ‘From Financialization to Operations of Capital: Historicizing and Disentangling the Finance-Farmland-Nexus’ (2016) 72 *Geoforum* 82, 82. Original emphasis.

¹⁹ Christophers (n 11) 184; However, see Muphy’s reply arguing that its plurality is precisely where its usefulness lies: Laurence Murphy, ‘Financialization (Un)Limited’ (2015) 5 *Dialogues in Human Geography* 206.

²⁰ Desiree Fields, ‘Constructing a New Asset Class: Property-Led Financial Accumulation after the Crisis’ (2018) 94 *Economic Geography* 118, 119. References omitted.

²¹ Fields (n 20).

novel asset class.²² These tools translated and pacified communities, homes and individuals so that ‘every home becomes a monitored asset, and every renter a revenue stream’.²³

Similarly, Langley emphasises how analyses of financialisation should focus on how financialisation is achieved.²⁴ Langley takes such an approach to the RMBS. Langley situates securitisation ‘as distinct cultural networks of modern finance made possible through performative practices’.²⁵ He suggests that ANT and Foucauldian approaches require ‘us to situate [R]MBS in US and UK mortgage finance understood as specific networks of modern finance’.²⁶ Drawing on Leyshon and Thrift, Langley suggests that ANT offers

...some particular insights into how we might further interrogate the development of [R]MBS. Such approaches conceive of money and finance not as material resources that flow and circulate throughout the economy, but instead emphasise the communication of information and reduction of uncertainty in specific networks of monetary and financial relations. From this perspective, the informational character of financial networks ensures that they “depend for their upkeep on often distinctive concepts, texts and instruments” which must be “constantly practised”.²⁷

Accordingly, there are growing calls to explore how financialisation is a contingent outcome of networked connections. While a response to such a call is perhaps not expected of property scholarship, property scholars have been slow to connect property research to the study of financialisation. Financial assets are distinct property forms which institute an abstract relationality between investors and underlying things or activities. They translate what is otherwise incommensurable into what Maurer describes as ‘abstractions of value embodied in imaginary shares’.²⁸ I suggest that the

²² Fields (n 20) 126.

²³ Drew Harwell, ‘Land Rush’ *Tampa Bay Times* (24 March 2013); quoted in Fields (n 20) 129.

²⁴ Paul Langley, ‘Securitising Suburbia: The Transformation of Anglo-American Mortgage Finance’ (2006) 10 *Competition & Change* 283.

²⁵ Langley (n 24) 288.

²⁶ Langley (n 24) 288.

²⁷ Langley (n 24) 291.

²⁸ Bill Maurer, ‘Forget Locke? From Proprietor to Risk-Bearer in New Logics of Finance’ (1999) 11 *Public Culture* 47, 366.

RMBS offers a window through which to explore how property is constituted as a relational effect. By implication, such an analysis also offers a means to understand the production and effects of financialisation. In the next section, I explore the dynamics of financial property forms, and argue that understanding the relational ontology of property helps us to understand property's composition, and responds to Fields' call to explore the means by which financialisation is achieved.

5.3 Finance, abstraction and property

LiPuma argues that defining a financial asset such as a derivative merely as a 'financial contract' 'is like describing the Venus de Milo as a double amputee'.²⁹ More prosaically, I suggest that the majority of research in both property and financialisation avoids analyses of how financial assets are property devices. Finance is a property form engineered around a complex re-making of subjects, objects and temporality which enables an expansive class of things and their income streams 'to be traded as if they are nothing but inscriptions detached from their foundations'.³⁰ Accordingly, finance disrupts the conventional understanding of property theory. As noted in Chapter 3, if property concerns relationships between people as to the use of things, much conventional property scholarship assumes that those "persons" and "things" are clearly bounded, have integrity, and are easily recognizable as separate kinds of entities.³¹ The abstract property forms of finance highlights the paucity of conventional assumptions in its ability to render potentially any thing or human subject the object of property. Put simply, subjects, objects and time are *outcomes* of abstract property forms created by financial actors – not pre-givens.

²⁹ Edward LiPuma, *The Social Life of Financial Derivatives: Markets, Risk, and Time* (Duke University Press 2017) 30.

³⁰ Lépinay (n 1) xviii.

³¹ Katherine Verdery and Caroline Humphrey, 'Introduction: Raising Questions about Property' in Katherine Verdery and Caroline Humphrey (eds), *Property in Question: Value Transformation in the Global Economy* (Berg 2004) 6.

Financialisation can therefore be understood as a process through which property relationships are constructed which engender abstraction. Such property forms enable a heterogeneous range of things, places and activities to be constituted as sources of value creation and rendered a mobile object which can move through financial markets. Derivatives, for example, are contracts with respect to some underlying activity that constitute a claim on future value. Their modern incarnation stems from nineteenth century Chicago, where farmers sold grain at a specific price with delivery later – so called ‘futures’ contracts.³² Such contracts were bought, sold and swapped as a distinct asset or thing, their value *derived* from the underlying activity (grain production). Bonds are a further example of financial property, constituting the physical expression of a promise of one party – the bond’s creator – to pay its holder. Similarly, shares facilitate the ownership of a distinct quantum of a company. Shares reduce company ownership to a right to receive income, rather than ownership of the company’s assets.³³ With these basic financial forms in mind, we can appreciate Paddy Ireland’s suggestion that conceptions and practices of property in the nineteenth century were transformed so as to embrace intangible income rights.³⁴

Three distinct aspects of this transformation are apparent. Firstly, as early as the eighteenth century there was an ‘explosion’ of new, abstract, intangible forms of property’ such as bonds, loan stocks and other credit devices which were constituted ‘as property on a par with property in actual material things’.³⁵ Secondly, as Piška outlines, equity enabled the ‘commodification of *future* value in the present’ by translating choses in action such as income rights from bills, government stock or joint

³² Adam Tickell, ‘Dangerous Derivatives: Controlling and Creating Risks in International Money’ (2000) 31 *Geoforum* 87, 88.

³³ I return to this point below. For an overview, see Paddy Ireland, Ian Grigg-Spall and Dave Kelly, ‘The Conceptual Foundations of Modern Company Law’ (1987) 14 *Journal of Law and Society* 149; Rob McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854 - 1920* (Ashgate 2009).

³⁴ Paddy Ireland, ‘Property, Private Government and the Myth of Deregulation’ in Sarah Worthington (ed), *Commercial Law and Commercial Practice* (Hart Publishing 2003) 95.

³⁵ Ireland, Grigg-Spall and Kelly (n 33) 153.

stock company shares into property.³⁶ Accordingly, shares, debts and other contractual claims ‘became usable wealth’³⁷ – ‘usable’ in that future value is brought forward and rendered tradable today. Thirdly, the advent of the limited liability joint stock company marked the creation of a distinct abstract property relationality.³⁸ Instead of unassignable direct ownership of a company’s assets, the limited liability company enabled shareholders to become *rentiers* who held transferable abstract income rights of a company’s surplus with no associated role in the company’s operation, and bore no responsibility or liability for its losses.³⁹ Coupled with the stock exchange in which the future value of such income rights could be mediated, determined and speculated upon, these assets were liquid and mobile, linking investors and underlying things through abstract relations that were predominantly de-physicalised.⁴⁰

Finance therefore entails the formation of a distinct form of property relationality: exploitation of the future income associated with a particular thing or activity. What is distinctive about financialisation today is the intensity with which property forms are being built around an expanding class of underlying things or activities.⁴¹ As *The Economist* put it in 1998:

Fancy investing in a security whose payoff depends on how much beer is sold in British pubs? How about a bond to be paid by collections of overdue parking fines in New York City? If you’d prefer, you can purchase the rights to a slice of the revenues from old Italian films, or the amounts raised by selling executive suites in Denver’s new stadium, or the royalties earned by pop stars such as David Bowie and Rod Stewart. *There is barely a cash flow*

³⁶ Nick Piška, ‘Aristotle’s Pharmacy’ (2017) 11 *Pólemos* 5, 16 Original emphasis. see also Ireland, Grigg-Spall and Kelly (n 33) 155. Piška 16 Original emphasis. see also Ireland, Grigg-Spall and Kelly (n 33) 155.

³⁷ Sarah Worthington, *Equity and Property: Fact, Fantasy and Morals* (University of Queensland Press 2009) 12–13. Quoted in Nick Piška, ‘Aristotle’s Pharmacy’ (2017) 11 *Pólemos* 5, 16.

³⁸ See also McQueen (n 33); Ireland (n 34).

³⁹ Ireland (n 34).

⁴⁰ Bryan and Rafferty (n 2) 73–74.

⁴¹ Rachel Weber, ‘Selling City Futures: The Financialization of Urban Redevelopment Policy’ (2010) 86 *Economic Geography* 251, 252; Marieke de Goede, ‘Chains of Securitization’ (2017) 3 *Finance and Society* 197; Lépinay (n 1).

*anywhere, it seems, that cannot be reassembled into a bond-like security that the most conservative of investors might buy.*⁴²

With this in mind, Leyshon and Thrift suggest that

financial capitalism is not the spectacular system of speculation but something more mundane; that is, financial capitalism is dependent on the constant searching out, or the construction of, new asset streams, usually through a process of aggregation, which then – and only then – allows speculation to take place...these kinds of financial bases are becoming increasingly important: they are to the contemporary financial system what gold was to its precursors, a source of value from which financial innovation can proceed.⁴³

If, as Graham suggests, modern property is characterised by ‘dephysicalisation’ – a trend in which the thing or place constituted as the object of a property right is irrelevant to the operation and dynamics of the right – financialisation both amplifies and modifies this dynamic in two key respects.

Firstly, not only do the abstract property forms of finance disassociate subjects from the objects of property, they create a distinct form of temporality. As La Berge suggests, finance generates a relationship between present and future, enabling the exploitation or unlocking of yet-to-be realised value.⁴⁴ The property forms of finance do not therefore exist within or against linear time but produce the very temporality they exploits.⁴⁵ Moore describes this as a ‘temporal short circuit’.⁴⁶ Such a short circuit, in the words of Guttman, bridges the ‘temporal disjuncture between intention, production and consumption.’⁴⁷ Thus for La Berge, finance is the ‘representational present of [a] promised future’. As Keenan puts it, the holder of a financial property form can ‘act as if

⁴² ‘Bonds That Rock and Roll’ *The Economist* (May 1998). Emphasis added.

⁴³ Andrew Leyshon and Nigel Thrift, ‘The Capitalization of Almost Everything: The Future of Finance and Capitalism’ (2007) 24 *Theory, Culture & Society* 97, 98.

⁴⁴ Leigh Claire La Berge, *Scandals and Abstraction: Financial Fiction of the Long 1980s* (Oxford University Press 2015) 26.

⁴⁵ La Berge (n 44) 26.

⁴⁶ Nathan Moore, ‘Pre-Emptive Value’ (2017) 5 *Birkbeck Law Review* 59.

⁴⁷ La Berge (n 44) 26.

the future has already arrived'.⁴⁸

Secondly, financial property blurs the distinction between subject and object. In respect to housing, for instance, finance's property forms render (human) subjects the objects of property. To return to Fields, the *future* rental payments of families are rendered into a distinct asset to be owned *now*. Those future payments, however, are intrinsically bound up with the lives of the human subjects who are obliged to make them. To that end, the human subject is directly implicated as an object of property and a source of value exploitation. Maurer therefore suggests that finance's abstract property forms 'redefine the subject of property not as the bearer of rights but as a risk profile ... At stake is not merely a new definition of property but a new definition of personhood and a new form of governmentality'.⁴⁹ This has led Marazzi to describe financialised capitalism as 'biocapitalism' characterised by the transformation of 'the consumer into a veritable producer of economic value'.⁵⁰

I suggest that unpacking the formation of financial property forms can help us understand both property's relational ontology, and the forms of governmentality finance produces. In the next section, I explore the composition of one particular property form through the lens of ANT: the RMBS.

5.4 Making abstract property forms and dematerialising home: mortgage-backed securities

The built environment is one of the most significant underlying 'things' upon which financial property devices are built. As Rolnik notes, 'real estate in general, and housing in particular, constitute one of the newest and most powerful of the expanding

⁴⁸ Sarah Keenan, 'From Historical Chains to Derivative Futures: Title Registries as Time Machines' (2019) 20 *Social & Cultural Geography* 283, 288.

⁴⁹ Maurer (n 28) 366.

⁵⁰ Christian Marazzi, *The Violence of Financial Capitalism* (Semiotext(e) 2010) 50.

borders of financial capital'.⁵¹ Income streams associated with urban housing, infrastructures and commercial property have been displaced and translated into an array of financial assets, including derivatives, securities, bonds and shares.⁵² Such income streams are transposed onto financial markets in legal forms (securities, shares, bonds) that can be bought and sold as if they were any other financial instrument. Potentially any aspect of the built environment can be translated and quantified in a way that enables 'commensuration between different investment opportunities'.⁵³ Financial property therefore helps overcome the historical barriers to globally disparate investment in urban resources by reducing the objects of investment to abstract income rights defined only by yield and risk. To that end, Aalbers and Fernández suggest that the city now constitutes a quasi 'global reserve currency'.⁵⁴

The primary means through which owner-occupied housing has come to be implicated in financial property forms is through the mortgage.⁵⁵ Mortgage finance was central to

⁵¹ Raquel Rolnik, *Urban Warfare: Housing under the Empire of Finance* (Verso 2019) 5.

⁵² Michael Byrne and Michelle Norris, 'Financial Circuits: Cyclicity, Leakiness and Social Housing Finance' (2017) Financial Geography Working Paper #5; Richard Goulding, 'Transforming Social Housing into an Asset Class: The Financialisation of English Housing Associations under Neoliberalism and Austerity Urbanism' (The University of Sheffield 2018); Desiree Fields and Sabina Uffer, 'The Financialisation of Rental Housing: A Comparative Analysis of New York City and Berlin' (2014) 53 *Urban Studies* 1486; Phillip M O'Neill, 'The Financialisation of Infrastructure: The Role of Categorisation and Property Relations' (2013) 6 *Cambridge Journal of Regions, Economy and Society* 441; Ludovic Halbert, John Henneberry and Fotis Mouzakis, 'The Financialization of Business Property and What It Means for Cities and Regions' (2014) 48 *Regional Studies* 547.

⁵³ A Guironnet, K Attuyer and L Halbert, 'Building Cities on Financial Assets: The Financialisation of Property Markets and Its Implications for City Governments in the Paris City-Region' (2016) 53 *Urban Studies* 1442, 1447.

⁵⁴ Rodrigo Fernández and Manuel B Aalbers, 'Financialization and Housing: Between Globalization and Varieties of Capitalism' (2016) 20 *Competition & Change* 71.

⁵⁵ Mortgages constitute a 'core' means through which investors dematerialise home into an asset class: Mary Robertson, '(De)Constructing the Financialised Culture of Owner-Occupation in the UK, with the Aid of the 10Cs' (2016) 22 *New Political Economy* 398, 1. However recent research has explored the increasingly 'variegated' nature of housing financialisation, e.g.: Manuel B Aalbers, 'The Variegated Financialization of Housing' (2017) 41 *International Journal of Urban and Regional Research* 542. In particular, novel techniques to transpose rental housing, both at market and social rents, into a financial asset class are emerging: Fields and Uffer (n 52); Benjamin F Teresa, 'Managing Fictitious Capital: The Legal Geography of Investment and Political Struggle in Rental Housing in New York City' (2015) 48 *Environment and Planning A: Economy and Space* 465; Gertjan Wijburg and Manuel B Aalbers, 'The Alternative Financialization of the German Housing Market' (2017) 32 *Housing Studies* 968; Manuel B Aalbers, Jannes Van Loon and Rodrigo Fernandez, 'The Financialization of a Social

the extension of home ownership throughout many European countries and the United States in the twentieth century.⁵⁶ For investors, however, housing markets and mortgage lending were 'illiquid' and fixed, 'defined by local particularities and idiosyncrasies'.⁵⁷ As Gotham notes, this specificity rendered it 'difficult for [investors] to know the value and property of what they are exchanging'.⁵⁸ However, the twentieth century saw these fixed and illiquid assets transformed. Through the creation of a distinct form of abstract property relationality, mortgages became a highly liquid and globally traded asset class in the form of the RMBS.

The RMBS operates by transplanting mortgage obligations – and the income stream from such obligations – into a property form that constitutes a claim on these future payments.⁵⁹ The RMBS prioritised abstract value over specificity and lived value by homogenising fixed assets into investment opportunities with standardised and 'transparent' characteristics (price, risk, returns), enabling easy conversion to cash.⁶⁰ A future promise to repay is thus transformed into a mobile property form with value today. As discussed above, such temporal dislocation is a defining feature of abstract financial property.

Housing Provider' (2017) 41 *International Journal of Urban and Regional Research* 572; Goulding (n 52).

⁵⁶ Moira Munro, 'Evaluating Policy Towards Increasing Owner Occupation' (2007) 22 *Housing Studies* 243; Richard Ronald, *The Ideology of Home Ownership: Homeowner Societies and the Role of Housing* (Palgrave Macmillan 2008).

⁵⁷ Kevin Fox Gotham, 'Creating Liquidity out of Spatial Fixity: The Secondary Circuit of Capital and the Subprime Mortgage Crisis' (2009) 33 *International Journal of Urban and Regional Research* 355, 359.

⁵⁸ Gotham (n 57) 357.

⁵⁹ Jongchul Kim, 'Identity and the Hybridity of Modern Finance: How a Specifically Modern Concept of the Self Underlies the Modern Ownership of Property, Trusts and Finance' (2014) 38 *Cambridge Journal of Economics* 425; de Goede (n 41); Bonnie G Buchanan, 'The Way We Live Now : Financialization and Securitization' (2017) 39 *Research in International Business and Finance* 663.

⁶⁰ Buchanan (n 59) 674.

The American government engineered the formative architecture of mortgage securitisation in the early twentieth century by marking a distinction between a 'primary market' in which mortgage obligations are created, and a 'secondary market' in which portfolios of obligations are sold on to investors via government sponsored enterprises ('GSEs').⁶¹ Later, in the 1970s, mortgage-backed bonds were engineered on Wall Street; the GSEs were authorised to create such assets in 1981.⁶² From the 1990s onwards, private actors became involved in the secondary mortgage market led by investment banks – particularly in purchasing loans that GSEs refused due to their relatively strict criteria.⁶³ As Buchanan reports, the entry of private actors and the growth of the secondary mortgage market connected globally disparate investors to previously inaccessible markets, and provided mortgage lenders with benefits:

Gone were the days when the small regional bank was limited to the local housing markets. Now this same bank could offload credit risk to international investors such as insurers and hedge funds. About half of the securitized assets in the US such as CDOs and MBSs were sold to foreign investors. Foreign banks, pension funds and other financial institutions snapped up these securities prior to 2007.⁶⁴

The American model took on different colours across Europe. In the UK, as Wainwright details, the main difference in developing securitisation was the leading role played by private sector financial institutions rather than government sponsored enterprises.⁶⁵ The deregulation of mortgage markets in the 1980s opened up UK mortgage markets to institutions other than building societies, enabling 'decentralized networks of bankers to embed the alien idea of securitization into the UK's political economy'.⁶⁶ 1986 saw the first use of mortgage securitisation in the UK, marking its development as a funding

⁶¹ Thomas Wainwright, 'Laying the Foundations for a Crisis: Mapping the Historico-Geographical Construction of Residential Mortgage Backed Securitization in the UK' (2009) 33 *International Journal of Urban and Regional Research* 372, 377.

⁶² Wainwright (n 61) 377; Gotham (n 57) 361.

⁶³ Buchanan (n 59); Heather MacDonald, 'Secondary Mortgage Markets and Federal Housing Policy' (1995) 17 *Journal of Urban Affairs* 53.

⁶⁴ Buchanan (n 59) 668.

⁶⁵ Wainwright (n 61); see also Thomas Wainwright, 'Circulating Financial Innovation: New Knowledge and Securitization in Europe' (2015) 47 *1643*.

⁶⁶ Wainwright (n 61) 378.

mechanism for lenders and as a means to subvert capital adequacy ratios by moving lending off balance sheet.⁶⁷ As Langley summarises, with RMBSs,

a set of close interconnections between Anglo-American mortgage networks and the multiple networks of the capital and derivatives markets [had] been formed. Mortgage networks have been significantly lengthened, such that they typically embrace the residential suburb, high street and a financial centre on the other side of the globe.⁶⁸

RMBSs were beneficial to both mortgage lenders and investors. For banks and building societies, moving mortgage loans off their balance sheets freed up lending capacity, further fuelling home ownership.⁶⁹ For investors, the RMBS provided access to novel sources of value: housing. Investing in securities enabled investors to access housing in a hitherto impossible fashion which, in the context of housing, 'de-link[ed] investment from place'⁷⁰, transposing the home into global circuits of speculation. For Gotham, securitisation is a process of 'creating liquidity out of spatial fixity', converting 'illiquid commodities' into 'liquid resources'.⁷¹ Accordingly, as a logic and modality of abstract property, securitisation 'dematerialised'⁷² housing into an abstract asset class divorced from its foundations and defined only by price, risk and yield, rendering investment legible to globally disparate investors. The effect of securitisation upon housing was profound. In rendering housing a liquid asset class commensurable with any other stock, share or bond, Gotham argues that 'the real estate sector [came] to resemble an economic sector composed of finance markets and instruments'.⁷³

I turn now to explore, through the lens of ANT, the heterogenous range of actors, translation and displacements that constituted this form of property relationality and the

⁶⁷ Wainwright (n 61) 379–380.

⁶⁸ Langley (n 24) 289.

⁶⁹ Wainwright (n 61) 385.

⁷⁰ Manuel B Aalbers, 'The Financialization of Home and the Mortgage Market Crisis' (2008) 12 *Competition & Change* 148, 154.

⁷¹ Gotham (n 57) 357.

⁷² Susan J Smith and Beverley A Searle, 'Dematerialising Money? Observations on the Flow of Wealth from Housing to Other Things' (2008) 23 *Housing Studies* 21.

⁷³ Gotham (n 57) 357.

effects it engendered.

5.4.1 First translation: originations to special purpose vehicle

A borrower's obligation to re-pay a loan from a mortgage lender constituted the underlying income stream upon which mortgage-backed securities were constructed. As such, completed mortgage agreements – 'originations' – constituted the 'raw ingredient'⁷⁴ of the RMBS. I begin this section by considering how distinct, spatially disparate mortgage agreements were translated into commensurate terms so as to form the basis of the RMBS. I start by considering how mortgage contracts forged links between individuals and lenders, and how that relationship was then 'subsequently effaced' by the network's forces.⁷⁵

A conventional legal analysis of a contract's formation is premised on compliance with formalities and the terms of the agreement. In contrast, I suggest that attention should be paid to the role and agency of the mortgage contract's material and performative dynamics in the formation of the RMBS as a networked effect. Through this lens, two features of mortgage contracts become apparent for the purposes of my analysis: the materiality of mortgage contracts, and their standardised terms.

5.4.1.i Materiality

Firstly, the materiality of the agreement helps create a durable network. Researchers have called for increasing attention to how contracts are objects which engender connection between other actors. For instance, Suchman suggests that a contract is an 'artefact' that should be stripped of 'legal mystique' and considered in the same terms

⁷⁴ Kathe Newman, 'The New Economy and the City: Foreclosures in Essex County New Jersey' in Manuel Aalbers (ed), *Subprime Cities: The Political Economy of Mortgage Markets* (Wiley-Blackwell 2012) 220.

⁷⁵ John Law, 'Actor Network Theory and Material Semiotics' in Bryan S Turner (ed), *The New Blackwell Companion to Social Theory* (Blackwell 2009) 144.

as ‘other paraphernalia of the social world’.⁷⁶ Suchman contends that the capacities of contracts should be located in their material and networked connections as ‘a discrete material object, consciously produced or transformed by human activity, under the influence of the physical and/or cultural environment’.⁷⁷ Similarly, in her study of financial markets, Riles emphasises that contracts are material objects, and that their potency in networks is located in the ‘aesthetic criteria’ of the object itself, which distinguishes a contract from other actors.⁷⁸ These aesthetic criteria – boxes to be completed, options to be struck out, signature fields – provoke particular performances.⁷⁹ To that end, Riles argues that connections between actors at different financial institutions were not generated by the *text* of contracts or the legal relationships such text purported to create. Rather, the contracts’ agency was located in their materiality and standardised aesthetic form. These elements, she suggests, were capable of engaging actors and of provoking particular performances which, in turn, forged connections within networks and created stability between actors. As she puts it, the collateral ‘master agreement’ used by the financial institutions in her study was distinguished from other texts and mediums at play by the particular aesthetic of the agreement. Riles contends that:

these aesthetic criteria in turn demand that the users of the forms engage in very specific forms of behaviour: One chooses the law that applies to the ISDA master agreement by circling the proper word; one delineates who is the responsible contact person for the agreement by completing the relevant box.⁸⁰

Accordingly, the network engendered by the master agreement is ‘normatively and socially thin’.⁸¹ Instead, the connections and behaviours caused by the agreement were

⁷⁶ Mark C Suchman, ‘The Contract as Social Artifact’ (2003) 37 *Law & Society Review* 91, 93. Suchman 93.

⁷⁷ Suchman (n 76) 98.

⁷⁸ Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (University of Chicago Press 2011) 54.

⁷⁹ Riles (n 78) 54.

⁸⁰ Riles (n 78) 54.

⁸¹ Riles (n 78) 54.

effects of the material and aesthetic criteria of the contract. Thus, the materiality of the standard form agreement was the 'material impetus' for the association between actors.⁸² In respect to mortgage agreements, Garcia-Lamarca & Kaika reflect Riles' argument by suggesting that the mortgage contract's capabilities to enrol and link actors stem from its materiality and performative capacities, rather than any inherent legal ability.⁸³ They contend that the materiality of mortgage agreements and the performative act of signing amount to an embodied process – a bureaucratic and biopolitical technology that associates borrowers and lenders.⁸⁴ To that end, networks between financial institutions and individuals that constituted originations were generated not through the operation of legal effect as foundational legitimacy, but produced by the capacities of the contract as an object to engender performance and networked connection. An effect of the association is that the individual is re-cast as a borrower, rendering legible a trajectory of future value.

However, while the connection forged by the contract is a networked effect rather than a consequence of any inherent legal authority, that does not mean that law is absent. The association drawn by the materiality of contract can be connected to 'legal' networks – litigation, termination, possession, and so on. Accordingly, the durability of networks formed between borrower and lender was buttressed by a lender's ability to draw on these legal networks: in the case of the mortgage, the most potent being the lender's right of possession and power of sale, providing durability and stability generated by contractual materiality. Legal effect is therefore generated through the association of heterogenous elements – not through any inherent ability of legal actants.

⁸² Riles (n 78) 54.

⁸³ Melissa Garcia-Lamarca and Maria Kaika, "'Mortgaged Lives': The Biopolitics of Debt and Housing Financialisation' (2016) 41 *Transactions of the Institute of British Geographers* 313.

⁸⁴ Garcia-Lamarca and Kaika (n 83) 316.

5.4.2.ii Standardisation

Secondly, standardisation of mortgage contracts was critical to the subsequent transformation of the mortgage obligation into a distinct form of abstract property relationality. As Freeman and Maybin argue, a document is 'a conduit or corridor, something through which other things (power, meaning) flow'.⁸⁵ Standardisation, however, amplifies a document's ability to conduct other actors and stabilise their identity, therefore rendering network formation smoother. To that end, Freeman and Maybin draw on Latour to suggest that documents mediate relationships between actors in order to 'combine and recombine them in new forms' and "make incommensurable frames of reference once again commensurable and translatable".⁸⁶ Further, as Riles notes, a standardised contract is 'a script for a particular kind of collaboration between two parties': standardised mortgage contracts therefore constitute a strictly defined conduit, or in ANT terms, an 'obligatory passage point', through which borrowers must pass.⁸⁷ As noted in Chapter 4, obligatory passage points are able to define the nature of relationships between actors and to generate further connections.⁸⁸

However, standardised agreements are also characteristic of what Callon describes as a 'device of interestment' in that the standardised agreement is able to lock actors into place by imposing and stabilising the identities of other actors.⁸⁹ As a conduit, standard

⁸⁵ Richard Freeman and Jo Maybin, 'Documents, Practices and Policy' (2011) 7 *Evidence & Policy* 155, 165.

⁸⁶ Freeman and Maybin (n 85) 165, 160; quoting Bruno Latour, *Aramis, or the Love of Technology* (Harvard University Press 1996).

⁸⁷ Riles (n 78) 50.

⁸⁸ Cloatre, for instance, discusses the techniques that seek to establish drug registration in Ghana as the means through which drugs enter the country's market: Emilie Cloatre, *Pills for the Poorest: An Exploration of TRIPS and Access to Medication in Sub-Saharan Africa* (Palgrave Macmillan 2013); Further, Callon explores how scientists built a network of relations through problematising and combing the dreams of scallops and humans to produce route to a distinct 'scientific' research programme Michel Callon, 'Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of St Brieuc Bay' in John Law (ed), *Power, Action and Belief: a new Sociology of Knowledge?* (Routledge 1986).

⁸⁹ Callon (n 88).

terms strip the specificity from the agreement, re-expressing the borrower as a collection of predetermined uniform obligations and powers. The components and networks that constitute the agreement are effaced, and the agreement itself becomes little more than an artefact that represents a borrower's promise to pay. Standardised terms therefore constitute mortgage contracts as 'immutable mobiles' – 'hardened technologies, objects that are stable in varying circumstances and always perform the task assigned to them'⁹⁰ In doing so, standardised contracts helped to 'black box' mortgage agreements, and pacify borrowers as an income stream. The standardised contract was therefore a critical means through which specificity underwent purification enabling, through this process, the actors that gave rise to the network to become 'subsequently effaced'.⁹¹ I turn now to explore how standardised mortgage obligations were further translated and aggregated.

5.4.2 Second translation: accessing the future and special purpose vehicles

Standardisation was significant in the formation of abstract property relationality because of the subsequent translation and displacement it enabled. As Cloatre and Cowan suggest, standardisation enables 'an array of new techniques' to become possible.⁹² In respect to mortgage agreements, standardisation facilitated the deployment of a further technique of displacement which was critical to the formation of the RMBS as a distinct form of abstract property: the separation of borrowers' promises to pay from the specificity of the mortgages themselves. Lenders severed this connection by displacing mortgages from originating banks to a new actor: a 'special

⁹⁰ Michael Guggenheim, 'The Laws of Foreign Buildings: Flat Roofs and Minarets' (2010) 19 *Social & Legal Studies* 441, 444; quoted in Caroline Hunter, 'Solar Panels, Homeowners and Leases: The Lease as a Socio-Legal Object' in Dave Cowan and Dan Wincott (eds), *Exploring the 'Legal' in Socio-Legal Studies* (Palgrave Macmillan 2015) 138.

⁹¹ Law (n 75) 144.

⁹² Emilie Cloatre and Dave Cowan, 'Legalities and Materialities' in Andreas Philipopoulos-Mihalopoulos (ed), *Research Handbook in Law and Theory* (Routledge 2019) 436.

purpose vehicle' ('SPV').⁹³ SPVs were companies established specifically for the purpose of creating the RMBS. The SPV performed the work of a vehicle in that they helped render the mortgage obligation mobile.

However, displacement to the SPV merely shifted relatively specific income rights to a different owner. To constitute an abstract property relationship in which investors and income were entirely detached from the specificity of individual mortgages, further work was needed to interest other actors by imposing a stable identity upon borrowers. Principally, borrowers and their obligations were made the objects of property by recasting them as abstractions. The key technique to achieve this was credit rating. Specifically, mortgage obligations were sorted into tranches of risk, which translated them into a quantifiable figure of risk determined by two variables: the risk of default and the risk of early repayment (which would extinguish the future payments).⁹⁴ Credit rating therefore exemplifies what Carruthers describes as a process of 'commensuration' in which

innumerable qualitative differences between borrowers were simplified and transformed into a smaller number of quantitative differences. Once commensurated in a single rating scale, borrowers became comparable; they could be ordered (from most to least creditworthy), categorized, labeled and counted.⁹⁵

Credit rating was therefore a calculative technology that constituted or 'pacified' mortgages as a 'qualifying market object' defined exclusively in terms of risk, in turn rendering the mortgage legible as a distinct investment opportunity.⁹⁶

The commensuration of mortgages and borrowers achieved by credit rating was the

⁹³ Langley (n 24); Wainwright (n 61).

⁹⁴ Martha Poon, 'From New Deal Institutions to Capital Markets: Commercial Consumer Risk Scores and the Making of Subprime Mortgage Finance' (2009) 34 *Accounting, Organizations and Society* 654.

⁹⁵ Bruce G Carruthers, 'From Uncertainty toward Risk: The Case of Credit Ratings' (2013) 11 *Socio-Economic Review* 525, 527.

⁹⁶ Fabian Muniesa, Yuval Millo and Michel Callon, 'An Introduction to Market Devices' in Michel Callon, Yuval Millo and Fabian Muniesa (eds), *Market Devices* (Blackwell Publishers/The Sociological Review 2007) 5.

product of the enrolment of an array of materials and calculative devices.⁹⁷ As MacKenzie notes, an apparently immaterial figure such as a price or expression of risk 'must take physical form – spoken or written numbers, electronic signals, and so on – if it is to be conveyed from one human being or computer system to another...'⁹⁸ The techniques that are productive of credit rating – calculation, formula, graphs, correlation, for example – reside in a distributed network of 'human beings, objects, and technical systems'.⁹⁹ Thus, As Freeman and Maybin put it, 'we should not think that what is virtual is non-material; rather, it exhibits a different kind of materiality'.¹⁰⁰ Accordingly, in the making of the RMBS, these actors were enrolled into the network and reduced what were seen as complexities – i.e. the specificity of individual mortgage obligations – 'to a letter symbol'.¹⁰¹ The letter became a critical actor, stabilising the network as something that can be harnessed and possessed by an investor.¹⁰² Credit rating technologies have been integral to the making of financial markets since the nineteenth century. I suggest three specific effects that can be charted in the formation of the RMBS as a network of heterogenous elements.

Firstly, ratings have 'distinctively portable format and scientific appearance' which imbues legitimacy to the asset described.¹⁰³ Recalling the discussion of performativity in Chapter 3, credit rating does not merely describe risk – they create the reality which they purport to merely describe. Carruthers describes how ratings originally had a material presence in lofty tomes which 'provided weighty evidence that a business or bank credit department was run in a rational fashion, and that credit was extended only

⁹⁷ Donald MacKenzie, *Material Markets: How Economic Agents Are Constructed* (Oxford University Press 2009) 2.

⁹⁸ MacKenzie (n 97) 2.

⁹⁹ MacKenzie (n 97) 16.

¹⁰⁰ Freeman and Maybin (n 85) 161.

¹⁰¹ Langley (n 24) 295.

¹⁰² Langley (n 24) 295. Emphasis added.

¹⁰³ Carruthers (n 95).

after 'due diligence'.¹⁰⁴ In respect of RMBSs, as Langley puts it, 'the judgements of credit rating agencies bring a semblance of authority, surveillance and trust to mortgage-backed securities.'¹⁰⁵ While accounting devices such as credit rating may purport to offer 'undistorted access to external commercial reality',¹⁰⁶ they produce and render economic that which they describe. As Miller puts it, accounting devices

produce certain forms of visibility and transparency... accounting numbers configure persons, domains, and actions as objective and comparable. This, in turn, renders them governable. For the objects and subjects of economic calculation, once standardized through accounting, are accorded a very particular form of visibility.¹⁰⁷

Accordingly, in the making of the RMBS, credit rating technology was not merely descriptive of an economic reality, nor were they merely opinions: they *constituted* it as a legitimate trustworthy object of investment.

Secondly, credit rating rendered the RMBS commensurate to any other investment opportunities. Credit rating was a well-known device used in financial markets, and the effect of rendering the RMBS akin with any other financial asset made them 'seem familiar and predictable' and, as such, 'they could be treated as equivalent' to any other bond, stock or share.¹⁰⁸ Accordingly, as Langley notes, the effect of credit rating was that the RMBS was 'constituted as relatively transparent financial instruments'.¹⁰⁹ For Langley '[w]ithout such transparency, mortgage-backed securities would not be knowable to participants in Anglo-American mortgage networks and the connected networks of the capital markets.'¹¹⁰ This was particularly important when mortgage-backed securities became more complex, and further derivative products were

¹⁰⁴ Carruthers (n 95) 544.

¹⁰⁵ Langley (n 24) 295.

¹⁰⁶ Marieke de Goede, *Virtue, Fortune, and Faith: A Genealogy of Finance* (The University of Minnesota Press 2005) 37.

¹⁰⁷ Andrea Mennicken and Peter Miller, 'Accounting, Territorialization and Power' (2012) 13 *Foucault Studies* 4, 7.

¹⁰⁸ Carruthers (n 95) 2012.

¹⁰⁹ Langley (n 24) 295.

¹¹⁰ Langley (n 24) 295. Emphasis added.

engineered on the basis of their value.¹¹¹ Credit rating therefore helped constitute the underlying heterogeneity of borrowers and their obligations as abstract objects of property by translating 'significant underlying heterogeneities' into an abstract quantum of value and risk.¹¹² Ratings therefore helped stabilise the creation of abstract property relations by translating borrowers into an object sufficiently universal as to become meaningfully comparable.¹¹³

Thirdly, credit rating helped generate or, following Grabham, 'brew' the temporality necessary for RMBSs to operate as a distinct form of property relationship. In Chapter 3, I stated that property should not be understood against a linear backdrop of time. Rather, I suggested that time follows as an *effect* of network formation. As noted above, the temporality of financial property is peculiar in that it re-makes the relationship between present and future so as to create the possibility of exploiting value that has not yet been created.¹¹⁴ Adkins describes the time produced by securitisation as 'a time in which pasts, presents and futures stand not in a predetermined or pre-set relation to each other, but are in a continuous state of movement, transformation and unfolding':¹¹⁵

Thus, in the time of securitized debt, futures may not only remediate the present but also the past; the present and its relation to the past and the future may be reset in one action (via, for example, index rolling); and pasts and presents can be forwarded and futures and presents backwarded. It is, moreover, along the flows of these non-chronological pasts, presents and futures, including their reordering and resetting and even their suspension, where channels for profit are yielded. In short, in the time of securitized debt, the time of profit lies in the non-chronological and indeterminate movements of speculative time.¹¹⁶

¹¹¹ Langley (n 24) 295.

¹¹² Martha Poon, 'Rating Agencies' in Karin Knorr Cetina and Alex Preda (eds), *The Oxford Handbook of the Sociology of Finance* (Oxford University Press 2012) 286; Donald MacKenzie, 'Knowledge Production in Financial Markets: Credit Default Swaps, the ABX and the Subprime Crisis' (2012) 41 *Economy and Society* 335, 355.

¹¹³ Carruthers (n 95) 546.

¹¹⁴ See page 140, above.

¹¹⁵ Lisa Adkins, 'Speculative Futures in the Time of Debt' (2017) 65 *Sociological Review* 448, 458.

¹¹⁶ Adkins (n 115) 458.

In the case of the RMBS, credit rating enabled the blending of present and future: the fact that a borrower was *likely* to pay in the future rendered such a promise valuable *immediately*. The algorithms, software and calculative devices of credit ratings were therefore critical actors in constructing the network which constituted the RMBS generating the temporality necessary to sustain and add value to this form of property. The outcome of this network is what Keenan describes as a ‘duplicitous temporality’ which

facilitates the rapid trade in mortgage titles on financial markets while maintaining the day-to-day tempo of the original mortgage agreements. Within this temporality, the mortgaged house is an abstract and temporary object, used to extract and construct financial value in the world of securitisation until it is sold. In contrast, homebuyers’ relationships with these same houses tend to be one of relative permanence, used to provide a stable physical home.¹¹⁷

5.4.3 Third translation: detachment

Thus far I have considered how borrower and lender were linked in obligation, and how such obligations were translated into abstract questions of risk through the articulation and extension of a network of heterogeneous elements, including materials, legal form, and calculative devices. However, in forming the RMBS, a third and significant extension of the network was necessary to detach and *mobilise* mortgaged homes as risk-calibrated portable assets. Specifically, securities were moulded into a particular legal form which operated to ‘sum up’ previous enrolments and translations, purifying the ensemble of actors into a detached, tradable and universal ‘thing’.

In English law, securities were generally constituted through a trust and issued by the SPV in the form of certificates.¹¹⁸ Utilising the credit rating devices discussed above,

¹¹⁷ Keenan (n 48) 297.

¹¹⁸ Slaughter and May offer ‘model guide’ that provides insight into how securitisation works: Slaughter and May, ‘Model Guide to Securitisation Techniques’ (2010) Available at <https://www.slaughterandmay.com/media/1429118/model_guide_to_securitisation_techniques.pdf>. See p. 7 on constituting securities. Additionally, Thomson Reuters Practical Law conducted a cross jurisdictional investigation into the mechanics of securitisation. The Guide is

securities were built around tranches of risk in a so-called waterfall structure. In the event of defaults in the underlying pool of loans the top tranches are paid first and remaining repayments cascaded down to subordinate tranches.¹¹⁹ Degrees of risk were thus concentrated in particular tranches, which, in turn, could be carved up and detached via security notes issued for public sale on the stock exchanges, or built and tailored for private transactions. Figure 1, below, provides an outline of the process.

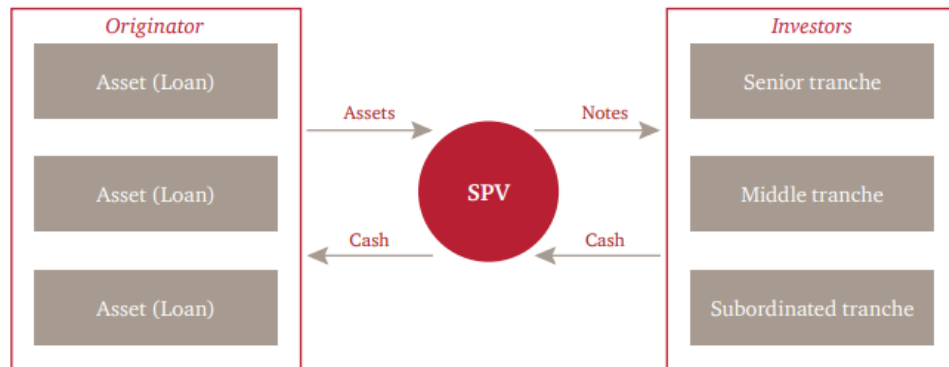


Figure 1 - A typical securitisation structure. Source: PwC.¹²⁰

Associating mortgage obligations with the SPV rather than the originating institution helped translate the mortgage into an abstract income stream: investors could hold assets issued by the SPV, entitling them to the income rights associated with the mortgages, without any regard or obligations in respect of the underlying homes.¹²¹

available online: Thomson Reuters, 'Structured Finance and Securitisation Global Guide' <[https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/StructuredFinanceandSecuritisationGlobalGuide?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/StructuredFinanceandSecuritisationGlobalGuide?transitionType=Default&contextData=(sc.Default))> accessed 17 January 2019.

¹¹⁹ Wainwright (n 61) 374.

¹²⁰ PwC, 'The next Chapter: Creating an Understanding of Special Purpose Vehicles' (2011) 7, available at <<https://www.pwc.com/gx/en/banking-capital-markets/publications/assets/pdf/next-chapter-creating-understanding-of-spvs.pdf>>.

¹²¹ Wainwright (n 61) 330.

SPVs were therefore critical devices in forming this property network, providing, as PwC puts it, ‘access to investment opportunities which would otherwise not exist’.¹²²

The outcome of network formation – the security – constituted a highly mobile and liquid asset that could be traded on global market networks. Through the articulation of this network, the specificity of individual homes – and the everyday life bound up with them – becomes constituted as the *object* of a distinct form of abstract property: holders of the security relate to the underlying home with detachment and abstraction, contoured instead through registers of risk and return. The nature of this property relationality is characterised by Park in the following terms:

Investing in a bundle of subprime loans sold for pennies on the dollar, each of which was taken out for a home, whose location one does not know, to be lived in by people one has never met, yet who supposedly let the owner of their loan down when they default—this act too constitutes both a relationship between persons, and of persons to land.¹²³

5.5 The material effects of abstract property

In this section, I suggest that the work achieved by financial property marks a significant departure from historic liberal legal conceptions and practices of property, and I explore the ‘productive life’ and ‘work performed’ by the RMBS.¹²⁴ Financial property forms such as the RMBS greatly amplify the abstract, dephysical dynamics of modern property forms. As Graham notes, ‘the theory, practice and pedagogy of property law, say that place is irrelevant’.¹²⁵ As noted in Chapter 3, the early modern period saw the manufacturing of a distinction between people and place which underpinned the deployment of property forms ‘as abstract entitlements as between

¹²² PwC (n 120) 2.

¹²³ K Sue Park, ‘Money, Mortgages, and the Conquest of America’ (2016) 41 *Law and Social Inquiry* 1006, 1032.

¹²⁴ Davina Cooper, ‘Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property’ (2007) 32 *Law and Social Inquiry* 625, 627.

¹²⁵ Nicole Graham, *Landscape: Property, Environment, Law* (Routledge 2011) 160.

persons'.¹²⁶ Financialisation marks a similarly profound shift in the articulation of property relationships. While financial property reflects the basic distinction of modern property by creating abstract relations between people, finance both amplifies and disrupts the 'dephysical' dynamics of modern property by enabling the objectification of human subjects, and disrupts both the temporality and spatiality of property. I consider each in turn.

5.5.1 Disrupting subjects and objects

Firstly, the RMBS disrupted the distinctions between the subjects and objects of property. The constitutive network of the RMBS enabled both home and everyday life to become a strategic source of value, enrolling 'not only personal income, but also the practices of everyday life as well as community and family relations as cogwheels into the global speculative financial strategies'.¹²⁷ As Aalbers puts it, the RMBS helped constitute a global market in the trade of personal debt based on the need for a home.¹²⁸ Accordingly, there is a distinct biopolitical dimension to this property form: human subjects, and everyday life, were constituted as the *objects* of property.¹²⁹

5.5.2 Temporal disruption and producing the future

Secondly, the RMBS is indicative of the temporal dislocations produced by property forms which are emerging from financial actors. As noted above, financial property is constitutive of a distinct temporality through which investors can exploit future value. They work on the assumption that such a future *will* be realised. For instance, in respect of the RMBS, value was created on the basis that borrowers *will* repay the

¹²⁶ Graham (n 125) 27.

¹²⁷ Garcia-Lamarca and Kaika (n 83) 314.

¹²⁸ Aalbers, 'The Financialization of Home and the Mortgage Market Crisis' (n 70) 154.

¹²⁹ See for example Marazzi (n 50); Ugo Rossi, 'On the Varying Ontologies of Capitalism: Embeddedness, Dispossession, Subsumption' (2013) 37 *Progress in Human Geography* 348; Mark Kear, 'Governing Homo Subprimicus: Beyond Financial Citizenship, Exclusion, and Rights' (2013) 45 *Antipode* 926.

loans secured on their homes. The temporality of the abstract property forms produced by finance are troubling because, as Keenan suggests, the temporalities produced by finance can be 'self-actualising'.¹³⁰ Thus, the exploitation of value from the future has an effect on the very production of that future. More than this, however, such property devices can rupture, and produce unintended and unforeseen outcomes. In respect of mortgage securitisation, Robertson suggests, the demand for securities by investors resulted in an unparalleled expansion of mortgage lending to create such paper assets. Originations therefore fed the formation of securities, which freed up lenders' capacity and enabled the creation of further securities. In seeking more borrowers, eligibility criteria were loosened, as were loan to value ratios, so as to lend to those 'who previously would have been unable to enter the market.'¹³¹

The effect was that securitisation became 'deeply embedded' in the UK housing system and grew rapidly from the mid-1990s up until the financial crisis.¹³² In England, outstanding RMBSs and covered bonds grew from £13 billion in 2000 to £257 billion in 2007.¹³³ By 2006/7, the UK was by far the largest 'securitising' nation in Europe: 54% of all mortgage-backed securities issued in Europe were British.¹³⁴ These property forms dematerialised UK homes and dispersed them in global financial networks: 70% of UK residential mortgage-backed securities were sold to investors located in other countries.¹³⁵

¹³⁰ Keenan (n 48) 291.

¹³¹ Josh Ryan-Collins, *Why Can't You Afford a Home?* (Polity Press 2019) e-book with no page numbers.

¹³² Wainwright (n 61) 5. For an overview see Jay Cullen, 'Securitisation, Ring-Fencing and Housing Bubbles: Financial Stability Implications of UK & EU Bank Reforms' (2018) 4 *Journal of Financial Regulation* 73; Neill Marshall and others, 'An Evolutionary Perspective on the British Banking Crisis' (2019) 19 *Journal of Economic Geography* 1143.

¹³³ Kathleen Scanlon and Henryk Adamczuk, 'Milestones in Housing Finance in England' in Jens Lunde and Christine Whitehead (eds), *Milestones in European Housing Finance* (Wiley Blackwell 2016) 135–6; relying on data from John Crosby, 'Mortgage Finance: Final Report and Recommendations' HM Treasury (2008).

¹³⁴ Cullen (n 132); Wainwright (n 61) 5.

¹³⁵ Wainwright (n 61) 5.

In deriving value from the future, securitisation dramatically altered the future it exploited, 'self-actualising' in the manner suggested by Keenan. Securitisation, coupled with deregulation, caused what Ryan-Collins describes as a finance-price feedback cycle in which securitisation was at the centre.¹³⁶ This led to what Robertson describes as an 'impetus for mortgage markets to expand...[emanating] from the financial sector' creating 'a mutually reinforcing cycle between house prices and lending'.¹³⁷ Accordingly, one of the most material effects of this form of this abstract property form was an increasing exclusion of the less wealthy from safe, secure and affordable housing.

5.5.3 Spatial disruption

Thirdly, if the abstract property of finance manipulates time, it is also able to manipulate space. The RMBS enabled globally disparate investors to exploit value from any location with ease. Producing equivalence between spatially distinct things and activities overcomes the barriers presented by space and specificity, presenting the objects of financial property to globally disparate investors as pure abstractions. Nonetheless, while these features of finance's abstract property forms may be novel, there is also a continuity between 'modern' forms of property and contemporary abstract property forms stemming from the financial sector in that they replicate the basic logic of abstraction and dephysicalisation achieved in the early modern period (and discussed in Chapter 3). As Keenan notes,

the new forms of ownership generated by contemporary finance are derivative of property's past. Securitisation and the legal means innovated to support it are based on a familiar formula of taking human relationships with

¹³⁶ Ryan-Collins (n 131).

¹³⁷ Mary Robertson, 'The Great British Housing Crisis' (2017) 41 *Capital & Class* 195, 199; see also Duncan Bowie, *Radical Solutions to the Housing Supply Crisis* (Policy Press 2017); Aalbers, 'The Great Moderation, the Great Excess and the Global Housing Crisis' (n 6) and; Michael Edwards, 'The Housing Crisis and London' (2016) 20 *City* 222.

land and turning them into distinct, seemingly independent and history-free assets to be traded and insured.¹³⁸

5.5.4 Conclusion

In this chapter, I explored the relational ontology of the RMBS as a distinct form of abstract property through the lens of ANT. In doing so, this chapter contributes to property scholarship in the following ways. Firstly, this chapter has highlighted that property relationships are the contingent effect of network formation rather than the coherent outcome of social or legal relations. In respect to the RMBS, I unpacked how this abstract property form was constituted through the enrolment, connection and translation of a large array of actors into a durable network, enabling investors to relate to swathes of homes 'as an *abstract financial equation* rather than a physical structure that people inhabited'.¹³⁹

Secondly, my methodological approach has highlighted how, through processes of network formation, the temporality needed to give succour to property is generated. In the case of RMBSs, distinctions between present and future were blurred, enabling value that has not yet been realised to be accessed contemporaneously. This temporal dynamic is a critical feature of finance's abstract property forms, and, following Grabham, must be actively 'brewed' to create and sustain the relationship. In respect to the RMBS, temporality was 'brewed' through the connections between algorithms, software and calculative devices of credit rating.

Thirdly, this chapter has highlighted how, through processes of network formation, the categories of subject and object are produced by the formation of property relationships. The analysis in this chapter suggests that, through network formation, humans (and their obligations to re-pay a loan) are re-cast as objects of property,

¹³⁸ Keenan (n 48) 288.

¹³⁹ Joshua S Hanan, 'Home Is Where the Capital Is: The Culture of Real Estate in an Era of Control Societies' (2010) 7 *Communication and Critical/Cultural Studies* 176, 184. Original emphasis.

aggregated as abstractions which can be bought and sold with ease. This contrasts with the conventional underpinning in liberal property theory, which posits such categories as pre-existing, and property relationships as mere 'outputs' of human subjectivity. Accordingly, as Davies argues, '[r]ather than think of subject and object as pre-social...they can be seen as positions within a socio-physical environment. Any qualities they have do not precede their interconnection but are rather its effects'.¹⁴⁰ Property scholars therefore need to continue to dispense with assumptions as to the stability of subjects and objects, and instead explore how they follow as effects of network formation, as I have done so in this chapter.

Finally, this chapter has drawn connections between property scholarship and research on financialisation. I have argued in this chapter that financialisation is constituted by the proliferation of abstract property forms. To that end, understanding how property relationships are constituted is part and parcel of how financialisation is achieved. This chapter therefore responds to Fields' call to analyse the 'concerted effort, supporting infrastructures, and practices that allow financializing projects to come to fruition (or disruptions causing them to fail)'.¹⁴¹

In the next chapter, I turn to explore the relational ontology of a different form of property: that engendered at a London cohousing site. Unpacking how property is constituted as a networked effect in this case study sheds light on the alternative 'work' that property can achieve, and thus how, recalling Davies, we are better able to 'pre-figure' property to alternative ends.

¹⁴⁰ Margaret Davies, 'Material Subjects and Vital Objects — Prefiguring Property and Rights for an Entangled World' (2016) 22 *Australian Journal of Human Rights* 37, 43.

¹⁴¹ Fields (n 20) 119.

Chapter 6

Making lived property: Copper Lane Cohousing

6.1 Introduction

In Chapter 3, I argued that property theory remains constrained by the subject-object distinction and simplistic assumptions as to the relational basis of property. Further, I suggested that property scholarship takes an uncritical view of the role of materiality in the composition of property, often assuming that materials are passive and inert. Similarly, I also suggested that scholarship views space merely as a context of property relationality, and that those approaches which do incorporate questions of spatiality require development. Finally, I suggested that the role of law in the dynamics of property should be re-questioned. Rather than a foundational 'source' of property, I argued that the contingencies of law and legality in the making of property should be questioned.

In Chapter 4, I developed a theoretical framework, informed by actor-network theory ('ANT'), to explore property as a networked effect. My approach, I argued, enables exploration of how elements such as materiality, spatiality and legality enter the making of networks. In the previous chapter, I applied this approach to a distinct form of abstract property – the residential mortgage-backed security ('RMBS'). My approach suggested that the RMBS was constituted through the heterogeneous engineering of a large array of human and non-human actors into a durable network. I argued that categories of subject and object, and past and present – often posited as the pre-existing constituents of property – followed as *outcomes* of network formation, enabling investors to situate humans as the objects of property and commensurate figures of risk and return.

In contrast, in this chapter I explore how networks can be productive of what I have described as 'lived property' – relationships calibrated around values such as reciprocity, collective use and mutuality. Specifically, I analyse the case of Copper Lane Cohousing in London. As detailed in Chapter 2, I am not interested in cohousing as a potential housing model that should necessarily be advanced or replicated. Rather, its value to my project is as a means through which to explore my research questions and unpack how property is constituted as a networked effect, how actors enter into the making of property, and how subjects and objects follow from property's networked basis. In particular, cohousing appears to generate attachment and belonging between inhabitants, and a form of mutuality that is usually absent in conventional ownership structures. To that end, it offers a lens through which to unpack the variable outcomes of property networks, and to explore, in Davies' words, 'how the conditions for an improved society are already with us.'¹ As such, while Copper Lane presents contradictions (which I explore in this chapter), it is valuable as a case study through which to analyse the making of lived property.

The legal features of the Copper Lane development are unremarkable. The freehold of the site is held by a resident-owned company, and long leases (999 years) have been granted in respect of each home. The leases do not mention the term 'cohousing' and give no indication that the homes form part of a cohousing site. The idiosyncratic property regime at Copper Lane is therefore not a simple output of legal form. Instead, I claim that the subjects, objects and norms of Copper Lane's property relationships are given effect through network formation, and I chart the processes of enrolment, delegation and translation which constitute this network. In doing so, this chapter helps move property theory beyond assumptions as to the inherent nature of subjects, objects and legal form (as explored in Chapter 3), instead revealing a picture of

¹ Margaret Davies, 'Material Subjects and Vital Objects — Prefiguring Property and Rights for an Entangled World' (2016) 22 *Australian Journal of Human Rights* 37, 39.

property characterised by mutual constitution, in that the elements commonly posited as the constituents of property are produced in the making of property. Moreover, this chapter develops our understanding of the norms or understandings that characterise property. Rather than social or legal phenomena, my analysis reveals how property normativity takes effect in the *production* of the subject rather than acting *upon* the subject. Finally, my analysis moves away from the primacy of law in explaining property. Instead, this chapter charts how legal actors and meanings enter into network formation in a manner that does not necessarily reflect their legal content or the expectations of lawyers.

This chapter is structured as follows. Firstly, I outline the development of Copper Lane. I chart how the project came into being following a desire to live 'more collectively', and how prospective residents were recruited. Secondly, I explore how this network was extended through the acquisition of vacant land, how the group attempted to articulate a shared vision of what living 'collectively' entailed, and how this was made real through techniques of translation and displacement. Thirdly, I explore how the agency of objects and spaces helps constitute Copper Lane's residents as subjects of property. I consider how the prospective residents sought to explicate a shared vision of the property norms that should characterise life at Copper Lane, and how this vision takes effect through the production of subjects and objects. I argue that the role of objects at Copper Lane problematises the subject-object divide inherent to property theory. Building on Davies, I suggest that there is no hard distinction between subjects and objects at Copper Lane: objects exist not only for subjects, but subjects exist for objects; and objects become akin to subjects in that they play a central role in the network which constitutes Copper Lane's property relationality.² Fourthly, drawing on Cloatre and Cowan, I consider how the making of legality is part of making property at

² Davies (n 1) 46.

Copper Lane. Rather than a simple output of legal form, Copper Lane's property relationality is sustained by a fluid or provisional understanding of law in which legal objects and devices help produce a particular form of belonging, as well as shared norms, which do not follow from their legal or technical content. Finally, I consider the failures and contradictions of Copper Lane. I explore how conventional property logics sit alongside lived property, and the extent to which this idiosyncratic property practice is dependent upon the presence of the human actors who created the site. This is explored through participants' accounts of the first sale of a home at Copper Lane, and the prospect of new residents joining.

6.2 Copper Lane: initial network building

Copper Lane was transformed from a vacant piece of land to a housing scheme which differs significantly from conventional housing and property typologies. I begin by examining the foundations of the network, and how the then-prospective inhabitants problematised the status quo in a particular way, creating their 'point of departure'.³

The initial impetus for Copper Lane lies with two households. In 2008/9, these households were neighbours – both privately renting – living a few minutes away from what is now Copper Lane. One of the households – a couple, who are participants in this project⁴ – had previously designed and built their own home with a friend in the past. Because the design of this previous home contained an element of shared spaces, the couple described it as 'a kind of cohousing scheme, to a degree'.⁵ However, the motivation behind the previous home was pragmatic rather than idealistic: building a new home with another person, rather than purchasing an existing one, was a more affordable method to live in the centre of London.

³ Michel Callon, 'The Sociology of an Actor Network: The Case of the Electric Vehicle' in Michel Callon, John Law and Arie Rip (eds), *Mapping the Dynamics of Science and Technology* (Palgrave Macmillan 1981) 21.

⁴ Their accounts are referred to as 'Interview 1' and 'Interview 2'.

⁵ Interview 2.

A neighbour was aware of the couple's experience of having built a home previously, and approached them to discuss building a new home, but this time on a bigger scale. The neighbour had discovered that a plot of land nearby, owned by an Ethiopian Church, was for sale. The church had spent two years trying to obtain planning permission but was ultimately unsuccessful. The initial reaction of the couple was refusal: 'we said "absolutely no way", it was a nightmare, it had taken us four years to build the first [house], the whole of the children's early childhood had gone by, we were still trying to make a family home'.⁶ The nature of the land, however, overcame this initial resistance. The couple were struck by the fact that, while the plot was in a built-up area, it was surrounded by green space in the form of neighbouring gardens. This is apparent in Figure 2 (below), which shows how Copper Lane sits at the centre of the gardens of four terraces. At the same time, the availability of the land was also a motivation: in their previous experience of building a home in London, the couple had spent significant time exploring data from the Land Registry to try and find an appropriate site.

⁶ Interview 2.



Figure 2 - Aerial view of Copper Lane site. Source: Google Maps.

Two other features helped convince them. Firstly, they wished to move to a more secure form of housing in a relatively central location, but could not afford to do so. Secondly, they had what was described as a longstanding ‘fantasy’ about moving to some form of collective housing. They also wished to live in a more ecologically sound fashion:

I think there is a kind of gut, kind of deep personal issue, about some form of collective living which I think lots of people have which is a sort of an ideal [an] extended family or some idea about community – some idea that you're not living this kind of isolated and privatised life... [W]e had it around moving out of London... Somehow in the countryside there'll be this community element? ... There were often moments where things became intolerable in London where we'd say “let's sell up because the housing market's doing so well and we will move to the countryside and buy a village house”. Then there was always this question of how we would support ourselves. So, it was always a fantasy... Then there is always this problem alongside of how do you solve your housing need – OK we want to stay in central London and not live in a sort of suburban area, and we can't afford it. We know from our experience that building costs half the amount than buying, so that was always an element of it. Then I think there was a kind of articulated idea about the crisis around the climate which was very much part of our discussion in the family and sort of real need to do something about de-privatising our life. So, there was quite an, I would say, articulated and unconscious – from our side – desire to do an experiment in how to live

differently that would deliberately try to move away from the sort of home as your castle idea.⁷

Upon viewing the land informally, the three prospective residents made contact with the seller, who offered to part with the land for £900,000. The offer was conditional on payment being made within 12 weeks. This presented two barriers. Firstly, it was necessary to recruit others as the price was far beyond what these individuals could afford. Secondly, and relatedly, they had to explicate a concept of shared living that this land would potentially afford in order to recruit others:

We didn't have any grand ideas. I knew about cohousing but I wasn't sort of like that hyped up about it but I knew I wanted to live in some sort of more collective way and this seemed like a good place to do it. So, we thought OK we're going to have to use this model and we just literally... [to] everyone we knew we said "do you know anyone interested in this?". And slowly we managed to gather a group of people around us...⁸

Cohousing therefore offered a relatively static ideal that could be used as a reference point in the group's efforts to recruit other prospective residents to 'live collectively'. Through an informal process of asking friends and neighbours, the initial group successfully convinced seven households (including themselves), comprising 11 adults, to commit to acquiring the land and developing the site.⁹ The group of prospective residents was (and remains) relatively homogenous in terms of race, class and occupation. The site is currently home to three academics, a designer, a Head of Operations, a psychotherapist, and a counsellor. Previous residents include an architect, a manager, and a solicitor.¹⁰ This homogeneity played an important role in network formation: the group was articulate and experienced in managing projects with others. I return to this point below. For now, I note that two causes can be attributed to the homogeneity of the group. Firstly, by seeking members via friends and family, the

⁷ Interview 2.

⁸ Interview 1

⁹ Interview 1.

¹⁰ As I outline below, the residents own the freehold of the site through a company limited by guarantee, and all leaseholders are directors of the company. Companies House lists the occupations of current and previous directors, and this information is available online: <https://find-and-update.company-information.service.gov.uk/company/06968455/officers.>>

pool of potential residents remained small. Secondly, the financial barriers to participating in the design and construction of cohousing further limited potential residents. While buying a home in a cohousing scheme can ultimately be cheaper than buying a comparable home in a conventional development, the Copper Lane project was restricted to those who either had – or were able to realise – significant amounts of capital to finance its design and construction. As participants noted, in practice, this currently means that cohousing is usually limited to middle-aged homeowners who have enjoyed windfall capital gains in the housing market. As one resident put it:

... this scheme could only really have happened because people had capital. So, this is a scheme for middle aged people that had a house to sell. No way was it going to be a scheme for first-time buyers, and we're not offering it as a model to solve the London housing crisis.¹¹

However, while the prospective residents were all homeowners when the project began, it was not the case that all members had equal or (easy) access to capital. Some had significant amounts of cash, whereas some had equity that could be realised on the sale of homes, and others had large mortgages and would need to borrow further to proceed. One participant observed that the group was split in half in respect to how they would contribute to the acquisition of the land:

[Some prospective residents] owned other things and had plenty of money. We were stuck and couldn't sell our house, and we had no capital at all, and in fact a huge mortgage left over from the last house. So, we couldn't buy anything, and others couldn't afford anything. There's one member of the group that did have capital and in fact didn't sell their original house: they had enough capital to do the build.¹²

The varying financial means of the individuals in the group was a significant barrier to extending the network and securing ownership of the land. The financial crisis of 2007/8 had limited the availability of credit, and because the scheme offered insufficient security to lenders, borrowing from financial institutions was rendered impossible. Unusually, this problem was overcome by 'a very extraordinary lending and

¹¹ Interview 2.

¹² Interview 2.

sharing of money' between the group in order to acquire the land.¹³ Participants noted that this lending would continue through the design and build process. They were unclear on how much in total was lent, but noted that the figure ran into hundreds of thousands of pounds. What is perhaps more remarkable than the lending occurring at all is the absence of any formal structures governing the loans. I asked about how the members of the group felt able to commit to lending relative strangers such large amounts to finance the acquisition of the land, given that, at the point of lending, the group had only existed for a matter of months:

Q: What do you think encouraged the trust for that to happen? It's extremely unusual for people to lend each other hundreds of thousands of pounds—

A: With no cover. I'm not sure of the answer to that. We didn't know each other very well.

Q: Was there any contract in place, for example, or something to enforce [repayment]?

A: No... I think it was done through quite a lot of emotive talking in the group... one person was able to talk very deeply and convincingly about trust. I think the cover for the more anxious people that it was very clear that the land was very valuable, and the market was such that you can see that land doesn't tend to lose its value in the way that houses go up and down... So, there was a sense that if we put this money in and everything went belly up, we'd sell the land and people would get their money out. But there was never an issue about "are you really going to pay?". It didn't work like that.¹⁴

Another participant, who had lent money to others in the group, felt differently about the lack of a legal basis to the loan:

...[W]e had notional contracts around [the lending] ... nothing, you know, with a legal framework around it but something that would have stood up in court would it have come to that. But I would have lent something without anything – this is how stupid and trusting I am.¹⁵

This is perhaps a more sophisticated (and realistic) understanding of the legal basis of the lending: despite the lack of a written instrument, this participant was aware that a

¹³ Interview 2.

¹⁴ Interview 2.

¹⁵ Interview 3.

valid contract for the loan of money had likely been formed and could be enforced if necessary. Perhaps more significant is this participant's claim that they would have lent money regardless of whether any enforcement mechanism existed. This suggestion may be coloured by the subsequent success of the scheme and the experience of the lending not having soured. In any event, the act of lending, I suggest, operated as a potent form of network building, and was inherent to the creation of distinct subjects of property, characterised by mutuality. As one participant summarised, 'through that [lending] trust got built...that played a big part in binding people together, despite disagreements about things'.¹⁶

6.2.1 Network formation: acquiring the land and legal choices

The prospective residents required a method of binding themselves to the land they had identified for the development, and a means of overcoming the resistance of actors who thought the risk too great. Acquiring land as a group presented a dilemma as to which legal form would mediate relations in a predictable and effective way. Their choices in this respect were limited. As Clarke notes, English property law is articulated around the figure of the individual owner, and the 'law struggles to find appropriate legal structures for the recognition and efficient regulation of land that is communally used'.¹⁷ As noted in Chapter 3, this legal limitation is underpinned by an ontological lens which views subjects as the masters of objects. Accordingly, groups wishing to hold land collectively face barriers. Firstly, as noted in Chapter 2, freehold ownership of individual units is often inappropriate because of current limitations on the enforceability of freehold covenants. Secondly, as legal ownership of a resource is only open to legal persons – and a group of individuals is not easily recognised as such –

¹⁶ Interview 1.

¹⁷ Alison Clarke, 'Creating New Commons: Recognition of Communal Land Rights within a Private Property Framework' (2006) 59 *Current Legal Problems* 319, 319.

options are further limited.¹⁸ The result, as Blandy outlines, is that legal recognition of collective property usually depends upon the use of a company (limiting the members' liability either by shares or guarantee), or a trust.¹⁹ Derivations of the company form offer further options: commonhold is a species of freehold ownership in which homes are owned by individuals and the site is owned by a resident-controlled company limited by guarantee (a 'commonhold association'), and statute providing for the enforcement of positive obligations between successors in title.²⁰ Similarly, cooperative societies, mutual home ownership societies and community benefit societies are all species of company that facilitate the fabrication of a corporate existence, enabling individuals to own a share of the society's assets (rather than distinct interests in individual homes). Clarke contends that the nature of the corporate vehicle 'dictates' a 'style of governance' by which property ownership can be arranged.²¹ For reasons outlined in Chapter 3, I suggest that this claim is problematic. Property relationships, I argue, do not simply follow from legal form. Rather, property is an outcome of network formation, of which legal form is one part. As I outline later in this chapter, Copper Lane residents are far from constrained by the legal requirements of the company form.

Nevertheless, because acquisition of the land was time sensitive, the prospective residents felt that they 'were very limited to the kinds of models' to use for ownership, and 'had to use a kind of off the shelf solution':²² a company limited by guarantee ('the Company'). The residents utilised the Company to acquire the land, and all residents were established as company directors. In turn, the Company would grant long leases in respect of individual homes:

¹⁸ Clarke (n 17) 347.

¹⁹ Sarah Blandy, 'Collective Property: Owning and Sharing Residential Space' in Nicholas Hopkins (ed), *Modern Studies in Property Law - Volume 7* (Hart 2013).

²⁰ Commonhold and Leasehold Reform Act 2002, s 31.

²¹ Clarke (n 17) 348.

²² Interview 1.

[We] ended up with... a company limited by guarantee which buys freehold and grants a leasehold because that's just something you can do like the same day, if you need to. We looked at various other ways of doing it quite quickly [such as] a community land trust or commonhold; this was all going to take way too long, and lawyers were all very wary of it.²³

Another participant also expressed scepticism as to the viability of alternative ownership structures:

It felt like in this country they are too new and precarious when it comes to selling on. But I think people would have been very open to choosing something different, and there were also lots of different ideas about financing the scheme.²⁴

That the group felt limited perhaps reflects the scepticism that individuals and lenders retain in respect to legal tools such as cooperatives, mutual home ownership societies, and commonhold – any of which are perhaps a better reflection of the group's desire to live 'collectively', in that they are expressly designed to facilitate varying degrees of collective ownership. Accordingly, residents felt that the construction of an alternative property form could only be stabilised by the use of conventional and predictable legal tools:

[It was] the way to make it happen because the people involved didn't know each other that well, the ultimate security was that if you wanted to get out at the end, you could and you would have made some money: you wouldn't have lost a whole bunch of money. But if you committed to another type of model there was quite a high risk, like if you'd done it through a CLT, then that whole question becomes relevant. The rationale for people to do it for people that don't know each other becomes a little more complicated.²⁵

Conventionality also afforded predictability which, in turn, introduced security:

... it was also partly important that people felt they could get out. So that legal structure allows people to see that actually there's quite a conventional structure that allows them to sell up if they have to.²⁶

Accordingly, in terms of legal arrangement, 'it's actually quite a conventional set up. It's no different to owning a flat in an old Victorian house'.²⁷ Another noted that

²³ Interview 1.

²⁴ Interview 2.

²⁵ Interview 1.

²⁶ Interview 2.

...in a way there's not a lot of difference between how ownership operates here than it does in a conventional situation. It's just that you are, in terms of an actual day to day living experience, you are much more bound up with other people.²⁸

As such, the use of conventional legal form enabled the formative members to present Copper Lane to potential recruits as an alternative that was moored in the security of the conventional. In any event, as noted above, I am not suggesting that the legal composition of the development was finally determinative, but was rather a matter of what was convenient at the time and, importantly (and I return to this below), has proven adaptable in terms of the day-to-day relationships.

Coupled with the company form, the actors enrolled a lawyer, found through their connections with other cohousing groups, who was familiar with cohousing (in 2002, the same firm and same lawyer worked with Springhill Cohousing, considered in the next chapter). In terms of network formation and extension, the lawyer was another actor that would help stabilise relations. Participants described how the lawyer had worked with cohousing groups before, and noted that they 'had this document that governed their relationship during the construction process' which was adapted and utilised in stabilising Copper Lane. While it was suggested that this document was a further solution 'that was off the shelf as well',²⁹ this was not quite a standardised document, in that it was developed through the specificity of the lawyer's previous experience. However, in terms of network stabilisation, and recalling the discussion of standard term mortgage agreements in the previous chapter, the document carried some of the features and effects of a standard form document in that its legal content was less important than its abilities to engender further connection and facilitate

²⁷ Interview 2.

²⁸ Interview 1.

²⁹ Interview 1.

extension of the network. However, as I note below, its legal content would later come to play an important role.

6.2.2 Network extension: normativity and subjectivity

Participants were aware that the use of cohousing as a 'model' did not necessarily guarantee the formation and endurance of the property dynamics they sought. Indeed, in characterising cohousing as a form of 'collective property', Blandy suggests 'residents must develop collective rules and norms about the use and management of both individual and collective property, define their boundaries (legal and physical) and decide how to resolve any disputes that may arise.'³⁰ As such, Blandy's analysis suggests that the features and characteristics of collective property do not follow as an automatic effect of legal form. In this section, I explore how the residents of Copper Lane sought to develop the 'collective rules and norms' described by Blandy, which, for convenience, I refer to as 'property norms'. By this term, I mean the shared understandings between inhabitants as to the entitlement and use of the site, as well as the behaviours that are permitted and/or expected. Recalling the discussion in Chapter 4, I claim that the process of constituting property is one of network formation constituting human subjects and their relationships to other humans and to objects. To that end, I argue that property norms or understandings gain efficacy through networks' constitution of subjects. As such, property norms do not exist as extrinsic social or legal rules that govern human relationships. Rather, they form part of the network's *production of the subject*. I first consider how Copper Lane's residents attempted to define a range of shared norms or understandings that would characterise collective life at the site. I then consider how Copper Lane's property norms are given traction through the production of subjects and objects.

³⁰ Blandy (n 19) 163.

6.2.2.(i) Defining property norms: 'how do we live together?'

In this section, I explore how Copper Lane's network was extended through the definition and articulation of property norms.

Following acquisition of the land, the prospective residents of Copper Lane moved towards development and realising a mode of 'collective' life. Because the land had been acquired relatively quickly and without planning permission, the group lacked any coherent and shared idea of what understandings or norms should characterise the site or what 'collectivity' entailed. Perhaps surprisingly, the group had resisted engaging in detailed discussion of what 'living collectively' might mean prior to acquiring the land: 'I think that was a very deliberate – every time those kinds of questions came up early we would quite carefully shut them down'.³¹ Accordingly, up until the time of acquisition, the group shared little more than a vague ambition to share and 'live collectively'. When the group turned to deal with this question, participants suggested that they resisted attempts to prefigure or prescribe property via formalised rules and policies:

We don't have any rules at all. There's nothing written down about what you can or cannot do. That was one of the things that when we first got going we looked at some of the other cohousing sites, I think it was [another cohousing group], and they hadn't even got a site, but they had 25 PDF files saying this is what you can and cannot do, which we thought was incredible and really bizarre. It was like they custom designed their own little utopia before they actually lived in it, and of course a lot of those rules had to be chucked out and abandoned. Every time an issue comes up we just have to work it out with the actual situation that has arisen rather than having some hypothetical rule about x or y.³²

Another suggested that

It was a very kind of 'no rules' community from the start. People were horrified by the idea that there be legislation [on particular issues]... The whole purpose of the community was to work [it] out as we went along.³³

³¹ Interview 2.

³² Interview 1.

³³ Interview 2.

However, while prospective residents may not have begun with rules, this is not to suggest that residents did not look to develop norms and shared understandings as to the uses and behaviours that would characterise Copper Lane's property dynamics. Participants suggested that the process of building normative force into Copper Lane's network began by attending to the question of 'how do we live together?'.³⁴ Thus, rather than start from a belief that shared facilities or design, for example, might help generate communality, attention was instead paid to the potential normative underpinnings of the site:

...[The] sets of discussions about what sharing might look like emerged as the group formed and once the land was secured. There were many overt discussions about what sharing looks like... I think that the group formed around an idea [prior to acquiring the land] that was quite idealistic, but it was clear to me that it was necessary that it remained an ideal and wasn't tied to things like "well, we need to have a garden". Or "what we're going to do is end up sharing washing machines". That seemed like a reduction of something else which was "how do we live together?" – that was the question. And that question had to be worked out through this process of building... And I think that from where I was and where [my partner] was that was a very conscious and deliberate thing. That we didn't want to foreclose what sharing meant by saying it meant sharing a garden'.³⁵

While it was suggested to me that the group shared a broad desire to 'live differently' or 'collectively', the question of what that looked like in practice proved divisive, and the answer was beyond the immediate capacities of the group. Perhaps because of their professional occupations, the idea of obtaining external professional help to solve a particular problem was not alien to the group. Attention therefore turned to extending the network through the enrolment of an architect:

That was the moment in which the group could see that the work of putting that ideal into practice was a very specialist bit of work, which is why you need an architect...*From my perspective we went to an architect to make that transition between the ideal and what could be possible.* It seemed to me very, very clear that it was very limited, what could be managed.³⁶

³⁴ Interview 2.

³⁵ Interview 2.

³⁶ Interview 2. My emphasis.

The prospective residents had discussions with several architects before creating a shortlist of ten. One participant suggested that the focus was on obtaining not just a firm who could design and build the site, but who could, firstly, help them articulate what they wanted in the term 'sharing', and secondly, to translate that desire into the objects and spaces of the development:

... the way that we made the decision [selection of the architect] was about whether an architect could understand that the help we needed from them was precisely to move away from that ideal into some concrete manifestation of this thing called 'sharing' that was not what we conceived.³⁷

The role of the architect was therefore not to help the group put into practice a pre-conceived idea, but to *introduce* such an idea to the network. The prospective residents selected London-based firm Henley Halebrown.³⁸ Henley Halebrown introduced important expertise to the network in that it had significant experience in designing residential buildings that aimed to generate particular forms of interaction and use among their users: as they put it, 'in each case the architecture is a catalyst for social interaction and personal endeavour.'³⁹ Henley Halebrown helped to extend the network by galvanising around the creation of relatively coherent and shared understanding of the norms that should characterise Copper Lane's property regime. This was achieved by the introduction of a range of other elements and forces: pictures, workshops, clay models, designs and ideas which helped focus the group's discussions:

...[The architects] put a lot of time in working through all these different typologies at the very beginning when they could have just said to us "this is the one, that's what you get for your money", like "take it or leave it". But they didn't do that. They went through a lot of iterations, and we had a lot of discussions, which were quite complicated and difficult at times, but I think for them they hadn't done a project – they'd done loads of much bigger projects – but they hadn't done anything like this, and I think they saw it as a kind of experiment for them. We were quite open, as a group, to anything, quite radical solutions.⁴⁰

³⁷ Interview 2.

³⁸ At the time the firm was commissioned it was known as 'Henley Halebrown Rorrison'.

³⁹ <https://henleyhalebrown.com/studio/>

⁴⁰ Interview 1.

However, while participants suggested that the prospective residents were bound together by a shared (albeit vague) desire to live more collectively, the suggestion of a shared desire to 'live collectively' appears to break down in light of participants' accounts of the difficulties the group faced when working with the architect. Participants described three instances which threatened to disassociate the group.

Firstly, participants described the difficulty in creating a *shared* vision of what collective life should entail. One described the differences of opinion and approaches among the group's members:

...people had really quite different relationships with that idea [of sharing]... [one couple] had an even more idealistic sense than we did – at times it felt a bit kooky...they were way over on the extreme side of the idea that, for example, if you trust the group the group would produce organically something that will look like sharing – and the idea is you don't want to foreclose on that. And, in fact, they struggled more and more as we went through the design process as we had to say "well, what does the garden look like?" [and] actually be prepared to make a decision, so that was a very hard part. But there were other people in the group who were much more expedient about all of this who just needed a place to live, had always wanted to live in an architect designed space, and were very interested in talking about things like the garden.⁴¹

Another described how the process of explicating communal life 'went through a lot of iterations, and we had a lot of discussions, which were quite complicated and difficult at times...there were lots of moments along the way where you thought this was getting out of hand'.⁴²

Secondly, the constraints of the land – principally its size – threatened to foreclose the network. The integrity of a collective ideal to 'share' is weakened by accounts of how individuals dealt with the small scale of the site:

So, yes, there were a set of ideals that people had, and everyone could then see that the land was this size. So, there was quite a few meetings where people would say– well, basically what was clear that everybody would secretly have liked to build one house for themselves on the land, OK. So, the kinds of discussions that were going on were about that imaginary, and then we'd go back and look at the plot with a tape measure, and go "oh

⁴¹ Interview 2.

⁴² Interview 1.

yeah, OK.” So, by the time we went to the architects it was very much more “what on earth could we eek out of this? Is there space for six [houses]?”...And then once you build six houses on that land there’s no garden left...whatever your ideal was, you could see [it] became quite difficult to realise. It was very clear then – well, don’t we want a communal house? Well, where’s that going to be? So, I think that the process of going into the architectural phase where things got imagined was very helpful... It seemed to me very, very clear that it was very limited, what could be managed.⁴³

Thirdly, the disparity in resources between actors – which had initially operated to extend the network through informal lending – threatened to diminish any notion of collectivity, and to end the project. The inability to obtain a loan as a group to finance the development of the site resulted in individuals organising their own financing. One participant noted that this – combined with the legal structure of individually owned leases – connected the network to conventional logics of the property market. Specifically, it appears to have fuelled an understanding that entitlement is created on the basis of purchasing power, which in turn situates land as the passive object belonging to the subject:

If we had been able to... we would have gone for a collective loan, but we couldn’t get [one]. It was just after the [2008] crash and very difficult to raise capital. So, in the end everyone organised their own finance which underlined the idea that this is my house, because this is my mortgage broker or my lender. Some people didn’t need to borrow at all. There was lots of stuff that came up around managing one’s envy – that some people have got more money than others, and that’s reality. So, you’re doing this egalitarian project full of ideals about sharing, but some people are more able to share than others. And that’s a very tough thing to manage in a small group. It’s like being in a family where someone gets more love, and sorry, it’s hard for the person who’s getting more, and it’s really hard for the person getting less. And all the really hard discussions happened around who was going to get the south facing bit of land, how many metres could I buy – but you can buy more metres so then you’re taking up more land which means I’ve got less garden. So that’s where the really tough stuff was... There were lots and lots of tears. People cried all the way through that process. Some of that was just the negotiation of these awful feelings...Certainly for me it was very difficult. I think it was a very important thing that people worked through – the fact that [the houses] are not all the same – in order to end up building something in which everyone had something slightly different, but there was still a shared element, that everyone had a right to. For me that was key.⁴⁴

⁴³ Interview 2. My emphasis.

⁴⁴ Interview 2.

Ultimately, the group accepted the introduction of conventional property market logics: those who could were able to finance the construction of larger, potentially more desirable homes. This perhaps highlights the sometimes contradictory nature of alternative property forms: they seek to move away from the alternative, yet often remain bound up in the logics and practices of financialised home ownership. I return to the point below.

Participants described how, as these somewhat conflictual feelings grew stronger, the potential for the group to disassociate increased. Accordingly, recall was had to the contract introduced by the lawyer, which the group signed when acquiring the site:

...we found out that this document that we signed had a clause in it, as plain as day, that once you put your money in you could not get it out until the entire project was finished. So, no one had read this. I mean everyone had *read* it, but no one had *seen* it. Even lawyers had looked at the document and not noticed this. It wasn't hidden away in some sort of 9-point font, it was really obvious, it was not a really long document. So in a way that really had protected us because once we realised that everyone thought [that] we have to see this through to the end, and that was really, really important: that moment when we realised we have to make this work, there's no option. That was a really important driver because I know from other, bigger cohousing schemes have had issues because people can drop out with no cost, so massive turnover of people involved when there's frictions or disagreements or people have different perspectives, so you were always losing people. That's a big drain on people's energy, but it also slows the whole process down. So, I think in a weird way this slightly strange situation that arose was what saved us, or made it feasible.⁴⁵

Despite the apparent obviousness of this provision, its discovery invested the contract with a capacity to maintain a binding between actors – perhaps to a greater degree than the group had wished. The necessity of continuing, combined with the experience and expertise of the architect during the process of design, therefore proved to be a potent form of network extension in that the attention of the group became focused on translating a vague desire to share and live collectively into a lived reality. Participants described how the process of working through the design was a means of stabilising an idea of what 'sharing' and 'living communally' might entail:

⁴⁵ Interview 1.

So we talked a lot about [it] – we had workshops with the architects, with little clay models. There was a kind of play element in which we could explore that. I think we all had a sense that community maybe could be formed through some kind of crossing over space. When [the houses] are flattened out into a line, you have a tendency to go in and out of your house...I think we had a sort of very basic sense that you need to force people to move across a space every day, hopefully two or three times a day, in order to have an encounter. So that was one element of how to think about the relationship between the houses and the front doors. I think there was always a sense that there needed to be some contact with the earth and that nobody wanted a situation where we reproduced a privatised street, which meant there had to be communal gardens, because as soon as you put something up that says “this is my garden” you’ve sort of blown it. I think there was also an element where we wanted one shared indoor space...where meeting happens by chance rather than by design.⁴⁶

It was through this process that the prospective residents created some loose ‘borders, rules or parameters’⁴⁷ and defined a shared understanding or norm that, beyond individual homes, all residents should be entitled to the spaces and objects of the site. As such, shared spaces were situated so as to be at ‘the centre of the plan rather than being like some other consideration; everything revolved around it, and that was what kept it in focus’.⁴⁸ Shared entitlement, by implication, provoked mutuality between residents:

We have communal areas and they are situated in such a way that the sort of flow in and out of the houses sort of enforces a kind of communal meeting environment, so that’s built into the design...that was an important element of how the scheme developed.⁴⁹

Similarly,

the collective spaces here are always places that you are always traversing... In a way our community space is a gigantic hallway that can also function in all kinds of other different ways. I think by having in a way that sort of collective space where you might meet other people or go to do things as a sort of circulation – weirdly as a circulation space – that really worked... [The space acts so that] you might meet other people...you’re always bumping into people because of the way that it’s constructed, you’re always coming across each other...without having to plan it or think about it,

⁴⁶ Interview 2.

⁴⁷ Interview 2.

⁴⁸ Interview 1.

⁴⁹ Interview 3.

you're always going to see people. And that kind of facilitation, that casual everyday contact, actually makes things happen.⁵⁰

Accordingly, the design became crucial in articulating a response to the question of how the group would live together. The response to that question, I suggest, was that the spatiality and materiality of the site would form an 'expressive medium'⁵¹ of the group's desire to live collectively. This resulted in a final design being iterated, which is characterised by six houses being built *around* and *facing* a central communal hall. This feature of the design is highlighted in Figure 3 (below), in which the court is represented by the central white area. The houses are connected to the hall in two ways. Firstly, the lower storeys of the houses (except one) contain internal connecting doors to the hall. Secondly, the roof of the hall forms a patio/terrace upon which the houses face and open on to, highlighted in Figures 4 and 5 below. The houses and hall are surrounded by gardens which are shared, and different areas are given over to different purposes (e.g. growing vegetables, bicycle storage, space for play and so on). The hall contains not only a large space for events, gathering, and meetings, but also a workshop and laundry. The architects capture succinctly the elements and forces that went into ordering these materials in a particular way, and how this ordering would then have effects of its own: 'The design strategy has been to maximise external space and to develop a building typology that manifests the idea of communality. This suggested a move away from the idea of a "terrace"'.⁵²

⁵⁰ Interview 1

⁵¹ Kyle McGee, *Bruno Latour: The Normativity of Networks* (Routledge 2014) 166.

⁵² See the Design Access Statement submitted when applying for planning permission: <http://planningdocs.hackney.gov.uk/NorthgatePublicDocs/00439905.pdf>>. No page numbers.

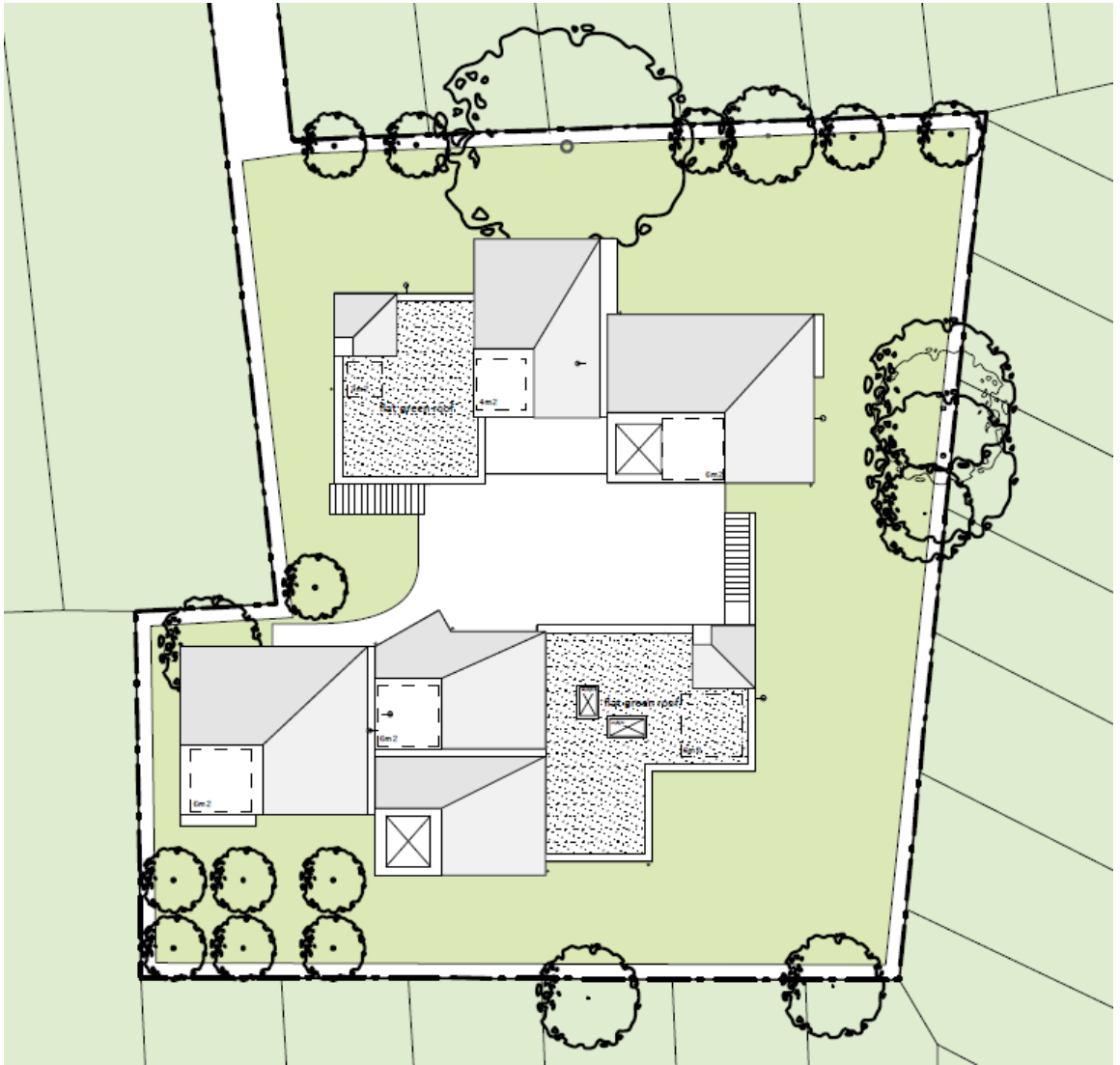


Figure 3 - Site layout plan. Source: Copper Lane 2011 Planning application drawings.



Figure 4 - Copper Lane terrace. Pictures from <https://copperlanecohousing.wordpress.com/>.



Figure 5 - Copper Lane communal hall.

I turn now to consider how the shared understanding developed through the design process is given effect by constituting residents as subjects of the network, and, therefore, as subjects of property.

6.2.2.(ii) Objects and spaces – creating subjects of property

Above, I suggested that the prospective residents of Copper Lane developed an understanding of property in which all residents are equally entitled to the spaces and objects of the site, and that this understanding is given material expression in the spatiality of the site. I turn now to explore how that understanding is imbued with normative effect by the production of Copper Lane's residents as subjects of property.

Recalling Chapter 3, Davies suggests that the subjects of property are not pre-existing entities that exist above or alongside networks.⁵³ Rather, subjects are constituted from the machinations of networks. Accordingly, both subjects and objects are not pre-given entities – or in Davies' term, 'pre-social' – but, rather, are 'positions within a socio-physical environment',⁵⁴ and the qualities that we associate with both subjects and objects are a result of interconnection with other entities.⁵⁵ Furthermore, the actions of subjects are also partly attributable to agencies and actors located within the network(s) in which subjects exist. Latour accordingly claims that 'action is not done under the full control of consciousness; action should rather be felt as a node, a knot, and a conglomerate of many surprising sets of agencies that have to be slowly disentangled'.⁵⁶ Bringing together Davies and Latour, I argue that both subjects and objects of property, and the causes of their actions, are constituted through processes of network formation. More specifically, I claim that what Blandy describes as the

⁵³ Davies (n 1).

⁵⁴ Davies (n 1) 43.

⁵⁵ Davies (n 1) 43.

⁵⁶ Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford University Press 2005) 44.

'collective rules and norms'⁵⁷ of property are given form in the production of subjects of property: they do not overlay, supersede or act upon subjects; rather they form part of the subject. I attempt to move beyond Davies by examining how the constitution of property norms can be traced in the actors and capacities of property's networked basis. I begin by considering the characteristics of subjectivity produced at Copper Lane.

Participants described how, rather than the sense of withdrawal and individualism that characterises conventional housing developments, Copper Lane's network produces subjects of property who are connected. While participants struggled with the vocabulary to explain this, rather than describe themselves as 'owners', their accounts depict a figure of the subject as constituted not by separation from others, but by reciprocity:

We're not some kind of happy family, but we're sort of– we're not really neighbours, and not friends, but some weird combination of those... I think everyone's pretty identified with the idea that we are part of this project, place, whatever it is, first and foremost. People have different ways of identifying with that, I wouldn't want to speak for everyone. For some I think it means a lot to them, and they wouldn't want to move... even if they don't want to make [Copper Lane] the centre of their lives.⁵⁸

Moreover, as subjects of property, Copper Lane's residents are connected by a shared property norm as to the use of spaces and mutual support. As one participant suggested, there is 'a very grounded understanding of shared responsibilities'.⁵⁹ This participant gave the example of the support residents provide when 'difficult' relatives are visiting:

...[W]hen people have had relatives to stay who are a bit of a handful...neighbours really step up. We go and eat on the terrace and they – I don't know how conscious they are – they'll come and eat with you, and suddenly there's an occasion, and we're all sitting on the terrace having dinner. And the implicit thing is: "God, someone's relative is round, they

⁵⁷ Blandy (n 19) 163.

⁵⁸ Interview 1.

⁵⁹ Interview 2

really need help". So that's sort of perhaps opposite of what one would normally do when you've got friends round: "*they've got friends round*".⁶⁰

This participant went on to describe how this shared responsibility extends to the mutual care and support of children:

I suppose what's really shifted for us is that we've been able to come and go a lot more and know that the kids are safe. There's always someone on site. It also means we can go away for periods of time and I can say to [a neighbour] that 'we're going away for the weekend, my kids are around, they'll cook their own dinner. [The neighbour] doesn't come in, but [they] are there'.⁶¹

Further, participants described how residents were linked by an understanding as to the shared use of the site's spaces. The effect of this is not merely that all are entitled to use the communal hall and gardens – although this is true. Rather, the understanding as to the shared use of the underpins interaction and the creation of relationships that are more than just fleeting. One participant noted, for example, how use of a space by one party did not carry with it an expectation that it cannot be used by another. Rather, there is an expectation that use engenders, perhaps obliges, others to join:

It would be unthinkable to have [a] party and say to people 'I'm having this party but you're not invited' – on your terrace, you know...there's sort of an implicit sense that if you're eating and you're walking past you should join and not tiptoe around or whatever.⁶²

Subjects at Copper Lane also expressed a clear, shared understanding as to the boundaries between public and private, reflecting the site's manifestation of a shared understanding developed with the aid of the architects. For instance, participants described how individual homes do not enjoy rights over a designated part of the garden. When asked about the part of the garden behind their home, a participant

⁶⁰ Interview 2. Original emphasis.

⁶¹ Interview 2.

⁶² Interview 2

noted flatly 'it's not our space'.⁶³ This boundary between individuals and collective spaces also appears to be actively enforced:

A: I have an area underneath my stairs that I wanted to claim for myself and I was shot down because it was deemed to be communal.

Q: How was that negotiated?

A: It wasn't negotiated. It was, you know, this is a communal area, and we don't want this, and that was it...⁶⁴

These boundaries should also be seen as participating in the production of inhabitants as subjects of property. Conversely, participants described how these boundaries were not understood or reflected by tenants who occupied one home for a brief time, and who were not involved in the development of Copper Lane:

It's like up on the terrace there when we first moved in we had two seating areas, one larger table and one smaller table, and, yes, [the furniture] belonged to people, but they were sort of encouraged and thought of as communal. And then suddenly a third table arrived, and it got a bit crowded...So we asked [the tenants] to take the table down here because we didn't have one there and they just flatly refused.⁶⁵

The tenants, therefore, did not share the understanding as to the communality of the outside space, instead reflecting a belief that the space outside their home belonged to them. There is a broader point here as to whether the norms and understandings of the network extend to individuals who were not part of the process of making Copper Lane, which I return to below. However, the experience with the tenants may also be bound up in understandings of objects as personal, and therefore not holding the same status as common space – a theme apparent in one participant's account: 'I have *my* plants that I need to look after, and sometimes I curse this because I think we have all this sort of communal stuff, why is this plant pot suddenly mine?'.⁶⁶

⁶³ Interview 2.

⁶⁴ Interview 3.

⁶⁵ Interview 3.

⁶⁶ Interview 3.

Copper Lane residents are, of course, not the first neighbours to look out for one another's children, to build deep relationships, or collectively own their homes. Indeed, participants recognised that a number of the features that define Copper Lane are present in conventional housing forms. The difference, participants suggested, is that in a conventional development interaction and mutuality are the result of concerted human will:

I have friends who live in a row of totally conventional houses who are constantly in and out of each other's houses: they socialise together, they have a kind of open-door policy, and I'm stunned at how they manage to do this in a completely conventional set up in the middle of London... I had very lovely neighbours when I first moved in [to a conventional house], but when they moved away it all went down the drain.⁶⁷

To that end, I suggest that the features of property at Copper Lane are not the outcome of direct human willingness to be bound by particular property norms. Rather, recalling Davies, subjects emerge *from* network formation; and recalling Latour, networks 'carry' their constitutive agencies, which in turn affect the behaviour and trajectory of actors caught up in it.⁶⁸ Accordingly, reading Davies and Latour together, I suggest that the composition of the network as described in this chapter operates to produce subjects. Further, the actors agencies within that network – including the physical and spatial form of the site, legal tools, loans, desires, lawyers, and architects – connect so as to constitute a normativity that takes effect in that production of the subject. To that end, through the heterogeneity of the network, particular behaviours, uses and relationships are, in part, engendered through these actors operating in the making of Copper Lane's subjects.

Through this lens, property norms take effect through a range of heterogenous elements, and are not extrinsic social or legal forces acting upon subjects. As such, property norms are not dissimilar to Latour's analysis of the speed bump, which, Latour

⁶⁷ Interview 3.

⁶⁸ Latour (n 56) 44.

contends, is 'ultimately *not* made of matter; it is full of engineers and chancellors and lawmakers, commingling their wills and their story lines with those of gravel, concrete, pain, and standard calculations'.⁶⁹ As such, the analysis in this chapter disrupts Gray's suggestion, noted in the Introduction, that humans possess a 'primal perception' as to an 'inner rightfulness' of certain kinds of property.⁷⁰ Instead, norms and understandings are *effects* of network formation rather than inherent to human subjects.

Alternatively, recalling the discussion of Cooper's work in Chapter 3, the translation of the actors' desire to live collectively into a durable network can also be understood as a form of 'codification', in which a 'thing' comes to be constituted as the object of property and 'comes to condense or represent a far more complex set of relationships'.⁷¹ As noted in Chapter 3, Cooper suggests that codification is a constituent part of making property because codification helps constitute the very nature of the thing caught up in a property relationship, by locating the 'thing' within a particular set of meanings and relationships to its users/owners/subjects. I suggest, however, that my approach helps shed light on how such codification happens by following the actors and translations and displacements through which particular meanings and norms come to be 'condensed' within artefacts and practices.

Finally, in concluding this section, I consider whether the network that constitutes Copper Lane challenges our understanding of subjects and objects. Rather than possessive individualism, the subjectivity produced by Copper Lane presents an alternative to the conventional understanding of subjects' positions in property relationships. In one sense, certainly, residents exhibited aspects of possessive individualism. In particular, participants stressed the importance of having their own

⁶⁹ Bruno Latour, *Pandora's Hope: Essays on the Reality of Science Studies* (Harvard University Press 1999) 190; quoted in McGee (n 51) 168.

⁷⁰ Kevin Gray, 'Equitable Property' (1994) 47 *Current Legal Problems* 157.

⁷¹ Davina Cooper, 'Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property' (2007) 32 *Law and Social Inquiry* 625, 630.

homes as somewhere they could 'retreat' to. In this respect, they partially conform to a vision of the human subject who controls objects (primarily by excluding others). It could therefore be claimed that any communality is a feature of each human subject conceiving of themselves as owners of the whole – a possibility that could be read in one participant's response to whether residents think of the site through the lens of ownership:

I know that on some level I think of it as mine – in terms of me having helped to generate it, living here and, you know, taking responsibility: if I see something, like a piece of rubbish on the floor, then I'll pick it up in a way that I wouldn't if I was on the street or somewhere else or in somebody else's front garden or something like that.⁷²

However, I want to suggest that there is a strong inverse aspect of this relationship which explains the degree of connection and mutuality between residents: the network produces a form of enrolment in which residents belong to Copper Lane as much as it belongs to them. Recalling Davies, this form of belonging presents a different understanding than the conventional subject-object underpinnings of property theory: it can be argued that the (human) subject belongs to the object of Copper Lane, and, after Davies, that the human subject does not just belong to themselves, but to other subjects of Copper Lane.⁷³ Taken further, if the belonging attached to the human subjects of Copper Lane's property regime is, as I am claiming, produced in large part through the translations and connections of non-humans, perhaps, following Davies, these actors should not be thought of as 'objects'. Perhaps the *objects* of Copper Lane can be thought of as *subjects* in that they 'are crucial to the meaning being created and in fact are themselves organising principles'⁷⁴ of Copper Lane's network. In this respect, the non-human actors at Copper Lane become akin to 'a subject of subjects –

⁷² Interview 3.

⁷³ Davies (n 1) 46.

⁷⁴ Davies (n 1) 45.

a central part of the interactional network⁷⁵, constituting relationships between inhabitants along specific vectors of mutuality and collectivity.

6.2.3 Legalities and the making of property

In this section I turn my attention to the role of law in the production of Copper Lane's property regime. In Chapter 3, I argued that property should not be thought of as a mere output of legal form. I resisted the claims of progressive property scholarship, which contends that, as property is primarily a legal relationship, property can be calibrated to alternative ends by legal change. I began to substantiate this claim in Chapter 5, in which I explored how the RMBS, as a distinct form of property relationality, was constructed through processes of network building. Legal actors entered into these processes, but the abstract property relationality instituted by the RMBS was not a simple consequence of legal tools. In this section, I further my claims as to the contingent role of law in the making of property, and consider the role of legal actors in the constitution of Copper Lane's property dynamics.

Cloatre and Cowan's work offers refinement to ANT's appreciation of law in processes of network construction. Cloatre and Cowan argue that, to understand how law acts, it is necessary to de-couple law from its 'institutional setting' and attend to what Ewick and Silbey describe as 'legalities' – 'the meanings, sources of authority, and cultural practices that are commonly recognized as legal'.⁷⁶ For Cloatre and Cowan, analysis of legalities requires exploration of the 'fluid spaces of legal meanings, expression and ambivalence'.⁷⁷ Critically, this entails a re-thinking of law as a 'process of ongoing production'.⁷⁸ Accordingly, rather than exist as an independent body of norms and

⁷⁵ Davies (n 1) 46.

⁷⁶ Emilie Cloatre and Dave Cowan, 'Legalities and Materialities' in Andreas Philipopoulos-Mihalopoulos (ed), *Research Handbook in Law and Theory* (Routledge 2019) 439.

⁷⁷ Cloatre and Cowan (n 76) 440.

⁷⁸ Cloatre and Cowan (n 76) 441.

rules, 'legality may not retain any more solidity than any other social objects'.⁷⁹ As such, Cloatre and Cowan's understanding of law is not as a fundamental social object upon which other objects are 'built' – instead, law is understood as a horizontal, interactive component or actor. Following Cloatre and Cowan, I suggest that, if property is a networked effect, consideration should extend to how the production of legalities is part and parcel of the production of property networks.

In apprehending the making of legalities, Cloatre and Cowan suggest that materiality mediates interactions, relationships and meanings.⁸⁰ To that end, they draw an analogy with Callon's work on the making of 'the economy'. Callon argues that the 'the economy' is the contingent outcome of calculative tools and objects. Accordingly, 'economic' relations should be read as the outcome of socio-technical construction which 'render things, people, and domains "economic"'.⁸¹ Cloatre and Cowan's claim in respect of law therefore chimes with Callon's in respect of the economy: legality is an outcome – and an ongoing effect – of 'materially-embedded practices'.⁸²

Participants described a reluctance on the part of the group to engage with the formal practices and norms of property law both during the development and ongoing management of the site. In a conventional development, lawyers and prospective purchasers would expect to see the rules and processes established to govern the site contained in legal instruments. In the case of a leasehold development such as Copper Lane, this would likely be the terms of the lease, or incidental regulations. However, Copper Lane residents were wary of relying on either legal form or documents to establish such rules or processes. This appeared to partly be based on avoiding the

⁷⁹ Cloatre and Cowan (n 76) 441.

⁸⁰ Cloatre and Cowan (n 76) 437.

⁸¹ Fabian Muniesa, Yuval Millo and Michel Callon, 'An Introduction to Market Devices' in Michel Callon, Yuval Millo and Fabian Muniesa (eds), *Market Devices* (Blackwell Publishers/The Sociological Review 2007) 2.

⁸² Cloatre and Cowan (n 76) 449.

cost of instructing lawyers, but perhaps more importantly, on a belief that full engagement in legal processes would not afford sufficient flexibility to the network:

... [T]here are lots of things that we have that are not written down and I think our attitude all along has been let's write down as little as possible, let's not legalise everything, because we know where that leads. It's not going to solve anything, it's just going to cost a lot, and then we'll be arguing over what that clause meant and why it was written in that way. ... [T]hat always feels a bit risky because other people, especially around solicitors, asking "where's this document or this" – we don't have it, and we may have to go back...⁸³

Another participant noted that the group felt that, rather than attempting to constitute property relationships through legal tools (such as the terms of the lease or the Company's articles of association), it was more important that the network possessed flexibility. To that end, the group found it preferable to operate without solid legal foundations: 'if there's something that doesn't work we'll just vote to change it and put something else in.'⁸⁴ This appreciation of law is at odds with two central characteristics which are often claimed to be positive features of legal instruments: certainty and clarity. In respect to certainty, Copper Lane residents feared that full engagement with legal processes would create ambiguity in that the group was unsure as to what they wanted to make certain. Creating a formal framework would therefore have created rigidity, foreclosing alternative possibilities. In respect to clarity, it was feared that the precision of legal terminology would not afford clarity and meaning in that the terms would be open to competing interpretations. A lack of written rules and processes therefore affords a convenient ambiguity for residents that is not necessarily present in a written instrument.

This has resulted, I suggest, in the construction of a legality which supports the constitution of Copper Lane's property relationships. This legality is characterised by an understanding of legal meaning that is provisional and open to re-making. For instance,

⁸³ Interview 1.

⁸⁴ Interview 3.

one participant described how, rather than spell out procedures and norms in legal devices, ‘there’s all these things that are like tacit knowledge between us collectively, and there will be a note in a minute of some meeting somewhere...’⁸⁵ Accordingly, while there is no attempt to spell out the rules or governance of the site in a central legal instrument such as the lease or regulations, the group’s minutes act as a material reference point for their decisions, and enter the constitution of the site’s legality. In turn, these documents take on a degree of authority. The creation of the document is a kind of recursive loop – the lack of formal law as to the ‘tacit knowledge’ between inhabitants is filled by the creation of minutes, which in turn constitute something that looks (or at least behaves) like law in that they give support to the understandings at play among residents. As such, these objects are constituent actors in the generation of legality. This is not to suggest, however, that minutes then take on the stasis that is conventionally attributed to law. While the minutes play an important role in constituting legality, they afford malleability:

... are the minutes kept rigorously and consistently? No... [O]ften we’ll make decisions which we then forget or haven’t been properly minuted and we have to remake them, but that’s probably OK, I think, because they probably needed to be remade if it was – if we’ve forgotten – it was probably because the original solution was not satisfactory. We’re often re-going over things because the situation has changed and we come to different decisions than we had done earlier. In terms of legal things we’re always improvising.⁸⁶

The malleability and potential absence of the minutes (which may constitute a breach of the Company’s articles of association in that they require minutes to be made of all company meetings⁸⁷) affords Copper Lane’s property dynamics flexibility, enabling understandings and norms to shift. Thus, as Cloatre and Cowan observe, ‘legality may not retain any more solidity than any other social objects; and it is likely to be similarly

⁸⁵ Interview 1.

⁸⁶ Interview 1.

⁸⁷ Art 63(b). The Articles of Association are available online via Companies House under the link entitled “Incorporation”: <https://find-and-update.company-information.service.gov.uk/company/06968455/filing-history?page=3>.

open to some degree of rewriting and reinventing in the everyday – within...the possibilities that networked forces allow'.⁸⁸

A good example of this flexibility and legal 'improvising' is the site's approach to the apportionment of service charges:

...[W]e haven't kept proper service charge accounts because, although technically we all pay, we just agreed how much ourselves we'll all contribute to the upkeep of the communal infrastructure. But we didn't – we just sort of made the figures up ourselves on an equitable basis which was something that we'd worked out. That's not written down anywhere, it's not in some kind of thing that a solicitor would expect to see, although we did find out that even though it is actually a service charge it's not, because of the company, it's not actually *legally* a service charge – it became really complicated.⁸⁹

The suggestion that the charge is not a service charge in law is likely a reference to *Morshead Mansions Ltd v Di Marco*,⁹⁰ which explored a leaseholder's dual liability as a leaseholder and member of a freehold management company. The Court of Appeal held that service charge liability under the terms of a lease is legally distinct from liability to pay 'company contributions' as a shareholder towards a management fund. Accordingly, company contributions are not service charges for the purposes of the Landlord and Tenant Act 1985. However, Copper Lane is a company limited by guarantee, and its articles of association contain no mechanism to demand contributions from its members, except in the event of its winding up (in which case no more than £1 can be demanded). Accordingly, there appears to be little doubt that the sums demanded of Copper Lane residents are service charges for the purposes of the 1985 Act. Nonetheless, the malleability through which residents appreciate law, I suggest, supports the dynamics of Copper Lane's lived property dynamics. Strict compliance with a conventional approach to apportionment of service charges would likely reinforce the subject-object logic inherent to such formalities by emphasising that

⁸⁸ Cloatre and Cowan (n 76) 441.

⁸⁹ Interview 1. Original emphasis.

⁹⁰ [2008] EWCA Civ 1371; [2009] L. & T.R. 15.

a leaseholders portion of liability is determined on the basis of individual ‘consumption’ of communal infrastructure. This would undermine the creation of communality that the residents desired when creating the site. Instead, the residents’ approach to service charges helps underpin a shared understanding that they belong to a larger whole. Legality at Copper Lane is therefore characterised by flexibility and re-making, and property relationality does not simply flow from legal form. Rather, through the making of legality, property itself is given form.

6.2.4 Failures and contradictions

In this section, I explore contradictions and failures in network construction at Copper Lane.

Firstly, despite my suggestion that Copper Lane’s network constitutes residents in distinct relational and normative arrangements, participants noted the difficulties they have experienced in overcoming the norms and practices associated with conventional housing forms. For instance, it was agreed among residents that the gardens on the site would be shared rather than individually apportioned – but this has not quite panned out as imagined:

I think people think of areas in the garden as in front of [x]’s house, or [y]’s house, or [z]’s house. We’re trying to circumvent this by saying sort of north south, east west, but it’s– I think partly because we’re not trained, we’re not used to living in an environment where this figures as a shared responsibility, where this figures as a communal identity...we’re having trouble negotiating this, living with this. I think it’s really something that, you know, you need to make an effort, you need to retrain your own education.⁹¹

The reference to ‘training’ highlights that, despite the capacities of networks and my claim that subjects emerge *from* networks, human will and experience retains the potential to resist the enrolment and conditioning of a network. Put differently, despite the agency of the networks, actors remain caught up in, and defined by, other

⁹¹ Interview 3.

experiences, practices, agencies – i.e. in other networks. In respect to property, this suggests that it is perhaps naïve to think that alternative property forms can be developed in the absence of broader normative challenges to property's conventional logics. This is reflected in one participant's observations as to the limitations of Copper Lane and its ability to constitute alternative property relationships:

[Copper Lane] has great limitations. It facilitates some things, but it's like— you can give somebody some tools but without training them to use the tools they're almost useless.⁹²

The shared hall was raised in all interviews as an example: it does not feature heavily in residents' daily use and negotiations, despite their hope that it would:

I think we had huge ambitions for it, massive ambitions for it... I think it all fizzled out a little bit because of the energy that would have been needed to really form this space and to sort of, you know, test ideas around community and how to use it and what is possible and what is impossible.⁹³

This reinforces my suggestion that, while the construction of property as a networked effect can help produce distinct subjects of property, those subjects remain caught up in other networks and norms – undermining the continuation of the network in question.

Secondly, Copper Lane straddles a contradictory position in respect to the financial value of residents' homes. As noted above, the site was developed with the aim of fostering a more collective form of daily life than dominant housing forms afford. Perhaps the most profound manifestation of that would require that the site is taken out of conventional logics of speculation and profit. However, the group ruled out the use of legal mechanisms to remove the homes from the housing market:

There was lots of talk about value...what was very clear was that everybody wanted to *live* there. Lots of the talk was about how are we going to live together...there was an implicit message: you're not allowed to do this and then sell up. If that's what you're going to do then go now. That's not what this is about...the discourse that was established was certainly that we don't know what these houses will be worth but we're trying to do something where we think we'll live here for the rest of our lives, so if they increase in

⁹² Interview 3.

⁹³ Interview 3.

value it won't be in our lifetime, so it was sort of postponed – and of course that is not what happened... I think it became quite taboo to talk about things like making a profit on the house, so I think there was probably an implicit regulation, but there was never a discussion about tying the value into the land itself.⁹⁴

The 'discourse' or 'implicit regulation' that emerged from the network's dynamics cannot be said to have ever amounted to an actor capable of mediating behaviours and relationships. This is perhaps most clearly evidenced by the fact that, at the time of writing, one house is for sale for £1.2 million. It should be noted, however, that this figure is in keeping with the extraordinary average house price in the local area of £1.2 million.⁹⁵ I suggest that the failure to remove Copper Lane from the conventional practices and networks of financialised home ownership is illustrative of how subjects of property can be caught up in competing and contradictory networks. Recalling the discussion of Cooper's work in Chapter 3, the presence of property relationships characterised by collectivity alongside financial logics can be understood as overlapping 'codifications' of Copper Lane. Codification, Cooper suggests, is the process by which the objects of property 'condense or represent a far more complex set of relationships'.⁹⁶ In the process, the 'thing' becomes located 'within wider regulatory and epistemic structures'.⁹⁷ Cooper notes that codification will vary depending on the form of belonging underpinning the relationship. On the one hand, codification may reflect particular forms of attachment and communality. On the other, it may produce the object of property as a repository of financial value, defined, made meaningful, and valued by its market relationship.⁹⁸ The experience at Copper Lane highlights how property networks can *simultaneously* be productive of attachment and belonging, yet also situate that same object in the spaces and practices of speculation.

⁹⁴ Interview 2. Original emphasis.

⁹⁵ This figure was reported by the estate agent Foxtons and property website 'Rightmove' in July 2021.

⁹⁶ Cooper (n 71) 630.

⁹⁷ Cooper (n 71) 630.

⁹⁸ Cooper (n 71) 630.

Following Smith, the experience of financialised home ownership at Copper Lane can fairly be described as an ‘uncomfortable hybrid of money, meanings and materials’.⁹⁹

It is, of course, possible to criticise the Copper Lane project for its failure to remove the site from the logics and networks of financialised home ownership. However, it is difficult to envision how the site could have been developed otherwise. As participants noted, the development of the site amounted to a huge risk, with great potential to lose money. To that end, the ability to sell the land (or individual homes) was an important feature to ‘lock in’ stability. More pragmatically, given that at least half of the residents had to borrow to finance the construction and acquisition of their homes, a conventional lease was required to attract the support of lenders. Rather than simply criticising the residents, it is perhaps, recalling Davies, more fruitful to consider how sites such as Copper Lane use the logics and practices of financialised home ownership to ‘prefigure’ property alternatives by using the conditions of the present – rather than casting aside practices that fail to conform to an imagined ideal.¹⁰⁰

Thirdly, the fragility of Copper Lane becomes apparent when considering the role of new residents. Participants described how the ongoing stability of the network is, in part, attributable to the fact that the current inhabitants were present throughout the design and articulation of the site. This issue surfaced when I asked about how the residents deal with someone purchasing a home at Copper Lane, and how the group ensures that the purchaser also ‘buys in’ to the norms of the site. Copper Lane residents believe that it would be unlawful to discriminate against purchasers on the basis of the group’s preference. Homes are therefore sold in the same manner as any other home, and there is no mechanism to prevent, for example, a buy-to-let landlord acquiring a home. This issue has caused debate and anxiety among residents:

⁹⁹ Susan J Smith, ‘Owner Occupation: At Home in a Spatial, Financial Paradox’ (2015) 15 *International Journal of Housing Policy* 61, 62.

¹⁰⁰ Davies (n 1) 39.

I think we had assumed that we would go down a Dutch model where there is a power of veto and some control. Then we looked into what other cohousing schemes in Britain do, and actually it became clear that it is really totally illegal to do that and open to all sorts of abuses of power, and we felt very uncomfortable about it and decided not to. However, the alternative, which is what happened, the house has just gone on the market with an ordinary estate agent and [the seller] is doing a very ordinary process: you don't normally meet your buyers, it's done through the agent. So suddenly we've got absolutely no control at all. That has felt very alarming...[The seller's] view is that nobody in their right mind would buy this house unless they had some sense of what this is about and that will necessitate them being likeminded. I don't think that's true. I think it could go to somebody that wants to rent it out. It could go to a complete nutter. I don't really want to live with that. So now we're in quite a precarious point...¹⁰¹

Similarly, another noted that

We had great ambitions to begin with to say we'll interview people and we want only these people and only those kind of people, and it's all gone. So we have nothing. We can just hope that whoever wants to live here has a kind of shared ethos. But it's tricky.¹⁰²

Accordingly, there is potentially a question as to the transmissibility and endurance of Copper Lane's property norms, and how far they will extend beyond those who built the site. Participants suggested that the potency of the network may, in large part, be attributable to the fact that, at the time of interviews, the current residents were present for all stages of the site's creation:

I think because we spent a long time doing it..., [and] because we're quite a small group, that's what bonded us together, the process – we didn't just wander in to some readymade edifice. We had to, you know, go through all of the grief and a lot of effort and labour of organising things and finding out things and finding people... It was that process that I think was the glue and I think in many situations an intentional community just happens because they've all been thrown together in one place there's quite a fragile social ecology...¹⁰³

Given the age of Copper Lane it is not possible to comment on how this particular network might endure. However, in the next chapter, I explore how the property norms of an alternative cohousing site – Springhill Cohousing – have achieved endurance

¹⁰¹ Interview 2.

¹⁰² Interview 3.

¹⁰³ Interview 1.

over the past twenty years, and how new inhabitants become constituted by the network as subjects of the site's property regime.

6.3 Conclusions

In this chapter, I analysed the composition of property relationships at Copper Lane Cohousing as a networked effect. In doing so, this chapter contributes to our understanding of property's relational ontology. Rather than the coherent outcome of legal form or human will, the analysis in this chapter suggests that property relationships are *effects* of network formation. Specifically, I have argued that the subjects, objects and norms of property are constituted in and through the making of networks. Accordingly, I have suggested that ANT sheds light on property's relational ontology by enabling analysis of the agencies, translations and actors that enter into the making of subjects, objects and property norms.

The analysis in this chapter helps overcome the difficulties identified in Chapter 3. Property relationships are not, following Blomley, the outcome of performance, which cites understandings of what property is. Similarly, if, as Blandy suggests, property is 'constituted by those who live it', the analysis in this chapter sheds light on how – and by whom and by what – that constitutive work is undertaken, moving property theory beyond explanations which posit that property is constituted by *social* interactions. As Latour maintains, the social is not an explanatory term.¹⁰⁴ Instead, the analysis in this chapter explored how the constitution of property, and how it is experienced by inhabitants, are contingent effects of network formation. Alternatively, if property is 'held up' by space – spaces which are shaped so as to constitute belonging between it and its users – the analysis deployed here furthers our understanding of how 'holding up' might happen by exploring the actors and techniques through which property emerges, and how such effects are contingent upon the existence and stability of the

¹⁰⁴ Latour (n 56).

network. This, I suggest, is a key contribution of ANT to the study of property: rather than assume that the norms and understandings which characterise property are somehow pre-existing or an effect of legal form, ANT attends to how such norms are produced through network formation, and alters the subjectivity of those caught up in such networks. Thus, in constituting residents' subjectivity along particular vectors, Copper Lane's property regime – and the understandings and behaviours it engenders – occur more 'organically' and, critically, I suggest, without the directing force of conscious human will. Instead, Copper Lane's constitutive network, carries that initial desire to 'live differently', and residents emerge as subjects of property, generating the lived relationships and collectivity that was initially sought.

In the next chapter, I move from exploring how lived property is made – the focus of this chapter – to analyse how property endures through time. I suggested in the last chapter that, in the making of property, actor-networks generate the temporality needed for the relationship. I pursued this through analysis of the RMBS, and I suggested that the RMBS generated an obfuscation of present and future, enabling the realisation of yet-to-be created value. I pursue this theme in the next chapter by considering how Springhill Cohousing is able to generate temporal effects, and ensure the constitution of future relationships in the network's terms.

Chapter 7

The endurance of lived property: Springhill Cohousing

7.1 Introduction

This chapter moves away from the formation of property, the focus of the previous two chapters, and turns to its endurance. As noted in Chapter 3, property has an inherent temporal dynamic in that it is a relationship which is ‘sustained through time’.¹ I suggested in Chapters 2 and 3 that property scholarship has paid insufficient attention to how the temporality and endurance of property is actively *produced*. I argued that property scholarship relies on an uncritical understanding of time as a universal and linear backdrop. While Blandy, Bright and Nield’s dynamics approach explores property as a lived and enduring relationship (characterised by norms and understandings which are often absent from formal legal instruments),² my approach differs by suggesting that temporality emerges as an *effect* of the networks which constitute property. Put simply, rather than existing ‘through’ time, I argue that the production of time is an inherent aspect to the production of property relationships. In Chapter 5, for instance, I explored how the residential mortgage-backed security (‘RMBS’) is given form as a property relationship through a heterogeneous network of elements, which includes the production of the temporal conditions necessary for it to exist.

In this chapter, I examine how property relationships at Springhill Cohousing in Stroud – the first cohousing site in the UK, established in 2000 and inhabited since 2003 – have achieved endurance. Relying on the ANT approach set out in Chapter 4, I

¹ Sarah Blandy, Susan Bright and Sarah Nield, ‘The Dynamics of Enduring Property Relationships in Land’ (2018) 81 *Modern Law Review* 85, 88.

² Blandy, Bright and Nield (n 1).

examine how property is constituted as a relational effect through network formation, and I consider the means through which that effect is given enduring stability. I focus on four aspects of Springhill's endurance, as identified by participants.

Firstly, I explore the role of leases in generating and sustaining property relationality. Following Caroline Hunter's work,³ I explore how the lease is a 'socio-legal object' that plays an important role in sustaining Springhill's property regime. I examine how the lease shapes the network and helps maintain a distinction between residents – as subjects of property – and 'Springhill' as an object or community. I also consider how a leasehold covenant requiring residents to 'comply with the Principles of Co Housing' constitutes an agency that supports the creation and endurance of norms and understandings which have no basis in the legal content of the lease.

Secondly, I consider how the spatiality of Springhill's network is generative of temporality. As Grabham outlines, time emerges from actor-networks not merely as an experience for human actors. Rather, for Grabham, temporality is a relational effect or 'a set of techniques constituted by and within a network'.⁴ Following Grabham and Latour, I suggest that the space of the Street constitutes a relatively powerful node in the network's dynamics by creating the temporal conditions that oblige particular behaviours of interaction and mutuality. While human will remains important in the endurance of Springhill's property relationality twenty-one years after the scheme's inception, I suggest that the stability and endurance of Springhill over the past two decades is dependent upon the creation of temporal effects.⁵ Specifically, I argue that Springhill's network is productive of what Latour has described as 'inertia', which, I

³ Caroline Hunter, 'Solar Panels, Homeowners and Leases: The Lease as a Socio-Legal Object' in Dave Cowan and Dan Wincott (eds), *Exploring the 'Legal' in Socio-Legal Studies* (Palgrave Macmillan 2015).

⁴ Emily Grabham, *Brewing Legal Times: Things, Form, and the Enactment of Law* (University of Toronto Press 2016) 26.

⁵ Emilie Cloatre, 'Law and ANT (and Its Kin): Possibilities, Challenges, and Ways Forward' (2018) 45 *Journal of Law and Society* 646, 650.

suggest, helps secure the endurance of Springhill's idiosyncratic property regime.⁶ The inertia that particular networks generate, Latour suggests, helps stabilise future relations and the conduct stemming from such networks. This can also be understood as the creation of a form of path dependency: network formation creates the conditions to 'lock in' future habits, behaviours, uses and understandings.⁷ The integration of this approach to temporality with property theory and ANT, I suggest, helps us understand how networks can constitute individuals as subjects of property in an ongoing and enduring fashion, despite the site's age and the departure and arrival of new residents.

Thirdly, I explore the role of the 'Common House'. The Common House is a large communal building at the centre of Springhill. It was designed to support relationships between inhabitants by facilitating shared use. While deployed as a strategy of network endurance, I explore how it has failed to work as potently in sustaining property as originally envisaged.

Finally, I consider the work that Springhill residents perform to ensure that new residents are implicated in Springhill's property regime, helping to ensure its endurance as human actors fluctuate.

The chapter is structured as follows. I begin by outlining the history and dynamics of Springhill Cohousing. Premised on fostering interaction between inhabitants, I argue that Springhill is an example of a lived logic of property. I outline how those who inhabit Springhill describe a property regime that is markedly different from conventional owner-occupation in that relationships are characterised by mutuality, collective governance and interaction. I then turn to analyse the four constitutive dynamics of Springhill's property relationality as identified by participants in the order identified

⁶ Grabham (n 4); Jim Johnson, 'Mixing Humans and Nonhumans Together The Sociology of a Door-Closer' (1988) 35 *Social Problems* 298.

⁷ SJ Liebowitz and Stephen E Margolis, 'Path Dependence, Lock-In, and History' (1995) 11 *Journal of Law, Economics and Organization* 205.

above, beginning with the lease, before considering the space and time of the street. I then consider the role of the common house, and efforts made to 'induct' new residents.

As detailed in Chapter 2, in-depth semi-structured interviews were conducted with five Springhill residents in 2018. I was also present at an 'open day' where those interested in cohousing, or in buying a house on the site, were given a tour of the site, and some of the individual homes, before a 'question and answer' session with a group of current residents.

7.2 Overview of Springhill Cohousing

Springhill claims to be the first purpose built cohousing scheme in the UK.⁸ Located a few minutes' walk from Stroud town centre in south-west England, Springhill contains 35 homes (a mixture of houses and flats). The site is home to between 70 and 80 people at any one time. At the centre of the scheme is a large 'Common House'— a building which all residents have access to, and which includes a kitchen for the residents' shared meals. The site was acquired in 2000, construction began soon after and the first residents moved in in 2003.⁹

Individual homes in Springhill are owned on a leasehold basis. The leases were granted for a term of 999 years (commencing either in 2003 or 2004, depending on when the unit was completed). The freeholder is a resident-owned company, which also holds the title to the common parts on the site. All leaseholders are both shareholders and directors of this company. The majority of the homes are owner-occupied. A small number of flats are rented, and some residents also take lodgers from time to time. The distinguishing legal feature of Springhill leases is the inclusion of

⁸ More information can be found on the website: <http://www.therightplace.net/coco/public/>.

⁹ A brief history is available on Springhill's website: <http://www.therightplace.net/coco/public/#history>.

a leasehold covenant requiring inhabitants to ‘comply with the Principles of Co Housing’ – a feature I return to in detail below.

As with the Copper Lane case study explored in the previous chapter, participants reported that the prospective residents were drawn to the Springhill project by a sense of alienation with conventional housing options and a desire to live differently. As one resident put it (who joined a few years after the project was established):

[W]e were living in [a suburban area] at the time – it was a very pleasant area, we had a great big sports field behind the house so there was plenty of light and open space, we were not overlooked or boxed in – but we didn't really know anybody there...We'd speak to our next door neighbours over the fence when we were in the garden, but we never went to their house and they never came to our house– we just didn't feel we really knew anybody, and we were looking for somewhere where there was much more of a sense of belonging. That's what brought us into this project.¹⁰

Similarly, another resident reported that ‘where we lived before was actually quite isolating. So I liked the idea of coming together with people more [and] spending more time together’.¹¹

Also akin to Copper Lane, Springhill adheres to the ‘principles’ of cohousing discussed in Chapter 2 – the site stems from a common desire of wanting to share spaces, resources and experiences, to foster interaction, and generally live in a more collective fashion than conventional housing options afford. However, realising this form of living in a landscape of conventional owner-occupation was no easy task. Residents, media reports and literature highlight the leading role of one individual in establishing Springhill: David Michael. *The Guardian* suggests that Springhill was his ‘brainchild’.¹² Similarly, one participant described him as the ‘backbone’ of the project.¹³ It is therefore fair to say that Michael was instrumental in forming the association of people, materials and techniques necessary to achieve an alternative housing typology. Michael acquired

¹⁰ Interview 5.

¹¹ Interview 2.

¹² Joanna Moorhead, “It's like a Mini Centre Parcs!” *The Guardian* (1 May 2010).

¹³ Interview 4.

the land on which Springhill sits in late 2000. He began recruiting prospective residents to begin the design process and to elaborate ideas of how they wanted to live together. Similar to Copper Lane, this entailed a huge amount of work: many meetings, and the enrolment of multiple actors (such as builders, blueprints, architects, contracts, money).

Central to the design were two books: *Cohousing* by Kathryn McCamant, Charles Durrett and Ellen Hertzmann,¹⁴ and *A Pattern Language* by Christopher Alexander and others.¹⁵ The influence of *A Pattern Language* led to the site revolving around a central communal building for shared meals and use. Additionally, a pedestrianised street forms an axis for those entering or leaving the site on foot. The architect's concept sketch (Figure 6, set out below) provides a snapshot of the design. Figure 6 also highlights how a central 'green' is laid out on the southwest side of the Common House. There are a number of individual gardens (although these do not necessarily adjoin the homes to which they belong), and a shared vegetable garden. What is not captured in Figure 6 is the layered nature of the site: the site slopes down from the top left of the image to the bottom right. This produces different levels of height between the three rows of homes visible in the image.

¹⁴ Kathryn McCamant, Charles Durrett and Ellen Hertzmann, *Cohousing: A Contemporary Approach to Housing Ourselves* (Ten Speed Press 1994).

¹⁵ Christopher Alexander and others, *A Pattern Language: Towns, Buildings, Construction* (Oxford University Press 1977).



Figure 6 - Architect's concept sketch of Springhill. Source: <https://architype.co.uk/project/springhill-co-housing>.

7.2.1 Residents' experiences of Springhill's property regime

While Springhill does not appear to differ from other housing typologies in many respects – individual owner occupation and mortgage finance are central to its operation – participants described how the lived reality of the site differs markedly from a conventional housing estate. Residents eat together three nights a week, collectively govern and maintain the site, and host a range of events and activities for one another. In short, residents highlighted that property relationships are defined by the importance of interaction, mutual support and sharing. As such, the idiosyncrasies of Springhill's property regime constitute people and relationships in a particular way, distinguishing it as an example of what I have described as a lived logic of property. This is highlighted by the following accounts from participants:

I just feel so safe and so secure here and it's just wonderful to have these people around... they care, we care about each other... it's like a kind of cohousing family in a way...¹⁶

It feels very safe and supportive... astonishingly supportive... We all know each other and the things that we do together, like we are cooking together, we're eating together... we're looking out for each other, we're baby-sitting each other's children... [T]here's a network, a myriad of relationships, and then there's things that happen: things happen that kind of bring you even closer – but it's not stifling....¹⁷

...[Y]ou know your neighbours... Friends of mine in London, they know everybody on their road and they share meals and that sort of stuff because they've made it happen – but because you're always seeing people... you see people a lot... you know your neighbours, and then we have an extremely active group of activities that we all join in. Of course, for the children it's ideal because every door is open to them and they're a blessing.¹⁸

This is not to suggest an idyllic life in which all live in perfect harmony. For instance, one participant suggested that while the dynamics between inhabitants are 'very positive, they have had 'difficulties... it's not all plain sailing all the time... some days I do have tantrums and go "I don't want to live here"'.¹⁹ Nonetheless, participants stressed that significant disagreements are very rare, and that while some may not get on from time to time, this does not significantly impede the functioning of the site: 'I think in any group you're not going to like everybody and not everybody is going to like you. But you have got to work with [them]'²⁰ Similarly,

... people do fallout. We do have a few mechanisms for sorting it out, which have been put into practice every now and then. It's like any village of 70 people: there are bound to be people that fall out with others. There are bound to be two people who are chalk and cheese: you like some people more than others, some people get on your nerves.²¹

However, it was suggested to me that Springhill's property regime affects inhabitants' subjectivity in a manner that helps overcome inter-personal difficulties:

¹⁶ Interview 1.

¹⁷ Interview 2.

¹⁸ Interview 4

¹⁹ Interview 1.

²⁰ Interview 2.

²¹ Interview 3.

A question I'm asked a lot is 'do you like everybody?' Well no, I don't. A lot of people I don't like. But what you learn to do is to love them. You just accept people for who they are, and glory in that they're rather different...²²

This chapter now turns to exploring how Springhill's distinctive property endures. When I asked one resident how collective life at Springhill is produced and sustained they replied 'I think you might even forget because you know you just take it for the norm.'²³ The chapter focuses on unpacking how 'the norm' has been produced, and how it appears to have been 'black boxed' into an unproblematic functionality, and how it continues to be sustained twenty-one years after the inception of the project, beginning with the role of law. I emphasise how endurance is achieved from the specifics of network formation rather than the consequence of legal form, and consider the four elements identified in the introduction above: the role of leases, the space and time of the Street, the Common House, and the work undertaken to 'induct' new residents.

7.3 The role of law

In this section, I explore the role of law and legal actors in the production and endurance of Springhill's property relationality.

As noted above, individual homes in Springhill are held on a leasehold basis. The freeholder is the Cohousing Company Limited ('the Company'). The Company holds the title to the common parts of the site and the Common House (defined in the lease as 'the Communal House'). All leaseholders are required to hold shares in the Company.²⁴ While not a requirement in the lease, participants confirmed that all shareholders are also directors of the Company. The Company enjoys a right of first refusal upon the sale of any unit. No participants reported that the Company has exercised this right.

²² Interview 4.

²³ Interview 1

²⁴ Fifth Schedule, Part 1, clause 18(b)(i).

The lease includes relatively few provisions in respect to the dynamics of the site as a cohousing community. These include:

1. A leasehold covenant requiring leaseholders and tenants to 'comply with the Principles of Co Housing' ('the Covenant'). I explore the Covenant in the second part of this section.
2. A restriction on each leasehold title requiring purchasers to enter a deed of covenant to observe and perform the lessee's covenants, and acquire the seller's shares in the Company for a nominal fee of £1.
3. A dispute resolution provision which requires disputes between a leaseholder and another leaseholder – or a tenant or licensee – to be referred to a committee formed by the Company, whose decision is binding.
4. An easement over the Common House 'for quiet recreational purposes'.

I resist explaining the property relationality at Springhill as being a simple 'output' of the lease. Instead, I examine the capacities of the lease as a 'socio-legal object'. Cloatre defines socio-legal objects as 'objects with a legal origin/dimension studied in their social action, through networks and connections'.²⁵ I build on the work of Hunter, who has explored the travails of leases as socio-legal objects in order to understand how they constitute the socio-material world.²⁶ Hunter argued that the connections and effects engendered by the lease in her study extended beyond the lease's technical (i.e. legal) parameters, and could be 'invoked' to 'produce further standards of behaviour'.²⁷ Hunter highlights how individuals who are connected through a lease 'may imagine, assume and act as if it had different contents from those contained within it' and that it can operate as 'an empty box into which different understandings

²⁵ Emilie Cloatre, 'TRIPS and Pharmaceutical Patents in Djibouti: An ANT Analysis of Socio-Legal Objects' (2008) 17 *Social & Legal Studies* 263, 263.

²⁶ Hunter (n 3) 139.

²⁷ Hunter (n 3) 153.

can be put'.²⁸ This section also builds on the work of Blandy, who has explored the extent to which leases are constitutive of property at a cohousing site in England.²⁹ In Blandy's analysis, the lived reality of property relationships neither flowed from nor precisely reflected the relationships, rights and duties specified in the lease. While the technical content of the lease (both real and imagined) was invoked to stabilise particular practices and positions, the leases' technical content was also regularly ignored and violated. Accordingly, while conventional legal theory would suggest that a lease is immutable, the leases in Blandy's and Hunter's studies were characterised by plasticity.

I consider first how the Springhill lease shaped the network so as to produce a distinction between individual residents as subjects of property, and Springhill as a distinct object and community. I then explore how the Covenant imbues the lease with an agency that facilitates the endurance of a distinct normativity in Springhill's network, supporting the creation of further norms, rules and expectations which have no basis in the lease's technical legal content.

7.3.1 Us and them: fabricating community

The first aspect of the lease's agency I explore is the distinction it manufactures between residents as individual subjects of property, and the community of Springhill as a separate entity or object.

Participants commented on the difficulty of conceptualising 'Springhill' as a separate entity to its residents. While it is easy to impose terms such as 'community', participants suggested that there has never been widespread agreement among residents as to how to characterise the sum of Springhill's parts. This disagreement

²⁸ Hunter (n 3) 153.

²⁹ Sarah Blandy, 'Collective Property: Owning and Sharing Residential Space' in Nicholas Hopkins (ed), *Modern Studies in Property Law - Volume 7* (Hart 2013).

dates to the initial discussions between prospective residents when conceiving of Springhill. One participant noted how prospective residents had differing conceptions of how life at the site would be characterised:

...a lot of people that joined early on were thinking in terms of community, and to be a community. There were one or two influential persons who said 'no, we're not a community, that's not what we're about – if anything, an intentional neighbourhood, but nobody can speak for all of Springhill'. So, if you want to write for the papers about a particular issue, don't say you're speaking for Springhill, speak for yourself only. So, while most of us share a very similar political outlook, we don't have one voice. I think quite a few people would have liked one voice and would have liked much more of a social cohesion. In fact there was a small group before the building even started that was looking at ways to build up society.³⁰

Participants reported that this issue was never resolved, and that discussion as to the nature of Springhill's collective or corporate existence continues: 'there's always a lot of debate about whether we're neighbours or whether we are a village or whether we are a community'.³¹ Similarly, it was suggested that 'there's a slight tension between people who feel that this is a housing estate and there's no "must": we're not on a cruise ship and we don't have to go to the groups, and some people will be more involved than others'.³² Another participant reported that 'some say it's an intentional community, others say it's an intentional neighbourhood, which is actually quite a good way of describing it: a sort of little intended village inside'.³³

Despite significant disagreement going to the very nature of what Springhill *is*, such disagreement does not appear to have caused significant problems to the pragmatics of network construction and endurance. Thus, while there is disagreement between the constituent *parts* of Springhill, there appears to be cohesion in respect to its existence as a *whole*. The absence of definitive agreement as to Springhill's form can be seen as introducing a useful ambiguity in that there is sufficient room for differing conceptions of

³⁰ Interview 5.

³¹ Interview 3.

³² Interview 2.

³³ Interview 5.

both 'community' and 'neighbourhood' to coexist. Nonetheless, I suggest that the lease is a key device in forging network stability and overcoming the lack of agreement (if not disagreement). Specifically, by anchoring leasehold ownership to membership of the Company, a distinction is created between individuals as residents and Springhill as an object or entity that exists 'above' residents. As one participant put it: 'we're a company' and 'we made ourselves into a company. *We acted as a company at all levels that we could*'.³⁴ Following Hunter, while the lease-company relationship is not necessarily constitutive of day-to-day life, it acts as a reference point 'above' residents – 'ready to be pulled out and relied on at particular points'³⁵ – which functions despite competing conceptions of what the company and community *is*. Accordingly, the lease helps constitute what Hunter describes as different 'scales of network' by fabricating a distinction between the individual and the Company which is perceived as bigger than, and external to, the individual.³⁶ As Latour notes, effects of scale are 'neither "above" nor "below" the interactions [of actors], but added to them as another of their connections, feeding them and feeding off of them'.³⁷ In this sense, 'society' or 'community' are not backdrops, but rather the outcomes of networks. Accordingly, the introduction of scale to Springhill achieved by the lease and the Company helps produce the 'collective' or 'community' of Springhill – despite disagreements among residents as to whether a collective or community does in fact exist (or should exist).

Further, I suggest that a lack of an ideological 'core' in the company form is a critical feature, helping to sustain the network despite disagreement. The Company lacks any definitive conception of community, except to the extent that its members and officers exist independently of it. Had residents had to select a corporate form that explicitly articulated a concept of community, this would likely have inhibited Springhill from the

³⁴ Interview 4.

³⁵ Hunter (n 3) 147.

³⁶ Hunter (n 3) 152.

³⁷ Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network Theory* (Oxford University Press 2005) 177.

outset. Instead, the company enables scale to be produced without *insisting* on a shared ideology. Twisting the terminology of ANT, the company can be viewed as a 'mutable immobile': *immobile* in that it remains static and holds the network in place, *mutable* in that it is linked to competing conceptions of what the Springhill network is.

Furthermore, I suggest that the scale achieved by the lease-company relationship is significant as, recalling Cooper, it helps produce both subject-object and part-whole belonging. The distinction between subject-object and part-whole belonging, Cooper notes, and as explored in Chapter 3, is that subject-object dynamics are characterised by an individual's mastery and exploitation of things. In contrast, part-whole belonging is characterised by 'the embedded, contextualized ongoing interrelationship of part and whole'.³⁸ Cooper characterises this as a 'a shared sense of reciprocal belonging' which constitutes norms and understanding between actors as to how the objects of property are to be used.³⁹ I want to suggest that part-whole belonging described by Cooper should be understood as an effect of network formation, and can usefully be deployed within my ANT approach to understand how networks build connections between actors. Specifically, I suggest that my approach can help shed light on how such forms of attachment and belonging are produced and sustained.

The scale introduced by the lease-company device works to constitute Springhill residents simultaneously as individual subjects who possess and control objects (homes), and as constituent parts that belong to 'Springhill'. The lease-company form achieves this by simultaneously constituting individuals as 'masters and possessors' of their individual homes while also fabricating Springhill as an entity that exists 'above' residents. By establishing the Company as the residents' landlord, and in turn situating residents as the constituent parts of the Company, residents are able to straddle the

³⁸ Davina Cooper, 'Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property' (2007) 32 *Law and Social Inquiry* 625, 632.

³⁹ Cooper (n 38) 650.

position of owner-occupiers and constituent parts of a broader 'whole'. Thus, rather than a conventional landlord and tenant relationship, which can be characterised by conflict and an 'us and them' mentality, Springhill is characterised by a property relationality of simply 'us', which is manufactured by the lease-company relationship. Residents' accounts illustrate how part-whole and subject-object belonging exist simultaneously. All participants were unequivocal about their homes being objects that they own and control. In contrast, Springhill was posited as existing externally to them and their possessions. For instance, it was emphasised that

...it's not like a community where you're all living together. *You have got your own separate houses.* For me it's nice because *you've all got your own private space.* I don't think people go into each other's houses that much really. Maybe some people do a bit more... the kids do, but I think the adults tend to meet more in the communal areas.⁴⁰

Similarly,

I have lived in [intentional] communities before – and after the last time I thought what I want next time is my own space *where I can shut the door and it's mine*, and the commonality: that's what cohousing is. *When I go inside my house it's my space in my private life*, but I have this opportunity for commonality.⁴¹

[Springhill] was really [intended to be] a place where we would live together but not in each other's pockets like in a commune. We've got as much privacy as we want and as much opportunity for community as we want...we've all got our own front doors, we've all got our own kitchens. We don't have to engage if we feel we're in that particular space where, for whatever personal reason, we'd rather just retreat. And there are people who do that. And that's one of the things about the individual houses where cohousing scores over the communes – you can be as social as you want or as private as you want at whatever time.⁴²

Another noted that 'the basic tenets of cohousing [are] that no one comes across your threshold unless you invite them...I had a fear before moving here that people would be continually coming in – actually that never happens'.⁴³ A different participant

⁴⁰ Interview 1.

⁴¹ Interview 3.

⁴² Interview 5.

⁴³ Interview 2.

summed it up more pithily: 'one of the bottom lines of [Springhill is]: your house, your space, private private'.⁴⁴

Despite the strength of these subject-object dynamics, part-whole characteristics were also apparent in participants' accounts of property. As Cooper notes, in practices of part-whole belonging, 'the part's exercise of agency is limited and structured by relations of governance underpinned and rationalized through the part's belonging to the whole.'⁴⁵ This rings true for Springhill: in producing scale, the lease-company form produces a 'whole' that bears some semblance to a community or communality. The precise form of what that whole *is* appears to be less important than the form of belonging it produces. In situating residents as parts belonging to the whole, Springhill's network affects residents' agency so as to constitute norms and understandings as to how the objects of Springhill are to be used, and how decisions are to be made. Most significantly, the part's – i.e. residents' – agency is affected or modified by the network by producing a shared understanding or norm that decisions on the management and governance of the site are made by consensus through the Residents' Association. This is not to suggest that decisions are reached easily or that the result is harmonious. Participants stressed that decision making can be a difficult, tiring and time-consuming process, with extensive discussion of relatively minor issues. Rather, I am claiming that residents accept that, as constituent parts, decisions are made as a whole – and that the decision of the whole is final, despite the extent to which decisions of the whole affect the constituent parts. Accordingly, I suggest that the part-whole belonging introduced to the network by the lease-company form is constitutive of a normative force that implicates the agency of residents, operating to *limit* individual subjects' capacities to the will of the whole. The introduction and

⁴⁴ Interview 4.

⁴⁵ Cooper (n 38) 632.

endurance of this part-whole belonging facilitates the constitution of norms or rules that extend beyond the technical content of the lease.

The 'Pets Policy' is a good example of the network's part-whole dynamics and how such dynamics affect residents' agency or capacities. The Pets Policy significantly restricts how inhabitants use their homes, and indeed, in conventional property law terms, the ownership, use and enjoyment of other objects of property (pets). The starting point of the policy is that pets cannot be obtained without giving notice to the 'Pets Committee', which then informs all residents in writing.⁴⁶ If any objections are raised, the matter is brought to the Residents' Association, whose decision is final. The Pets Policy also empowers the Residents' Association to restrict the number and nature of pets residents may own and the manner in which they are cared for: cats must be sterilised, and all pets must be 'well cared for and not neglected'.⁴⁷ Any dispute over the keeping of pets is 'arbitrated by the Pets Committee'.⁴⁸ If the Committee cannot resolve the dispute, the matter is referred to the Residents' Association for a final determination, which has the power to 'evict' 'problem pets'.⁴⁹

These rules are not provided for in the terms of lease, yet the policy claims that its aim is to accommodate pets 'according to the Lease'.⁵⁰ The lease provides for the Company to impose regulations which, to bind lessees, must be consistent with the terms of the lease and served in writing on leaseholders.⁵¹ An argument could be made that the policy constitutes regulations for the purposes of this term. However, there is no indication that it was the express intention of the Residents' Association for the policy to constitute regulations, nor that any written notice had been given.

⁴⁶ Springhill Pet Policy, 'How the Pet Committee works, paras 5.1 to 5.4. Available online at <https://www.therightplace.net/coco/public/pets-policy.html>.

⁴⁷ Pets Policy, 'Pet Guidelines', para 2.

⁴⁸ Pets Policy, 'Pet Guidelines', para 1.

⁴⁹ Pets Policy, 'Pet Guidelines', para 1.

⁵⁰ Pets Policy, 'How the Pet Committee Works', para 1.

⁵¹ Springhill lease, Schedule 5, Part II, cl 5.

In any event, I am claiming that the precise legal status (or lack thereof) is not particularly relevant to explaining how property norms are formed and endure, nor why residents abide by restrictions which are not provided for in the lease, such as the Pets Policy. Rather, in helping to create part-whole dynamics within the network, the leasehold-company form helps constitute residents in a relational arrangement of belonging with other residents. As Knecht argues, and as claimed in the previous chapter, the formation of networks alter human subjects in that subjects 'are as much the result of the networks in which they are entangled as the non-human entities involved'.⁵² This part-whole relationship implicates residents' agency so as to ensure compliance with the decisions of the whole. The lease therefore helps constitute property not simply as an output of its content. Rather, the lease enters network formation and helps produce inhabitants' subjectivity and the constitution of shared norms or understandings. Thus, recalling Hunter, the Springhill lease should be seen as a socio-legal object that shapes the network by underpinning the constitution of norms and understandings that do not necessarily flow directly or coherently from the technical content of the lease itself.

In concluding this section, it should be noted that the part-whole dynamics produced at Springhill also have the potential to act in unhelpful and/or unforeseen ways when connected to the conventional networks of landlord and tenant law. For instance, one resident reported how, in planning for an annual festival-like event, residents wished to use service charge funds to hire a band to play at the event. In fabricating the Company as a distinct legal actor connected to the requirements of landlord and tenant law, the capacities of the network became limited:

[The] company secretary said 'actually I don't think you can do that because the money comes from the service charge and using that to pay a band is illegal'. *Well this is us, we're paying the money to ourselves, who gives a*

⁵² Robert Knecht, 'Framing Labor Contracts: Contract versus Network Theories' (2016) 37 *Recht der Werkelijkheid* 76.

*damn? Why should anybody bother? ... [The company secretary] went to a couple of property lawyers to get clarification... but of course, looking at the normal kind of rented situation – blocks of flats and an outside body owns the flats – yes, it would be illegal to charge a service charge and then use it for the owners' entertainment – but when it's us paying us for our own purposes, most people couldn't really see why that's a problem. Sometimes questions of legality might surface and it just seems rather odd.*⁵³

Here, the precarity of law in the formation of property again becomes explicit. Recalling Hunter, on the one hand the lease constitutes an important object that binds residents together. On the other hand, the content and operation of legal rules introduced by the lease disrupts the very binding that the lease affords. The lease therefore appears akin to a 'glue' which can come unstuck when its contents are inspected. The possibility for further 'unsticking' caused by legal form is not difficult to imagine. Springhill's leaseholders, like leaseholders in any other housing development, are entitled to challenge service charges on the basis that the expenditure was not reasonably incurred.⁵⁴ Similarly, Springhill's leaseholders are entitled to exercise statutory rights of enfranchisement and acquire the freehold of their homes.⁵⁵ Accordingly, there is a precarity in schemes such as Springhill which rely on conventional legal tools to establish alternative property relationality in that the application of conventional tools can produce unforeseen and unwanted effects. This provokes a broader question as to the necessity of legal recognition of property practices such as cohousing, as suggested by Blandy.⁵⁶ I return to this question in the conclusion.

7.3.2 The Covenant

The Covenant is the second feature of the lease as a socio-legal object that contours the endurance of Springhill's property dynamics. The lease requires all leaseholders to 'comply with the Principles of Co Housing', defined by the lease as meaning 'the principles as set out in the book 'Cohousing' by Kathryn Macamant [sic] a copy of

⁵³ Interview 5.

⁵⁴ Landlord and Tenant Act 1985, s 19.

⁵⁵ Under Part I of the Leasehold Reform Act 1967.

⁵⁶ Blandy (n 29).

which book is available for inspection via the Lessor'.⁵⁷ The lease takes a 'belt and braces' approach to this obligation. Firstly, the Covenant is included as a term of the lease.⁵⁸ Secondly, the lease requires that assignees enter a prescribed deed of covenant with the Company to observe and perform the lessee's covenants, and additionally, to 'comply with the Principles of Co Housing details of which are set out in the Lease'.⁵⁹ As the lessee's covenants necessarily includes the covenant to 'comply with the Principles of Co Housing' the effect is that the lessee promises twice to 'comply with the Principles of Co Housing'. It is not clear why, as a matter of drafting, this replication is employed. As I note below, it may be a hangover from older practices.

Provision is also made for the Covenant's applicability to tenants and licensees. The lessee's covenants include a requirement that, before any underletting or sharing of possession, one week's notice must be given to the Residents' Association by providing it with a copy of the proposed 'letting agreement'. Further, the proposed agreement must include a provision that the tenant or occupier agrees to become a member of the Residents' Association, and 'a covenant by the tenant or occupier to abide by the rules and decisions of the Residents Association [sic] and the Principles of Co Housing'.⁶⁰

Participants acknowledged that the Covenant is vague, and also suggested that it may not be legally enforceable against purchasers. However, despite residents' concerns, a leasehold covenant to 'comply with the Principles of Co Housing' is likely legally enforceable against successors in title.⁶¹ While the Covenant likely fails to 'touch and

⁵⁷ See Schedule 1 of the lease. Presumably this definition is attempting to refer to Kathryn McCamant, Charles Durrett and Ellen Hertzmann, *Cohousing: A Contemporary Approach to Housing Ourselves* (Ten Speed Press 1994) There is no indication that McCamant alone published a previous version of this book.

⁵⁸ See Schedule 5 of the lease.

⁵⁹ Schedule 5, Part I, cl 18(b)(iii). The only such "details" on the principles of cohousing in the lease is the reference to McCamant, Durrett and Hertzmann.

⁶⁰ Fifth Schedule, Part I, cl 18(a).

⁶¹ Blandy (n 29) 164.

concern the land', unlike freehold covenants, the enforceability of leasehold covenants in leases created after 1995 is not dependent upon the covenants 'touching and concerning the land'.⁶² Instead, the benefit and burden of covenants in post-1995 leases are automatically annexed to the estate and automatically bind assignees, provided they are not 'personal covenants'.⁶³

The Covenant is very unlikely to fall foul of this provision. A personal covenant for this purpose is a covenant which is 'not intended to bind the person from time to time entitled to the tenancy'.⁶⁴ To determine whether a covenant is expressed so as to not bind successors in title, the lease must be read in context to determine whether there is an express or implied intention that the covenant is not to be annexed to the lease.⁶⁵ There does not appear to be any express intention in the Springhill lease that the Covenant is not intended to bind to successors in title. There also does not appear to be any convincing argument that the lease demonstrates an implied intention that assignees should not be bound – particularly when the lease requires assignees to promise to observe and perform all the covenants in the lease.

However, in the event that the Covenant was held not to pass automatically under the 1995 Act, the provision of the lease described above requiring assignees to observe and perform the lessee's covenants and 'comply with the Principles of Co Housing' operates as a failsafe to secure enforceability. This provision of the lease ensures the creation of a new covenant each time the lease is transferred. It is unclear whether this was an intentional safeguard of the lease or a hangover from the pre-1996 drafting of leases. The latter is more likely. As the Law Commission has noted, landlords

⁶² S 2(1)(a) of the Landlord and Tenant (Covenants) Act 1995, s 2(1)(a) abolished the requirement that leasehold covenants must 'touch and concern' to secure enforceability against assignees.

⁶³ Landlord and Tenant (Covenants) Act 1995, s 3(1) and s 3(6)(a).

⁶⁴ *First Penthouse Ltd v Channel Hotels & Properties (UK) Ltd* [2003] EWHC 2713 (Ch); [2004] L. & T.R. 16 (Ch D); [2004] L. & T.R. 16, per Lightman J at [48].

⁶⁵ *Ibid*, [49]. See also *Woodfall: Landlord and Tenant* (Sweet & Maxwell 2020) vol 1, para 16.125 (R 124 April 2021).

commonly required assignees to covenant directly with the landlord to ‘observe and perform the tenant’s covenants in the lease’.⁶⁶ This had the effect of rendering the assignee liable for *all* the tenant’s covenants in the lease – not merely those that satisfied the requirement to ‘touch and concern’ the land.

However, while the Covenant may, as a matter of law, be enforceable against Springhill residents, it is far less clear how it could be enforced in practice – a fact further recognised by residents. It is difficult to imagine how one would seek to enforce the obligation: an injunction compelling interaction? Or perhaps restricting withdrawal? How can failure to attend communal meals, for example, be measured adequately in damages? Forfeiture is theoretically a remedy open to the Company following a leaseholder’s breach. However, the court retains a broad discretion to grant relief for breach of a covenant other than the non-payment of rent.⁶⁷ Given that forfeiture is the ‘ultimate sanction’ for the most serious breaches, the court has stressed that in most cases relief will be granted, subject to the breach being remedied and the payment of costs.⁶⁸ There is perhaps room for argument on the question of whether a breach of the requirement ‘to comply with the Principles of Co Housing’ is capable of remedy. The Supreme Court has noted that a positive obligation is, in principle, more capable of remedy than a negative obligation, in that the lessee can remedy the breach by performing the obligation.⁶⁹ A breach of the Covenant could therefore theoretically be remedied by a lessee undertaking to participate in the Residents’ Association, attend communal meals or contributing work to the upkeep of the site, for example. Conversely, it could be argued that performing these obligations under compulsion is itself contrary to the ‘principles of cohousing’, and therefore no remedy at all. However,

⁶⁶ Law Commission, ‘Landlord and Tenant Law: Privity of Contract and Estate’ [1988] Law Com No 174 2.3.

⁶⁷ Law of Property Act 1925, s 146(2).

⁶⁸ *Magnic Ltd v Ul-Hassan* [2015] EWCA Civ 224, per Patten LJ at [50].

⁶⁹ *Telchadder v Wickland Holdings Limited* [2014] UKSC 5; [2014] A.C. 678

an a pragmatic level, it is difficult to envision a court finding it palatable to refuse relief to a Springhill resident (or their lender) in respect of his or her failure to attend communal meals, for example, or refusal to take part in meetings of the Residents' Association. To residents, these things are vital aspects of cohousing life – but to an outsider, and to the logic of conventional property law, they can be painted as trivial, and the windfall that the Company would enjoy from forfeiture can be characterised as a grossly disproportionate outcome. It is therefore unlikely that forfeiture is a viable option for the Company.

Successful enforcement appears to fall apart entirely in respect of a breach by a leaseholder's occupier (such as a spouse, civil partner or cohabitee who is not also a registered proprietor, as well as family members and other licensees). In this case, there is no provision to enforce the Covenant: the 1995 Act only provides for the enforcement of *restrictive* covenants against such occupiers, and while complying 'with the Principles of Co Housing' is vaguely expressed, it entails positive acts: attending meetings, preparing meals, and so on.⁷⁰

In any event, it appears that the strict legal capacities of the Covenant are not necessarily significant in shaping Springhill's property dynamics and their endurance. I suggest that, instead, the Covenant amplifies the shared desire to live in a particular way into an actor that shapes the network. It does so, I suggest, by translating desire into an object that can be invoked as authority, despite the pragmatic difficulties associated with actually enforcing it. Significantly, recalling Hunter, it is the *form* of law as an object that is significant in binding residents together over and above the object's technical legal *content*. This particular object therefore becomes authoritative through its functionality as a commitment device. Participants highlighted that residents have *committed* to the obligation by *signing* the lease, thus constituting it is a reference point

⁷⁰ Landlord and Tenant (Covenants) Act 1995, s 3(5).

for those within the network. For all participants, signing the Covenant was situated as a key aspect of 'joining' Springhill. As one participant put it:

you have to sign the lease. That's the big formal thing. Somewhere in the lease it says "I shall abide by the principles of cohousing", which is very woolly. That's the big thing.⁷¹

I suggest that the Covenant's (and the lease's) agency as a commitment device stems from the fact that it is public knowledge that all residents have participated in the Covenant and agreed to the ideal it embodies, reducing the object of the lease itself as a material reference point. Recalling Pottage, property relationality is constituted through human actor's association with a 'symbolic object'⁷² – in this case, the lease. While Pottage suggests that medieval conveyancing was dependent upon the 'the vicissitudes of recollection',⁷³ the same can be said of Springhill: the Covenant's endurance is not secured by its legal qualities – rather, endurance is achieved by its position in the recall of residents and its presence in the object of the lease, enabling it to be grasped and relied upon to secure the endurance of particular behaviours. Accordingly, following Hunter, 'the actual technical content of the lease is therefore less important in terms of the day-to-day constitution of social relations than as a symbol of the relations'.⁷⁴ In this respect, like the mortgage contract considered in Chapter 5, the covenant is a 'biopolitical technology' that enters, and enables, the constitution of property.

The above analysis appears to be reinforced by residents stressing that, while anyone can buy or rent a home in Springhill, prospective inhabitants are encouraged to attend an 'open day' and share a meal in the Common House 'so they know what they're coming to, so that the expectations are not wrong'.⁷⁵ This suggests that the residents

⁷¹ Interview 3.

⁷² Alain Pottage, 'The Measure of Land' (1994) 57 *Modern Law Review* 361, 361.

⁷³ Pottage (n 72) 361.

⁷⁴ Hunter (n 3) 144.

⁷⁵ Interview 3.

are aware that the legal content of the lease is both inaccurate at conveying the shared expectations and understandings of the site. It perhaps also suggests a recognition that the lease, by itself, is not constitutive of the effects the residents' desire. Moreover, a physical copy of the lease is kept in the Common House and is displayed at open days (along with other materials such as photo albums, newspaper articles and academic research on Springhill), as if to impress upon purchasers the distinct property relationality of the site – or, at least, that the network has some legal grounding, represented in the object of the lease.

I suggested above that, by introducing part-whole belonging to Springhill, the lease is constitutive of a normative force which operates to limit individual subjects' capacities to the will of the whole in a manner that is not consistent with the terms of the lease. I also want to suggest that the Covenant also introduces distinct normativity which helps generate behaviours that are not required by the actual terms of the lease. As Hunter comments on Blandy's study of a cohousing site, leases may break from their 'legal moorings' and move beyond their 'technical limitations and become something which can be invoked as governing the relationships between the lives of the residents'⁷⁶ and 'may go beyond its actual working to be invoked to produce further rules and standards of behaviour'.⁷⁷

In addition to the authority of the Residents' Association, participants associated the lease and the Covenant with standards and behaviour which are not required by the lease's legal content. In particular, two 'rules' or expectations were raised by all participants as somehow being anchored to the Covenant: firstly, each adult is expected to contribute twenty hours per year to maintaining the site. Secondly, each adult is to take part in cooking a communal meal for the community once a month. One

⁷⁶ Blandy (n 29) 144.

⁷⁷ Hunter (n 3) 153.

participant believed that these expectations were in fact provided for in the terms of the lease:

you sign this ridiculous lease that nobody knows how to change so that it's usable, but in it it has one or two absolutely essential clauses for cohousing: the main one is cooking for each other once a month. That is the glue that holds it all together [...] The second one is, ideally, when you do your 20 hours a year keeping the place looking nice, then you're meant to attend a meeting or two or three or four or however many you want to. But at least put in an appearance that you're co-responsible.⁷⁸

Neither clause exists in the lease. However, despite their absence in legal technicality, residents nonetheless *act* as if they are requirements, even if they were ambivalent on whether they constituted strict rules or merely expectations – the terms 'rules', 'conventions' and 'protocols' were used interchangeably. Residents were also equivocal on whether these rules/conventions/protocols constituted legal obligations. For instance, one resident noted that 'there's no compulsion' but immediately added 'I say there's no compulsion, there are certain expectations'.⁷⁹ Alternatively, two participants observed that the work was something that was 'supposed' to be done. However, there was also reluctance to think about the cooking and maintenance aspects as 'rules':

everyone's a bit scared of rules but there are, what would they be called – indicators. I mean there are some rules, like no smoking in the Common House, we don't have meat in the Common House, [if] you have a dog it always has to be on a lead – those sort of rules are in place. Yeah, there's a minimum of rules actually... the lease is the big thing ...it's the rules, and there in the lease [are] things, things like you should not make a noise and disturb your neighbour, you have to pay your monthly sub to the Residents' Association... and even saying there are not many rules, there are sort of ways of doing things.⁸⁰

It was also suggested that the site is characterised by norms rather than rules as 'people balk at the idea of rules, I think, as opposed to norms or something else'.⁸¹

⁷⁸ Interview 4.

⁷⁹ Interview 5.

⁸⁰ Interview 3.

⁸¹ Interview 2.

Another rejected the idea that there are rules at the site. When asked whether the maintenance and shared meals were rules, it was instead suggested that ‘they are hopes and suggestions’.⁸² It is possible that the positioning of these understandings in vague terms creates an ambiguity which helps encourage the endurance of the network. Recalling the discussion of legality in the previous chapter, reducing such understandings to written rules, for instance, might entail rigidity and therefore difficulty in the event of change or non-compliance.

While there was ambivalence among participants as to the terminology, participants were clear in connecting the Covenant, and the act of *signing* the lease, with the presence of normative force. Recalling Pottage, this suggests that Springhill’s network is not generated by abstract legal entitlement but rather by the performative and symbolic acts associated with the conveyance, and the positing of that performance in collective memory.⁸³ Indeed, this is a reversal of the abstract logic of property inherent to registration (within which Springhill is of course also implicated): the Covenant enables the lease to travel from the ‘administrative archive’ of the register to the ‘networks of organic or practical memory’ of Springhill residents.⁸⁴ The lease is a symbol of that commitment. In the next section, I turn to explore how the spatiality of the site enters into, and helps secure, property’s endurance.

7.4 The space and time of property: the Street

In Chapter 3, I argued that property theory offers an incomplete account of how space enters into the constitution of property. While Keenan suggests that space ‘holds up’ property, it is unclear what ‘holding up’ entails, nor how such a process constitutes

⁸² Interview 4.

⁸³ Pottage (n 72).

⁸⁴ Pottage (n 72) 361.

property.⁸⁵ In this section, I explore how the space of the Street enters the constitution of property. I suggest that understanding how space enters the constitution of property requires examination of space's networked dimensions. This enables us to account for the capacity of space, how it possesses agency, and its role in securing the endurance of property relationality by creating temporal effects. Through this lens, the mutual constitution of space, time and property becomes apparent.

7.4.1 The spatiality of the street

The Street forms the central axis of Springhill, and I suggest it can be understood as an 'obligatory passage point'. While 'obligatory passage point' may be an apt description for a passage that acts as the main entrance/exit to the site when travelling on foot, as discussed in Chapter 4, an obligatory passage point is more than a physical passage or route. In ANT terms, an obligatory passage point is a central, conditioning actor in a network which controls 'the enrolling and ordering of other actors'.⁸⁶ I suggest that the Street should be understood in these terms.

Participants reported that the Street obliges certain behaviours, responses and connections. In particular, the Street provokes and generates interaction and association between individuals:

You're not scurrying down the Street trying to keep clear of any traffic, you just wander along it and very often in the summer if I'm wandering into town it might take a quarter of an hour to get to the gate because there's somebody there to stop and chat, and somebody else will pass and they'll stop and join in.⁸⁷

⁸⁵ Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge 2015).

⁸⁶ Catriona Rooke, Emilie Cloatre and Robert Dingwall, 'The Regulation of Nicotine in the United Kingdom: How Nicotine Gum Came to Be a Medicine, but Not a Drug' (2012) 39 *Journal of Law and Society* 39, 42; see also Michel Callon, 'Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of St Brieuc Bay' in John Law (ed), *Power, Action and Belief: a new Sociology of Knowledge?* (Routledge 1986).

⁸⁷ Interview 5.

Similarly, when asked what makes interaction happen among residents another participant suggested the following:

I guess the environment itself... we've got a green and we can all sit out and have a cup of tea, you don't– before we lived on a busy main road and you didn't want to spend any time outside your house, you just wanted to get in. It's something to do with the common shared thing [that] people move in with and also the environment itself.⁸⁸

Its materiality is thus critical. But so too is the lack of other objects – it was suggested to me that the lack of cars

automatically helps communication because you can walk down the Street, you can stop, you can chat, you can wave to people through their window as you walk by. Most of the kitchens overlook the Street, so if people are washing up you can see them and they can see you. And they can watch their children as well out the window because the windows are looking out on where the children play.⁸⁹

Accordingly, the Street generates interaction: 'whenever you go out you are either going one way so you tend to meet people on the way, you know, up to the car park, or out to town, or to the garden'.⁹⁰ Similarly, another participant, when asked how relations between people are generated, suggested that

It's an obvious thing, it's the architecture. The Street, where there's no cars...the seating by the pond which looks out onto the children's play area, the green, *encourages* people...a lot of people just go out with a cup of coffee and sit there and people who have time will come and sit too.⁹¹

The Street, I suggest, is critical in producing and sustaining the dynamics of Springhill's property relationality. Recalling the origins of 'oblige' in Chapter 2, the Street ties inhabitants into a binding set of behaviours and uses. In turn, this underpins the formation of particular habits and tendencies which characterise Springhill's logic of property – communality instead of withdrawal, familiarity instead of alienation. I suggest

⁸⁸ Interview 1.

⁸⁹ Interview 3.

⁹⁰ Interview 1.

⁹¹ Interview 2, my emphasis.

that this is constitutive of a normative force or what Blandy, Bright and Nield describe as the ‘understandings’ underpinning a property practice.⁹²

I recognise that some will resist the idea that space can play such an active role in the production of property relationships. However, the obliging capacities of the Street described by participants can also be unpacked through examining its spatial and temporal dynamics. I suggest that the ANT view of space as a networked effect helps explain the ability of the Street to constitute property relationships – and this requires resisting the conception of space as a vacuum or mere ‘backdrop’ for human relationality. As I explored earlier, through the work of John Law, spatiality is multiple. As such, the space of the Street can be accounted for in Euclidean terms as a distinct set of coordinates and manifested in materials such as gates, steps, and the land itself. However, this material and Euclidian dimension is only one aspect of spatial existence.⁹³ As Law has observed, space also exists in networked terms. As Murdoch puts it, ‘...it is the sets of associations which define and constitute spatial qualities’, and while space is ‘partly physical’, it is ‘wholly relational’.⁹⁴ Thus, space is produced by a network of relations, and this network imbues space with qualities ‘so that certain types of actions can be conducted’.⁹⁵ Accordingly, the productive dynamics and capacities of space cannot be assessed purely by reference to its Euclidean dimensions: rather, space’s capacities, and what it offers or makes possible for the ‘user’, can be understood through interrogating its networked dynamics. Accordingly, in apprehending property’s relationality, it is therefore necessary to attend to the networked dimensions of space.

Specifically, the Street is a locus of an array of other agencies, summing them up and enabling them to operate through it: desires to live differently, academic texts, and legal

⁹² Blandy, Bright and Nield (n 1) 86.

⁹³ John Law, ‘Objects and Spaces’ (2002) 19 *Theory, Culture & Society* 91.

⁹⁴ Jonathan Murdoch, ‘The Spaces of Actor-Network Theory’ (1998) 29 *Geoforum* 357, 361.

⁹⁵ Murdoch (n 94) 361.

documents all endure through the Street, and help constitute its users as subjects of Springhill's property regime. As a particular 'piece' of space, constituted through networked elements, the Street is therefore imbued with an enduring ability to act by obliging particular uses and behaviours. The effect is captured by Murdoch when he writes that,

Despite the heterogenous quality of any previous identities these entities now work in unison...As the network settles into place so the links and relations become standardised – 'heavy with norms', as Callon puts it – and, therefore, predictable.⁹⁶

Thus, when residents interact and support one another, it is not because of a pure free will. As Latour puts it, 'action should rather be felt as a node, a knot, and a conglomerate of many surprising sets of agencies that have to be slowly disentangled.'⁹⁷ As such, the Street helps ensure that relationships are constituted according to a particular logic by, as participants put it, 'encouraging' particular behaviours, uses, and connections. Accordingly, the distinction between human will or agency and the capacities of the network are blurred – as Law emphasises, our subjectivity, behaviour, and identity is constituted by our place within heterogenous networks.⁹⁸ The Street therefore helps constitute property by *anchoring* shared understandings within and amongst inhabitants' subjectivity. In this respect, as noted in the previous chapter, ANT offers a more sophisticated understanding of Keenan's suggestion that space 'holds up' property by revealing how space becomes imbued with the capacities to generate particular behaviours, creating a reciprocal 'holding up' of space and habits of use to the extent that property and space are significantly intertwined.

⁹⁶ Murdoch (n 94) 362.

⁹⁷ Latour (n 37) 44.

⁹⁸ John Law, 'Notes on the Theory of the Actor-Network: Ordering, Strategy, and Heterogeneity' (1992) 5 Systems Practice 379.

7.4.2 The time of the street

As noted above, Grabham suggests that temporality is a relational effect or ‘a set of techniques constituted by and within a network’, produced by the ‘hooking together’ of non-human elements.⁹⁹ In this respect, networks are capable of generating – or following Grabham, ‘brewing’ – the temporalities needed to sustain them. To that end, the Street helps sustain Springhill’s property regime by introducing what Latour describes as a ‘built-in inertia’ to the network.¹⁰⁰ Latour suggests that non-humans introduce inertia to networks by shifting the task of sustaining the network away from human actors. As noted previously, Latour relies on the example of a hinge closing a door versus the employment of a porter to undertake the task. Latour argues that when a network is stabilised by non-human actors – such as a hinge – rather than the concerted work of people – such as a porter – the network ‘evokes the past perfect’, in that behaviour can be referenced to the point at which the network was stabilised by the introduction of non-humans. Thus, the temporality of the network is *modified* in that the human actors’ attention shifts away from producing the effect to simply helping to maintain it.¹⁰¹ In contrast, when a network is formed and sustained only by concerted human action, there is a failure ‘to modify the time schedule’ in that the network struggles to overcome the present given the precarious dependence on human action.¹⁰² Non-humans therefore introduce significant temporal effects to actor-networks, resulting in a ‘temporal shift’ and the ‘folding’ of time in that the network becomes imbued with ‘inertia’ – a capacity to regulate (and make predictable) future behaviours and relationships. Thus, as Murdoch notes (quoting Latour), ‘objects bring other times and other spaces into the here and now: “we hourly encounter hundreds,

⁹⁹ Grabham (n 4) 26, 34.

¹⁰⁰ Johnson (n 6) 301.

¹⁰¹ Johnson (n 6) 301.

¹⁰² Johnson (n 6) 300–301.

even thousands, of absent makers who are remote in time and space yet simultaneously active and present”¹⁰³.

The Street introduces this form of inertia to Springhill’s property dynamics. The individuals who established Springhill faced a dilemma as to how to transform a desire to live differently into an enduring form of property relationality. Delegating the generation and support of relationships between inhabitants to spatial forms was a conscious decision: ‘we also used this thing [a book] called *A Pattern Language* by Chris Alexander which is all about creating nodes and eating places and *encouraging neighbourliness through design*.¹⁰⁴ The Street therefore helps translate inhabitants’ desire to live differently into a stable property form by establishing an environment where inhabitants can fall into behavioural repetitions and habits. The characteristics of the Street – the lack of alternative routes, the publicity and visibility of its users and lack of other objects – all help to ‘fold’ time by securing a continuity to the behaviours and understandings the Street generates. This inertia can also be characterised as a form of path dependency: the choices made earlier (by those who designed the site) affects the choices that are available to users later in time.¹⁰⁵ This creates a mutually-reinforcing cycle: as the habits and repetitions of inhabitants caused by earlier choices become more ingrained, the ‘path’ (that is, the possible relationships, habits and uses) also becomes more ingrained, sedimented or ‘locked in’ so that it is the only (or at least the dominant) option available to future users.¹⁰⁶

Accordingly, the spatiality and design of the Street creates an environment in which users comfortably – if not unconsciously – fall into habits and repetitions which, as they are repeated, reinforce the potency of the path. As such, rather than the linear

¹⁰³ Murdoch (n 94) 360; quoting Bruno Latour, ‘On Technical Mediation-Philosophy, Sociology, Genealogy’ (1994) 3 *Common Knowledge* 29, 40.

¹⁰⁴ Interview 3.

¹⁰⁵ Liebowitz and Margolis (n 7) 210.

¹⁰⁶ Liebowitz and Margolis (n 7).

backdrop to property, temporality and endurance are contingent outcomes of network formation, and in our analyses of property attention should be paid to how endurance is achieved through the agency of non-humans.

7.5 The (in)capacities of objects: the Common House

In this section I turn to consider a further actor in the endurance of Springhill's property relationality: the Common House. My analysis focuses on the extent to which the Common House is an object (and space) which supports the endurance of Springhill's property relationality, and how the Common House fails to conform with the expectations of its designers.

As noted above, the Common House sits at the centre of Springhill. It is a space for the collective use of the site's residents. The building consists of three floors. The ground floor – which opens on to the Street – contains a workshop and laundry. The second floor consists of a large living-room like area, containing soft furniture and audio-visual devices. The third floor is a kitchen and dining area. This is where the residents' shared meals are prepared and eaten. As noted above, the site is a sharp slope, and the Common House acts as an interface between the Street and the upper level, with the ground floor opening to the Street, and the top floor opening to the upper level. Akin to the Street, the Common House is the outcome of a significant work of prior engineering and is, arguably, where the desire to 'live collectively' is most visible to outsiders. I begin by considering how the residents who created Springhill saw the role of the Common House in generating and sustaining property, and, following Akrich, consider whether it performs its role according to the 'script' attributed to it.¹⁰⁷

¹⁰⁷ Madeleine Akrich, 'The De-Description of Technical Objects' in Wiebe E Bijker and John Law (eds), *Shaping Technology/Buiding Society* (The MIT Press 1992).

Akrich argues that objects participate in the construction and endurance of networks through bringing other actors together.¹⁰⁸ As Law and Mol also maintain, materiality and sociality are co-constituting: 'when we look at materials, we are witnessing the production of the social'.¹⁰⁹ Moreover, Akrich argues that many objects are imbued with a 'script'.¹¹⁰ A script, Akrich suggests, refers to the expectations of designers as to how an object should work in its interactions with actors, and how these expectations are then 'inscribed' into the object.¹¹¹ As such, an object's script attempts to 'define a framework of action together with the actors and the space in which they are supposed to act'.¹¹² Moreover, Akrich argues that in order to constitute relationships between actors in accordance with its script, objects 'must establish systems of causality that draw on mechanisms for the abstraction and simplification of causal pathways', which, if successful, may become 'naturalized', and efface 'any possibility that it could have been otherwise'.¹¹³ In this respect, the 'scripting' of objects is part and parcel of the production of inertia and path dependency described above, in that scripted objects help shape networks so as to carve out actors' behaviours and uses. However, as many ANT works have shown, this is not a simple process through which human will is instrumentalised in things: while particular scripts can be attributed to particular objects, such objects are able to deviate, exceed, or simply fail to follow a purported script.¹¹⁴ The effect of deviation is potentially multiple: the intended relation fails, or it mutates, producing something novel and unexpected. As Cloatre notes, in the case of the latter, this is better described as a discrepancy rather than a failure. In deviating from its

¹⁰⁸ Akrich (n 107) 205–206.

¹⁰⁹ John Law and Annemarie Mol, 'Notes on Materiality and Sociality' (1995) 43 *The Sociological Review* 274, 274.

¹¹⁰ Akrich (n 107).

¹¹¹ Akrich (n 107) 208.

¹¹² Akrich (n 107) 208.

¹¹³ Akrich (n 107) 220, 222.

¹¹⁴ See, for example, Michel Callon, 'The Sociology of an Actor Network: The Case of the Electric Vehicle' in Michel Callon, John Law and Arie Rip (eds), *Mapping the Dynamics of Science and Technology* (Palgrave Macmillan 1981); Marianne de Laet and Annemarie Mol, 'The Zimbabwe Bush Pump: Mechanics of a Fluid Technology' (2000) 30 *Social Studies of Science* 225.

script, objects still produce relations, albeit not in accordance with the ordering or engineering behind them.¹¹⁵

There was some ambiguity among participants as to the script that should be attributed to the Common House. For those present since the creation of Springhill, it was difficult to pinpoint what they had imagined the Common House would be after having lived with it for many years. Indeed, this accords with a broader ambivalence as to the express intention of those who established Springhill, such as the ambiguous nature of the Covenant, and the uncertainty among residents as to what Springhill 'is'. Actors such as the Common House and the lease are therefore objects which form a reference point for a shared expectation of co-operation that lack a precise definition. Recalling Hunter, this affords flexibility in that these actors can be 'invoked' or relied upon at particular points to produce definitions.¹¹⁶

The majority of participants suggested that the Common House was intended to function as a form of informal space for collective, everyday use – not just for shared meals in the evening, but also for simply 'being' together. As most participants put it, it was conceptualised as an 'extension of one's living room' – a space where one does the everyday in the presence of others. In contrast to the Street, the enclosed space of the Common House creates a different set of expectations for residents, with the act of sharing space linked to the creation of encounter and the development of deeper relationships. As such, it is fair to describe the Common House's script as being orientated to the creation and naturalisation of a shared domesticity and informality through which an enduring form of communality would emerge.

However, if the Common House's script was to associate residents in an informal manner, participants suggested that the Common House deviates from this path.

¹¹⁵ Cloatre (n 5) 652.

¹¹⁶ Hunter (n 3) 153.

Participants noted that while the Common House is important in providing a space for shared meals (three times per week), meetings and other activities, it lacks the obligatory potency and capacity to format the network, and is therefore not able to constitute relations on such terms. Chiefly, residents reported that it does not engender use without concerted (human) work: 'we don't use it that much unless [an activity is] organised'.¹¹⁷ As another elaborated,

...it's not a drop in place, and I do think that's a pity, it would be a nice way of socialising...It might be because the houses probably are so big that people don't need to. But even those who live in the studios, which are small, don't tend to drift in there. The top floor, which is the kitchen, that's really been a lot of the heart of it. The middle floor has been good for things like the residents' meetings and other meetings and the choir and singing and meditation group. *It's a good social area but it's not something that people would go into just as a matter of course to sit down and pick up a book or a paper or whatever, which I think is what a lot of us had in mind.* Partly it's a very big open space there. If it had been smaller and partitioned into rooms then I think that might well have happened, but right now it is a big open space. If you go in by yourself it's a bit 'where shall I sit, why should I sit here?' so we tried putting a coffee machine in but that didn't really work either, so we've got the kettles there and we've got film projectors and all sorts of devices. Yes, people will use it for an event - somebody might say I want to show a film tonight, anybody interested? And four or five might turn up.¹¹⁸

Another explained the failure of the Common House with reference to the interface between the Common House and the surrounding houses:

... the bottom floor is a bit of a dead space, to be honest. There's a ping pong table and a pool table, but nobody ever does that really. Every now and then the teenagers do. So you've got the Street and you've got the Common House and the Street doesn't flow into the Common House, partly because there are steps, and partly because the bottom of the Common House is a dead space. The life is all in the kitchen upstairs, or in the sitting room on the middle floor, but to get to the kitchen from the Street you have to go up three flights of stairs. I've always thought we should have steps from the bottom floor down into the Street so you could walk up and pop up the steps and pop down again, which is a great shame... But my point about it being divorced from the Street, it doesn't fulfil that function of in the winter say, you're walking by: 'oh, hello George, let's have a cup of tea together' and you sit there in the armchairs in the Common House – because it's divorced from the Street. I think in the early days people thought it would get used more for reading the papers, having a cup of coffee, but it doesn't

¹¹⁷ Interview 1.

¹¹⁸ Interview 5

happen that way... *That dropping in thing doesn't work*, which I think is a disappointment.¹¹⁹

Accordingly, while the Common House was loaded with a script to bring Springhill's residents together in a recurring pattern of informal domestic use, it has not overcome an apparent resistance from inhabitants to use the space. By 'resistance' I do not mean the conscious refusal of inhabitants to use the space, but rather the inherent tendency of actors in any network to fall out of place in the absence of sufficient connection. Law suggests that for an object to constitute relationships and effects, the 'relative syntactical positions of relevant entities [must be] held constant'.¹²⁰ Law gives the example of a ship, which is a ship only to the extent that the hull, sails and masts are held together, overcoming resistance and the potential for these various elements to fall apart.¹²¹ Without the effort of ordering and connecting there would be no endurance, and the effect would dissipate – the ship is no longer a ship, sailors no longer sail. Critically, the ship's ability to constitute effects (transportation, exploration, trade), and to constitute people in particular relational arrangements (sailors, captains, colonisation), is dependent on the endurance of the ship's constitutive network of both human and non-human functions acting in their scripted manner. In contrast, the Common House, I suggest, is an example of a script failing. It lacks the ability to constitute actors in a particular relational arrangement in accordance with its designers' intentions. Any enduring effect that might be attributable to the Common House is precariously over-dependent on human will in that the Common House can only connect inhabitants if the inhabitants themselves engender that connection: e.g. through the organising of shared meals or activities. In contrast to the Street or the lease, the Common House lacks obligatory potency: it cannot move inhabitants towards particular uses and understandings. Perhaps more problematically, the

¹¹⁹ Interview 3. Emphasis added.

¹²⁰ Law (n 93) 95.

¹²¹ This example is offered by Law (n 93).

Common House's lack of potency and dependency upon human will has caused a feedback loop in which informal use is abnormal, feeding a norm that any use must be organised in advance:

You're supposed to say if you're doing something – even off the cuff – you're supposed to say on email, partly because of the booking thing, you know: 'me and my band are going to practise there this afternoon.'¹²²

While participants attributed this incapacity to the design of the building, it is also possible that the inhabitants exhibit an aversion to the blurring of public and private in the manner envisioned by the Common House's script. As noted above, participants stressed the value they place in hard distinctions between their home and the wider cohousing community. It therefore seems counterintuitive that Springhill's inhabitants seek to both preserve that distinction *and* actively subvert it by presenting the Common House as an extension of one's living room: if Springhill residents are averse to sharing their own living rooms with one another, and place great value in the ability to exclude the community, it is perhaps unsurprising that the Common House does not function as a shared, informal domestic space. Perhaps, as a participant noted in the previous chapter, the 'retraining' of one's conceptions of private and shared in a housing system which valorises owner-occupation is too big a task for a single building to achieve. This is reinforced by the similar failure or 'de-scripting' at Copper Lane. In both cases, the particular object of the Common House was not sufficiently potent to condition the network in the manner intended. It is therefore not the case that, in making property, relationships can be generated simply through translating human will into objects.

7.6 New residents and the endurance of property

The final aspect of Springhill's endurance I consider is the work undertaken to ensure that new residents become part of Springhill's network. Critics of my approach might

¹²² Interview 3.

suggest that the distinctive property relationships that characterise Springhill are sustained exclusively by human will. As elaborated throughout this thesis, I resist this claim, and instead suggest that property is the outcome of networks of heterogenous elements, which constitute individuals as subjects of property relationships. To that end, the behaviour and understandings that follow from such relationships are not the exclusive product of the individual's willingness to behave in a particular way. Rather, I suggest that the norms and behaviours of property follow from the agencies and actors within the network. However, this is not to jettison the role of human agency. I sought to understand what current Springhill residents do to ensure that new residents, for want of a better word, 'comply' with the shared property norms and understandings. Accordingly, I asked what was done to ensure that new residents respect Springhill's property dynamics:

...there's just a hope that they will because they don't have to go through anything to move in, anyone can buy a house here. But I guess there is the hope that, well, if they're going to do that... it hasn't worked for everyone. Some people have left since I've been here that didn't really, you know, it didn't really work for them, so it doesn't work for everyone.¹²³

It's very daunting when you come to live here, I did find that, because it's so many people to get to know, and even saying there are not many rules, there are sort of ways of doing things that you may not know about unless someone tells you. So there is a sort of social networky [sic] system going on that you have to get to know... I think it is daunting. So we set up a Welcome Book and a Welcome Group to make your first six months, hold your hand through it all. I think it is difficult when you first come here. Not in a bad way, just so much to know and so many people...¹²⁴

We have a welcoming group and there's a clause in the lease that their solicitors would have gone through very carefully which says that if you're living here you must abide by the principles of cohousing as expressed in that book [*A Pattern Language*], so they're having to sign up to it anyway. So far, we haven't had anybody buying in who's not done that – who's just been looking for a cheapish house...near the middle of town. I'm just wondering how long it will be before one or two houses do go that way, but so far it's not happened. So we have a welcoming group and there's a booklet that somebody's produced that lists all of the rules and the obligations and how things work, protocols and so on. So, each new person will have a welcomer

¹²³ Interview 1.

¹²⁴ Interview 3.

from the welcoming group who will greet them when they arrive and talk them through this and take any questions and help them out.¹²⁵

I suggested above that the successful 'inducting' of new residents into Springhill's network may be attributable to the leasehold covenant, considered above, which helps orientate the temporality of Springhill's network to the future. In agreeing to 'comply with the Principles of Co Housing', the lease is pointed towards future obligations. However, these participants highlighted the active and ongoing work current residents undertake to help ensure that newcomers successfully integrate to the site. This perhaps diminishes the force of my claims as to the potency of the non-human actors at play.

Furthermore, the accounts above highlight a number of paper actants at play in the inducting of new residents. Firstly, the Residents' Association has produced a standard letter that it sends to prospective purchasers and their lawyers. The letter states that parties must be familiar with the lease, and that purchasers have a meal in the Common House so as to 'understand' what life at Springhill entails. Secondly, participants stressed that the community's decisions are committed to writing, and a large file is maintained of all minutes of the Residents' Association. Thirdly, the residents have produced a 'handbook' (interchangeably described as 'Welcome Book') which details agreed processes and rules. The fluidity of residents' understandings and deployments of these terms suggests a much more flexible approach to leasehold covenants than a doctrinal legal approach might otherwise suggest. These documents, and the lease itself, can be invoked in attempts to reinforce (but also to question or modify) property norms. As one resident noted:

A lot of rules and agreement are to be found in the minutes...every so often there may be a disagreement...somebody will find the relevant minutes to

¹²⁵ Interview 5.

show what we've agreed. Usually the result is 'why did we agree that, that's crazy'.¹²⁶

Such documents and artefacts help Springhill's network gain purchase on those who become inhabitants of the site. As Freeman and Maybin suggest, documents are

intrinsic to those communicative processes in which actors inhabiting different social worlds first enter into relations with each other and then begin to recast or reconstruct themselves, their interests and their worlds. This means simply that the document connects actors and coordinates their actions.¹²⁷

These documents, combined with human actors, therefore help connect the history of the site, and the expectations that are constituted by the network, to new inhabitants. As such, they help Springhill's network re-construct new inhabitants as subjects of its property regime. Combined with the potency of the other elements considered in this chapter, Springhill's network is able to implicate those who join, ensuring the endurance of its distinct form of property.

7.7 Conclusion

In this chapter, I have unpacked the composition and endurance of property relationships at Springhill Cohousing. Utilising the ANT approach set out in Chapter 4, I explored how Springhill's distinct logic of lived property is a networked effect, given form through the heterogeneous engineering of human and non-human actors. Four dynamics were identified in the analysis of participants' accounts.

Firstly, this chapter has highlighted the fluidity of legal devices in the formation and endurance of property. Springhill's property regime is neither accurately reflected by, nor an effect of, formal legal instruments. However, participants highlighted the capacities of the lease as a distinct object that travels and enters the sustaining of

¹²⁶ Interview 5

¹²⁷ Richard Freeman and Jo Maybin, 'Documents, Practices and Policy' (2011) 7 *Evidence & Policy* 155, 165; quoted in Emilie Cloatre and Dave Cowan, 'Legalities and Materialities' in Andreas Philipopoulos-Mihalopoulos (ed), *Research Handbook in Law and Theory* (Routledge 2019) 437.

property. The leasehold covenant to 'comply with the Principles of Co Housing' removes the lease from the archive of the register and instead renders it an active mediator in Springhill's network, helping to constitute the shared understandings and norms of property that characterise the site. As such, the lease's potency stems not from its technical content, but rather the manner in which it invokes and stabilises standards and behaviours.

This presents both difficulties and opportunities for the development of alternative property practices. The analysis in this chapter suggests that attempting to construct property relationships by specifying their nature in a formal legal instrument is insufficient: Springhill indicates that property does not follow as a simple output from an instrument such as a lease. Such uncertainty may create difficulties for those attempting to establish alternative property practices, and those looking to legal tools to operate as an effective 'architecture' of property. The unpredictability of the outputs of legal instruments may therefore act as a significant disincentive to those seeking to prefigure property alternatives.

However, the uncertainty of legal tools in network construction and dynamics may also present opportunities to those wishing to construct alternative property practices – particularly in the context of English law, which, as discussed, lacks tools for the collective occupation and management of housing and other resources. The fluidity of the Springhill lease, and its ability to support the creation and endurance of norms that have no technical legal basis – and, indeed, that are not capable of recognition at law – presents an opening for the creation of lived forms of property. To that end, the analysis in this chapter suggests that law can be instrumentalised as a tool to construct property in a manner that departs from the logic of abstraction or dephysicalisation inherent to modern property law; indeed that, by a certain vagueness as to content, a practical focus on the physicality of shared, day-to-day living, is held up by the common imaginary of legal form. Recalling the discussion of Davies' work in Chapter 3, the

fluidity of law may in fact present opportunities to 'prefigure' property to alternative ends.

Secondly, space plays a critical role in the production and endurance of Springhill's network through creating temporal effects. As Law suggests, human subjects are constituted through their positions in networks.¹²⁸ The networked dynamics of space help constitute Springhill's inhabitants as subjects of its property regime. Specifically, the space of the Street obliges a particular position in Springhill's network, encouraging and formatting the encounter and interaction between human subjects. The non-human nature of this space introduces what Latour describes as an 'inertia' to the network, helping to secure the future constitution of behaviour and subjectivity on the network's terms. To that end, the Street helps generate the temporal conditions necessary to sustain Springhill's network. Time here is not something that simply unfolds as context to Springhill: the inertia introduced by the Street helps 'fold' time so as to achieve endurance. Similar to the case of mortgage-backed securities, the networked composition of property creates the temporal conditions necessary to sustain the network.

Thirdly, this chapter has highlighted that the composition and endurance of property is not simply the outcome of human will. Participants described how the Common House was constructed to give effect to their desire to live differently from the ways usually associated with conventional owner-occupation. However, this object has not resulted in the outputs the (initial) inhabitants had hoped for. The failure of the Common House to generate a form of use and sharing in the manner imagined highlights that property is more than human will. Rather, the norms and shared understanding that characterise property must be generated and sustained in stable spatiotemporal networks in order to constitute enduring relationships.

¹²⁸ Law (n 98).

Finally, human will and action played an important part in securing the endurance of Springhill's property relationality. The documents and activities they produce work in concert with the actors identified above help Springhill to produce new residents as subjects of its property regime. While the network helps secure endurance through the work of an array of non-humans, residents' activities play an important part in ensuring that new residents are enrolled into the network.

Chapter 8

Conclusion

8.1 Summary of contents

In this thesis, I argued that property scholarship remains constrained by ontological assumptions as to the primacy of human subjects. I claimed that, by centring humans in its analysis, much property scholarship fails to explore the role of non-human actors, such as objects and spaces, as well as the contingency of legal form. Despite various approaches which suggest that property is constituted in or from a network of sources and elements, I argued that property scholarship remains methodologically and conceptually constrained by an overemphasis on the primacy of the human subject. From this, four research questions were identified:

1. Can property be understood as a networked effect?
2. How are networks productive of property relationships? What does this mean in practice?
3. How do materiality, spatiality and legality interact to form networks of property?
4. How are the subjects and objects of property produced through processes of network formation?

8.2 Understanding property as a networked effect

To answer questions one and two, I developed a methodological approach based on actor-network theory ('ANT'). My approach contended that property can be analysed as a networked effect which follows from the connections and interactions of human and

non-human actors. I further claimed that my methodological approach enabled exploration of the contrasting effects – or ‘work’ – that property is capable of producing. By imputing ‘logics’ into processes of network formation, I distinguished between ‘abstract’ and ‘lived’ forms of property, which broadly reflect a distinction between abstract and lived space, theorised by Lefebvre. The methodological and theoretical framework set out in Chapters 2 and 3 formed the foundation to answer questions three and four: by analysing property as a networked effect, my approach emphasised and explored how property is an *outcome* of ‘heterogenous engineering’, in which materials, spaces and legalities interact to form property, and in doing so, create effects such as the distinction between human and non-human, and temporalization. These research questions were pursued through case study analyses of contrasting instances of property.

8.3 How do materiality, spatiality and legality interact to form networks of property?

In respect to question three, my analysis in Chapters 5, 6 and 7 revealed how property emerges from the interactions between heterogenous elements, held together in a stable arrangement. For example, in Chapter 5, I explored how standard form contracts, algorithms and calculative devices, among other actors, were productive of the RMBS as a property form. Further, in Chapter 6, I analysed how property relationality emerged from a patterned network of objects and spaces, including legal form. However, rather than the outcome of law, I analysed how Copper Lane’s network was generative of a ‘legality’ which generated flexibility as to the rules and norms governing the site: instead of a static form of governance, law took form in particular materials that could be invoked at particular times to stabilise the network, and in ways that was often at odds with the formal legal arrangement of the site. Similarly, in my analysis of Springhill Cohousing in Chapter 7, I explored how the lease is a distinct socio-legal object which formats networked relations, and was invoked to produce and stabilise behaviours which have no technical basis in the lease’s legal contents. Finally,

I explored how spatiality and temporality were bound up in the endurance of property at Springhill. I explored how the network at Springhill was generative of temporality and path-dependence, which operated in large part through the space of the site, helping to 'fold'¹ time so as to achieve endurance of this lived property practice.

8.4 How are the subjects and objects of property produced through processes of network formation?

In respect to question four, my analysis lends support to Davies' claim that the distinction between subjects and objects in property relationality is an *effect* of property's formation rather than a pre-existing ontological distinction.² In Chapter 5, for example, I analysed how the RMBS constituted humans as the objects of property, and as strategic sources of value creation. Far from the classical figure of humans as rights bearing subjects in control of the non-human, my analysis of the RMBS highlights how, through heterogenous engineering, distinctions between human and non-human can follow from the *making* of property. This claim is reinforced by my analysis in Chapter 6, which explored how the distinction of 'subject' emerged from network formation at Copper Lane. My analysis revealed how property norms – the understandings between inhabitants as to the uses and behaviours in respect of the cohousing site – took effect through the network's production of subjects, rather than acting upon subjects. Moreover, I suggested that, conversely, it did not follow that the non-human elements of Copper Lane are merely 'objects'. Rather, building on Davies, if the non-human actors 'are crucial to the meaning being created' in the network, then these objects are 'organising principles' and, therefore, subjects – or even 'a subject of subjects' in that non-humans constitute 'a central part of the interactional network'.³ Accordingly, my

¹ Jim Johnson, 'Mixing Humans and Nonhumans Together The Sociology of a Door-Closer' (1988) 35 *Social Problems* 298, 301.

² Margaret Davies, 'Material Subjects and Vital Objects — Prefiguring Property and Rights for an Entangled World' (2016) 22 *Australian Journal of Human Rights* 37, 52.

³ Davies (n 2) 46.

analysis reinforces Davies' suggestion that property relationality, subjects, and objects are not prior to connections between human and non-human worlds.⁴ Finally, in Chapter 7, I explored how the network at Springhill produces subjects of property, characterised by belonging and interaction through the fabrication of scale and a 'community' that exists 'above' subjects.

8.5 Contribution to property scholarship

I suggest that this research contributes to property theory in the following ways.

Firstly, as noted above, my research reveals how property relationality does not merely mirror 'natural' distinctions between subject and object but in fact manufactures such distinctions. As explored in Chapter 3, the subject-object distinction plays a foundational role in conventional property thinking. However, my research reveals how the distinction between subjects and objects inherent to property are outcomes of network formation. This thesis therefore helps property theory move away from the fabricated *a priori* distinction between subjects and objects, and instead suggests that the subjects and objects of property are effects of network formation.

Secondly, my analysis highlights the important role that materiality plays in the formation of property. Davies suggests property is formed through the connections 'between the human and non-human world',⁵ and my analysis reinforces this conclusion by highlighting how non-human actors played a vital role in network formation and therefore in constituting property. In Chapter 5, for example, I explore how the materiality of mortgage contracts created connections between borrowers and lenders. These connections were subsequently translated and displaced in the formation of abstract property relationality. Further, in Chapter 7, I analysed how space at Springhill Cohousing is a distinct and potent actor in the network's endurance.

⁴ Davies (n 2) 53.

⁵ Davies (n 2) 53.

Space, I suggested, helps achieve endurance by obliging particular uses and behaviours, which operates to anchor shared property understandings among residents.

Thirdly, my analysis highlighted the indeterminacy of legal form in producing property. Rather than acting as a 'source' of property relationality, my analysis highlighted that law's role in constituting property is more attributable to its material manifestations which, in turn, helped constitute distinct forms of legality and normativity. In Chapter 5, my approach suggested that the role of legal form in the constitution of the RMBS was not as a constitutive 'foundation' of property. Rather, its efficacy was located in its materiality, and as an object that engendered connection between actors through the performances it provoked. In Chapter 6, I explored how the constitution of property at Copper Lane was in part supported by the formation of a legality in which legal meanings are flexible and open to re-making, supported by objects such as minutes and other documents. The creation of legality, I suggested, is part and parcel of the process of network formation which constitutes Copper Lane's property relationality. Thus, rather than the 'source' of property, my analysis highlighted the contingencies, forms and objects through which law acts in the making of property. Similarly, in Chapter 7, I revealed how the lease at Springhill Cohousing was a socio-legal object which supported the creation and endurance of norms which had no basis in the legal content of the lease. Such effects, I suggested, stemmed from the lease's agency as a material commitment device which could be invoked and deployed in particular arrangements.

Fourthly, my approach refines contemporary scholarship's approach to the role of space in the formation of property. In Chapter 3, I explored how Cooper argues that

space is central to property in that property 'encodes' space with norms.⁶ Further, Keenan argues that space 'holds up' or supports property relationships.⁷ I argued that these accounts remain clouded with conceptual and methodological ambiguities. In contrast, I claim that my approach contributes to our understanding of how space forms and supports property by revealing how space becomes 'loaded' with particular agencies and capacities, thus shaping and affecting the uses and users caught up in it. Finally, my approach highlights how, through network formation, the temporality of property is also generated. In Chapter 2, I argued that property theory is constrained by an understanding of time as a universal linear backdrop against which property can be understood, and I was critical of the dynamics approach to property advanced by Blandy, Bright and Nield for making this assumption. In contrast, my thesis contributes to property scholarship by revealing that time is not a universal backdrop to property. Rather, my research suggests that, within the processes of network formation which constitute property, such processes also generate the temporal conditions necessary for the creation of that relationship. The RMBS, for instance, 'folded' time so as to access future value today. In contrast, in Chapter 7, I explored how the dynamics of Springhill's property network created an 'inertia' which helped secure the endurance of property. Thus, rather than the context of property, the *creation* of time is bound up in the creation of property.

In the remainder of this chapter, I outline the limitations of this thesis and my methodological approach, and questions for future research.

⁶ Davina Cooper, 'Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property' (2007) 32 *Law and Social Inquiry* 625.

⁷ Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging* (Routledge 2015).

8.6 Limitations of thesis

In this section, I build on the discussion in Chapter 2 and reflect upon the methodological limitations to this thesis.

The first limitation I discuss concerns the selection of case studies and the extent of my claims in respect of property's ontology. This thesis relies upon two differing examples of property: cohousing, on the one hand, and the RMBS, on the other. While I suggest that these offer useful case studies through which to explore the relational ontology of property, and analysis of the contrasting effects that property is able to engender, the limited number and type of case studies necessarily limits the strength of my claims. In particular, my claims in respect of property reflect ANT's contention that all of social life is reducible to networks. As such, I suggest that the claims in this thesis as to the ontology of property can be extended in respect to any property formation or practice. However, as my research is limited to instances of property that involve housing and home, my claim as to the universality of property's ontology as a networked effect perhaps loses force. Given my focus on home in the selection of case studies, some may remain unconvinced that my claims speak to the ontology of other instances or examples of property. As such, further study of differing instances of property through my methodological lens is needed to strengthen this argument.

A second limitation concerns my methods of data collection, sampling strategy and sample size. In respect of Chapter 5 and the exploration of the RMBS, my analysis is built upon secondary data. While the use of ANT is not necessarily conditional upon the participation of human participants, the use of secondary data introduces limitations to my research. As noted in Chapter 2, the questions underpinning the secondary data I relied upon differ from my own. Accordingly, the exclusive reliance on secondary data in Chapter 5 creates a risk that my analysis may have omitted consideration of an actor (or class of actor that) would only have been discoverable from a human informant. However, I was able to guard against this to some extent by the availability of

published research and data available in respect of the RMBS, enabling me to explore a wider range of issues than human participants may have been able to speak to.

In respect to Chapters 6 and 7, my claims are potentially limited by both sampling method and sample size. Participants in both instances were self-selecting. As noted in Chapter 2, a risk of self-selection bias is therefore present. In particular, those that volunteered may have been strong advocates of cohousing, which may have coloured their responses so as to paint a particularly favourable picture of their respective cases. Relatedly, the small sample size also creates a risk that my data is not representative of the experience of the majority of residents in both sites. However, as noted in Chapter 2, my research design sought participants from cohousing sites as a means through which to understand how they became implicated in the production of property relationships – not to gain a representative account of how cohousing works. In any event, my findings as to the lived experience of cohousing are not dissimilar from other empirical studies of cohousing life.⁸ These risks could have been reduced in this thesis by the use of an alternative, more selective sampling strategy, combined with a greater number of participants.

A third limitation exists in respect to the research methods deployed in Chapters 6 and 7. Each participant was interviewed once, thus offering a limited snapshot of their experience, and this may have produced a static image of property. On reflection, my methods of data collection could have aimed to collect data over an extended period of time. For example, this could have taken the form of follow-up interviews. Alternatively, participants could have been asked to keep a diary or some other record of their ongoing experience of the property regime at both sites, or asked to complete questionnaires on a regular basis. In respect to my analysis of property's endurance,

⁸ e.g. Sarah Blandy, 'Collective Property: Owning and Sharing Residential Space' in Nicholas Hopkins (ed), *Modern Studies in Property Law - Volume 7* (Hart 2013); Kath Scanlon and Melissa Fernández Arrigoitia, 'Development of New Cohousing: Lessons from a London Scheme for the over-50s' (2015) 8 *Urban Research & Practice* 106.

this approach would have offered a richer account of how property relationships play out over time, and militated against any partiality that may have been present on a given day, such as mood or other aspects of daily life which may have coloured participants' accounts on the days the interviews occurred.

A fourth limitation relates to the well-known criticisms made of ANT. As outlined previously, Bhandar suggests that ANT prevents engagement with the politics of property.⁹ Specifically, it is suggested that the 'flat' ontology of ANT – its insistence that all phenomena are the effects of networks – eschews the analysis of contexts such as capitalism, culture, class, gender or race. This has led to the criticism that ANT is devoid of critique, and the charge that ANT's 'description of the world as a series of evolving networks' amounts to 'affirmative stance towards the current situation'.¹⁰ For Simon Cooper, this amounts to a rejection of critique in that, for Cooper, critique works through 'reference to an outside' and 'to larger structures'.¹¹ While I sought to respond to this criticism by structuring my analysis around 'logics' of property, therefore explicitly incorporating questions of power and the politics of property to my approach, it remains possible that my analysis is weakened by omitting consideration of forces and structures that may exist outside of a network. For instance, in Chapter 5, no consideration was given to a broader structure and forces of financialised capitalism in the formation of the RMBS. This represents a limitation in ANT's approach to the broader culture of financialised capitalism, and the political consensus that facilitates the formation of novel property arrangements around an ever-increasing class of 'things'. As Roberts contends,

ANT researchers lose a critical analytical edge in their theoretical armoury in how they might account for the way in which organisational and economic

⁹ Brenna Bhandar, 'Critical Legal Studies and the Politics of Property' (2014) 3 Property Law Review 186.

¹⁰ Simon Cooper, 'Regulating Hybrid Monsters? The Limits of Latour and Actor Network Theory Simon' (2008) 29/30 Arena Journal 305, 313.

¹¹ Cooper (n 10) 311.

'actor-networks' are refractions of, and fold into, abstract and immanent capitalist processes. In other words, the abstract contradictory form of capital, particularly its inherent tendency towards crisis and exploitation of labour power, is not separate from concrete-contingent practices as ANT believes...¹²

Further, ANT's insistence on abandoning 'context' and outside processes potentially limits my analysis in Chapters 6 and 7. By 'following the actors' and remaining on a 'flat' ontological terrain, my analysis tends to omit detailed consideration of residents' class in the formation and endurance of both cohousing case studies. ANT's world view contends that, as an abstract force or structure, actor-networks cannot be explained by reference to categories such as class. In respect to my analysis, there is the obvious point that cohousing, and potentially many other alternative property forms, require participants with the money (or the ability to borrow) and the will to instigate development.¹³ A more difficult question is whether the success, failure, or dynamics of cohousing as an instance of property is bound up in residents' class. In Chapter 6, I suggested that the homogeneity of the group of prospective residents' was a distinct actor in the formation of the project, and that their professional occupations better placed them to negotiate complex decisions with the aid of specialised help. However, because of its hostility to concepts such as class, ANT is not well equipped to deal with how socio-economic status and political outlook affects the formation of both instances of property. To that end, my analysis was not well equipped to deal specifically with how class affected the case studies in Chapters 6 and 7. To that end, there is some force in Bhandar's suggestion that, in ANT's attempt to disrupt anthropocentrism and rejection of concepts such as class or social capital, 'the proverbial baby has been thrown out with the bathwater'.¹⁴

¹² John Michael Roberts, 'Poststructuralism against Poststructuralism: Actor-Network Theory, Organizations and Economic Markets' (2012) 15 *European Journal of Social Theory* 35.

¹³ And cohousing has been critiqued for this dynamic. See Chapter 2 and Francesco Chiodelli and Valeria Baglione, 'Living Together Privately: For a Cautious Reading of Cohousing' (2014) 7 *Urban Research and Practice* 20.

¹⁴ Bhandar (n 9) 193.

A fifth limitation to consider is the potential that my analysis under appreciated the role of human actors. I noted in Chapter 2 that ANT has been criticised for offering a deterministic account of networks. I outlined how critics suggest that, by attributing agency to non-humans, ANT embraces the essentialism it purports to reject. For Whittle and Spicer, ANT suggests that the power of well-engineered networks is total and determinate.¹⁵ Similarly, for Baron and Gomez, ANT's emphasis on the effects of association 'suggests some lack of attention to issues of the history, memory and trajectory [the entities assembled], and the effect that the entities' histories, trajectories and memories could have in their actions and associations.'¹⁶ Accordingly, it could be claimed that the emphasis I have placed on the capacities of non-humans in the formation of property has either obscured the important, foundational and enduring role of humans, or that my analysis suggests that networks operate to determine human behaviour. In respect to abstract property, for example, greater attention could have been paid to the foundational role of human subjects in the design of RMBSs, and their experience with other financial property forms. Similarly, in Chapters 6 and 7, some participants either had experience of alternative property forms, or had come to their respective sites wanting to live differently. It is therefore possible that the emphasis on non-humans has obscured the importance of the histories and experiences of these actors in producing and sustaining property. Accordingly, despite ANT's suggestion that all relational effects lie in heterogenous networks of elements, the role of human actors' will should perhaps not be underestimated.

Finally, my approach may be criticised for its failure to offer concrete suggestions for policy or law reform. My focus has been on the relational ontology of property, and exploring how property is a networked effect which does not merely flow from legal

¹⁵ Andrea Whittle and André Spicer, 'Is Actor Network Theory Critique?' (2008) 29 *Organization Studies* 611, 617.

¹⁶ Luis Fernando Baron and Ricardo Gomez, 'The Associations between Technologies and Societies: The Utility of Actor-Network Theory' (2016) 21 *Science, Technology and Society* 129, 141.

form. The aim of my approach has not been to identify or produce suggestions for the reform of property law, and some may take issue with that. However, Davies suggests that such a criticism may be misguided in that it is questionable whether property can be modified simply by the deployment of new policies or legal tools:

There is not going to be a theoretical solution or even a model that can quickly remediate the effects of the expansionist, colonial, liberal project that has for centuries set humans against the Earth and – ultimately – against each other in isolationist, accumulative and competitive self-constructions.¹⁷

While the outcome of this research is not a model or policy that can be proffered for implementation, I consider that it has identified a number of discrete points relating to how property can be better understood and changed. I turn to these now.

8.7 Future research

In this section, I discuss the questions and issues for future research provoked by this thesis.

8.7.1 Continued exploration of property's relational composition

Firstly, I suggest that there remains a need to deploy further and alternative methodological tools to explore the relational ontology of property and challenge the assumptions of property scholarship. While this thesis developed an approach to exploring property's ontology based on ANT, as discussed in this chapter and in Chapter 2, ANT is not without limitations. Accordingly, there is a need for future research to deploy other methodological tools which, recalling Davies, challenge conventional assumptions as to how property operates in practice. In particular, there remains significant scope to explore how property is formed by relationships between the human and non-human spheres. This research sought to achieve this by exploring property as a networked effect, and suggested that non-human entities act in the

¹⁷ Davies (n 2) 54.

formation of such networks. However, other approaches to the role of non-humans in property's dynamics could be deployed, such as Bennet's account of the 'vitality' of objects, which suggests that agency runs through non-human 'things', therefore enabling them to participate in the production of social life and subjectivity.¹⁸ Accordingly, the deployment of other conceptual frameworks to apprehend how property relationality is constituted, and the role of non-humans in such processes, can help realise Davies call for a 'reorientation' away from the human subject and the figure of the 'self-owning individual' towards 'an idea of property and an idea of the human subject that is never prior to those relationships.'¹⁹ Davies suggests that this would enable a form of property which is 'responsive to place and context, and subject to both collective human need and the interests of the environment, rather than being a universal form applied unthinkingly in very different contexts'.²⁰

8.7.2 The role of law in property's formation and dynamics

The analysis in this research has provoked a series of questions as to the role of law in the nature and dynamics of property as a relational phenomenon, and the specific role of law in the context of alternative property practices. In all three of my case studies, property did not follow as a simple 'output' of legal form. Rather, 'legal' effects were generated through the enrolment and translation of particular actors. For instance, in Chapter 5, I noted how the RMBS abstracts the home into an immaterial figure *not* through the legal features of the mortgage contract or legal charge but, instead, abstract property was created through the production of a shared, universalising understanding of the home as an immaterial figure of risk, achieved in large part through the materials of credit rating. Similarly, in Chapter 6, I noted how the composition of lived property in Copper Lane was not the outcome of legal form.

¹⁸ Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Duke University Press 2010).

¹⁹ Davies (n 2) 53.

²⁰ Davies (n 2) 53.

Rather, legal form was important insofar as it entered into the construction of a legality, made through minutes and the elements of the company form. Further, in Chapter 7, I explored how the outputs of the lease at Springhill differed from the lease's technical, legal content. The lease travelled to underpin the formation of rules and norms which had no basis in the lease itself. In this respect, the lease was an object that could be invoked to produce distinct subjects of property. This suggests a practice of legal meaning which is fluid and provisional rather than deterministic, and there remains significant scope to explore the uncertain and contingent effects legal actors have in the making of property.

A further, and related, point as to the provisionality of legal form is the role of law in respect to the development or 'prefiguring' of instances of lived property. In my analysis, I argued that property does not follow from legal form. If legal effect is not a predictable or coherent outcome of legal actors, are property practices such as cohousing in need of legal recognition? Clarke suggests that the lack of legal frameworks undermines the development of property practices based on collectivity and mutuality.²¹ Similarly, Blandy contends that instances of property such as cohousing require legal recognition.²²

However, for lived or collective property, my findings suggest that the creation of a bespoke legal form would not necessarily have guaranteed the particular form of property relationality participants desired. Rather, I argued that property followed as an *outcome* of network formation – not exclusively from the use of legal tools. If legal form is indeterminate, should an emphasis be placed on legal recognition as a principal barrier to the development of alternative property practices? Further research is required to consider the importance of law in the underpinning of alternative property

²¹ Alison Clarke, 'Property Law: Re-Establishing Diversity' (1997) 50 *Current Legal Problems* 119.

²² Blandy (n 8).

forms. However, it is clear from my findings that the use of conventional tools introduced risks and precarity to the lived property forms under investigation. Accordingly, whether or not bespoke recognition is necessary, it is at least clear from my findings that some distinct reforms may be necessary to assist the development of alternative property forms.

Firstly, future research should explore the corporate form collective property practices might take. I suggested that the manufacturing of scale is inherent to the making of lived property in that it fabricates a distinction between part and whole, and that the company form was used as a means of achieving this. In Chapters 6 and 7, I explored how participants relied upon the company form, and noted the important stabilising effect this device had on both networks. However, Blandy suggests that the company form imposes an onerous structure that fails to reflect 'the true relationships between residents'.²³ This becomes apparent when considering how the company form connects a network to the formalities and strictures of company law. A failure to file an annual confirmation statement, for instance, would result in both the company and its directors committing a criminal offence, and the company may be struck off by Companies House.²⁴ This would dissolve the cohousing structure: the freehold titles to the common parts and individual homes would automatically revert to the Crown.²⁵ As such, the nature and form of corporate existence for lived property forms may require change. In the context of commonhold, the Law Commission was recently presented with the opportunity to address the corporate existence that commonhold associations should take, which might have addressed this concern for those considering using that structure. However, it was not persuaded by suggestions to propose the creation of a new, bespoke form of corporate body to underpin commonholds in order to remove

²³ Blandy (n 8) 171.

²⁴ Companies Act 2006, s 853L.

²⁵ Companies Act 2006, s 1012.

them from the formalities and strictures of company law.²⁶ It is unclear to what extent the lack of a suitable corporate form inhibits novel property formations, and there is accordingly scope for future research to explore how new corporate forms might better support the creation of part-whole dynamics in lived property practices.

Secondly, participants in Chapters 6 and 7 described how both cohousing sites relied upon conventional legal means – such as the company form, but also leases and covenants – to achieve alternative ends. However, reliance on these tools can result in unforeseen and potentially unwanted outcomes. Further examples present in landlord and tenant law may be used to challenge the decisions of the whole: for example, the group may decide to raise funds to finance a particular project, but an individual owner may subsequently challenge that expenditure when it is collected in the form of a service charge. Leasehold enfranchisement may also be relied upon by leaseholders to acquire the freehold of their home, potentially removing their home from the cohousing structure. Accordingly, the use of conventional legal tools to produce and stabilise alternative property practices are precarious because of their connections to the powers and duties they introduce. This suggests that legal development to support the development of alternative property forms must sever the connections to conventional legal networks to prevent the dissolution of alternative property networks. I have outlined some of the obvious rights and duties that should be disconnected from alternative property practices, however further research can fully identify the extent of the change needed.

8.7.3 Trajectories of lived property

The analysis of lived property practices in this research rebuts claims that occupiers either do not want to be involved in the collective management and governance of their

²⁶ Law Commission, 'Reinvigorating Commonhold: The Alternative to Leasehold Ownership' (2018) Consultation Paper No 241 paras 7.20-7.23.

homes, or lack the ability to do so properly. Such claims are often made to resist the development of alternative property forms. Leasehold has been the legal tool of choice to facilitate the ownership of interdependent units within a single development (largely because of English law's historic inability to enforce positive obligations against successors in title of freehold estates). This difficulty was potentially remedied in 2002 by the introduction of commonhold – a form of freehold ownership which enables positive obligations to bind purchasers.²⁷

However, as the Law Commission notes, developers and landlords have resisted calls to both convert existing homes to commonhold and develop new homes as commonhold on two fronts. Firstly, there is an assumption that inhabitants have no interest in managing their homes as they 'are ultimately apathetic about how their buildings or estates are run'.²⁸ Secondly, landlords and developers present themselves as necessary to the safe management of multi-occupied housing:

Institutional landlords are said to act as custodians who take a long-term view of the investments needed in a building or estate. Such landlords are also said to have superior expertise in overseeing insurance, maintenance, health and safety, fire risks, planning obligations, building regulations and anti-social behaviour.²⁹

As the Law Commission notes, these suggestions are unconvincing: why would the occupier of a leasehold property necessarily have less interest in the management of their home than a freeholder?³⁰ The findings in this thesis in respect of lived property support that argument by revealing a very different picture of property to that suggested by landlords and developers: inhabitants were highly invested in the management and control of their homes. This suggests that the lack of collective property practices is not down to an apathy from prospective occupiers, nor the effectiveness of 'professional

²⁷ Commonhold and Leasehold Reform Act 2002

²⁸ Law Commission, 'Reinvigorating Commonhold: The Alternative to Leasehold Ownership' (2020) HC 586 Law Com No 394, para 1.42.

²⁹ Law Commission (n 28) 1.39. Footnotes omitted.

³⁰ Law Commission (n 28) 1.40.

landlords' in the provision and management of multi-owned property. However, further research is needed to explore the extent to which individuals wish to move away from models of conventional ownership, and towards alternatives relationships of self-governance and mutuality. It is unclear from my research whether residents of cohousing sites are unique in wanting to realise the latter, or whether they represent a broader latent desire to live in a more collective fashion.

8.7.4 Trajectories of abstract property

Finally, I suggest that there is significant scope to develop my claim that financialisation is a property phenomenon and to further explore the property devices formed to achieve financial expropriation. In Chapter 5, I argued financialisation should be understood as a process through which property relationships are constructed which engender abstraction. These property forms enable a heterogenous range of things, places and activities to be constituted as the objects of property and rendered mobile to move through financial markets. Such an approach to finance, I suggested, enables property scholars to respond to Fields' call for greater exploration of how finance itself is constituted, and analysis of 'the concerted effort, supporting infrastructures, and practices that allow financializing projects to come to fruition...'.³¹ There is, however, significant scope to develop methodological tools beyond ANT to unpack how finance, as a form of property, is constituted, and explore the effects such devices engender. Moreover, it is clear that financial property forms are being developed around an increasing range of subjects and objects in respect to housing, such as build-to-rent developments (noted in Chapter 2), as well as social housing.³² Understanding the

³¹ Desiree Fields, 'Constructing a New Asset Class: Property-Led Financial Accumulation after the Crisis' (2018) 94 *Economic Geography* 118, 119.

³² E.g. Manuel B Aalbers, Jannes Van Loon and Rodrigo Fernandez, 'The Financialization of a Social Housing Provider' (2017) 41 *International Journal of Urban and Regional Research* 572; Michael Byrne and Michelle Norris, 'Financial Circuits: Cyclicity, Leakiness and Social Housing Finance' (2017) *Financial Geography Working Paper #5*; Richard Goulding, 'Transforming

means through which abstract property forms are realised better places us to understand the centrality of property in formatting social life.

Social Housing into an Asset Class: The Financialisation of English Housing Associations under Neoliberalism and Austerity Urbanism' (The University of Sheffield 2018).

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