2. The anthropology of property

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1. INTRODUCTION

From an anthropological perspective, property refers to the many ways in which rights and obligations, privileges and restrictions govern the dealings of humans with regard to resources and objects of value. The value of objects is qualified according to socio-cultural perspectives. In that sense, property is socially conditioned in all societies – its value may remain constant, increase or decrease depending on the social relations inherent in it. Property can also generate more property. What appears desirable to be held as property in one society may appear without value in another. Moreover, humans may regard material and immaterial property as cognitively and intellectually connected with its owner or as related to an individual personality. The political status of an individual, full rights of citizenry, or an individual's legal capacity may depend on property. Moreover, as individual valorization can only take place in a societal context, i.e., with respect to others, anthropologists look at property as constitutive of personhood. In addition, symbolic aspects or ascriptions of specific qualities (e.g., spiritual characteristics) may endow items with meaning that make them desirable as property. Thus the concept embodies and brings together materiality, technology and sets of knowledge – what we might call the more purely economic factors – with intellectual, spiritual, symbolic and ideological dimensions (Hann, 1998; Moore, 2005; von Benda-Beckmann et al., 2006). Property appears as a human universal and involves more than the relationship between people and valuables (Hann, 1998). It is about relationships among people relative to goods and valuables.

The first observation anthropologists make about property is its relative character (Hann, 2005). Different degrees of control and exploitation over property items come into play. The concept of property has a specific history and role in the intellectual tradition of industrialized societies, a tradition that reflects the projects of modernity and capitalism. Anthropologists have, from a comparative point of view, often argued that the prominence – some might even call it an obsession – with the exclusivity of (individual) private property is not a central aspect of the understanding of property in most societies or cultures. In many societies around the globe, notions of property, possession and ownership may more or less explicitly include notions of usufruct, shared access and many other legitimate forms of use of goods and resources that do not imply exclusive, private ownership. Property appears thus as a relative term and is not easily translatable. What is considered property is subject to constant change and translation between societies and cultures, depending on political, legal and other developments. Nowadays the significance and value of property may depend on its connection with knowledge, the intellectual capacities of owners to make specific use of that property, and various further qualifications. Concepts such as entitlement,

eligibility, membership and responsibility may accentuate the nature of property, provide access to it or even constitute it. From an anthropological perspective, property is a social, economic and legal institution. In this broad view, property rights are considered a human universal.

This chapter mainly focuses on the research on property in social anthropology, paying particular attention to the anthropology of law and its repercussions in legal studies. Other domains such as economic and ecological anthropology are not neglected, but are brought into the discussion only where necessary to highlight their contributions to the debate on the normative and legal character of property. As an overview of the history, development and most recent trends in the anthropological research on property regimes, this chapter makes no particular argument except that the anthropology of property is inextricably linked to property research in other disciplines, bringing its specific analytical tools, a methodology that focuses on gathering empirical evidence and a social science theory component. Since this *Handbook* already includes separate chapters on various natural resources (Chapters 12 and 20), the commons (Chapters 10 and 11), land grabbing (Chapter 13), indigenous property rights (Chapters 18 and 19) and cultural property (Chapter 17), this overview will concentrate on the specifically anthropological contributions to the property debate.

2. ANTHROPOLOGY AND PROPERTY: HISTORY OF RESEARCH

From the establishment of social anthropology as an academic discipline, the issue of property has constituted a central theoretical challenge. This was certainly true for the earlier phases of anthropology's development, when property issues led anthropologists to identify law as one of the discipline's main fields of research. The foundational phase of the discipline in the nineteenth century was shaped by the then dominant paradigm of cultural evolutionism. At that time, social anthropology was expected to contribute to the general history of law and legal institutions, which was an integral component of a universal history of humankind. The research demands assigned to anthropology in the disciplinary division of labour led to a focus on the early stages of socio-cultural development as postulated in the evolutionary scheme prevalent at that time. According to this scheme, the different consecutive phases in the unilinear evolution of civilization were believed to be embodied as 'survivals' in extant 'primitive' societies. The search for the origins of social formations and their political and juridical organization included tracing the evolution of property regimes from a hypothetical unspecified primitive state, in which 'property' as such was presumed not to exist and all resources were characterized by an open access regime, to the property concept of the industrializing world, with its focus on exclusive individual rights (Tuori, 2015: 7). In the latter stage, according to this hypothesis, the state emerged of necessity to protect property.

This research portfolio was, not coincidentally, linked to the project of modernity, the emergence of the nation state, capitalism and the colonial endeavour. Lewis Henry Morgan (1877 [1995]) and Henry Sumner Maine (1861 [1986]), jurists who are considered pioneers of anthropology, introduced property as a legal institution in anthropology. Many anthropologists ascribe the introduction of the metaphor of the

'bundle of rights' to Maine, who first mentioned the term in his seminal work *Ancient Law* (1861 [1986]) (von Benda-Beckmann, 1995). This concept continues to be influential in the description and analysis of property and property relations not only in anthropology, but across disciplinary boundaries. The bundle metaphor emphasizes property as, ultimately, a social and political category. Morgan's ethnographic data and anthropological concepts of human institutions were taken up by Engels in his *Origins of Family, Private Property and the State* (1884 [1972]), although Engels' interpretations went beyond what can inferred from Morgan's data. In this early literature, property was considered the driving force behind social evolution and the steady progression from the earlier stages of human development, during which humans were presumed to have lived without any concept of property whatsoever, to notions of communal sharing to private ownership. This theoretical assumption has never been supported by the empirical evidence, which suggests that in any and all societies over time and space notions of property did exist. As Swygert (1927: 127) put it, 'the exact origin of property antedates any authentic data so that it becomes, in its final analysis, merely conjectural'. Property was, moreover, envisioned as a point of departure for further social development, leading to other legal institutions such as marriage and inheritance. While socialist property theory made use of anthropological data then available, as the example of Engels shows, later anthropological research on property in turn referred to Marxist concepts such as mode of production, labour and social inequality to criticize the capitalist private property model (Pels, 1998).

The colonial encounter and the experience of being confronted with notions of property that appeared totally alien to those found in the Bible and other canonical sources led to the emergence of a broader comparative perspective. Anthropologists were critical of efforts to impose European (Western) concepts onto customary law in the colonies that led to the creation of pseudo-customary property regimes. The early Anglophone literature of Morgan and Maine and others resonated not only with socialist property theory; beginning in 1878, proponents of the 'ethnological jurisprudence' in Germany published numerous articles on property relations in all parts of the world in their *Zeitschrift für vergleichende Rechtswissenschaft* (Journal of Comparative Law). In France in 1925, Marcel Mauss (1925 [1990]) published his seminal book, *Essai sur le don* ('The Gift'), in which he analysed the exchange of goods as a 'total social fact' that comprises, among others, economic, normative and religious dimensions.

Malinowski (1935), Firth (1939 [1967]) and Gluckman (1965) made essential contributions to colonial property research in British academe. Gluckman extended the bundle image. Dichotomizing industrial (Western) and non-industrial (African) societies, he reflected on the differences in the use and administration of land for the social stability of a community, the dynamics involved in rights holding, and the transference of rights within political hierarchies. Those political actors who were in a position to delegate rights, Gluckman emphasized, are still bound to the recipients by certain obligations. Gluckman's analysis of local property regimes, which asserted that all property relations were ultimately social and political relations, was taken as an argument against colonial land appropriation and was widely referenced later in the literature on post-colonial claims to restitution (see e.g. Peters, 2007). He thus challenged the assumption of the existence of ownerless goods, especially land, in

colonized societies. In his comparative approach, Gluckman made the distinction between immovable and movable property with reference to Roman law and analysed what this distinction may mean for social relations such as, for instance, property arrangements in polygynous households.

In Germany, property studies remained an integral part of the anthropological project. The German anthropological cultural history that was contemporaneous with British colonialism, dominated by Father Wilhelm Schmidt, emphasized the close connection between kinship, social organization and property (Schmidt, 1937–1942). With authors such as Schott (1987), the development took a turn towards the legal aspects of property regimes and, more recently, their plural-legal (von Benda-Beckmann, 1999; von Benda-Beckmann et al., 2006) and postsocialist/economic (Hann, 2005) dimensions. In France property research continued with Etienne Le Roy, Verdier, and the movement of Marxist French economic anthropologists, among them Godelier (Rouland, 1994). The French tradition is perhaps best represented by research conducted at the Laboratoire d'Anthropologie Juridique à Paris (LAJP). Le Roy (2007; 2011), heading the LAJP until 2007, focused his research especially on landed property and inheritance in Africa. He placed the emphasis on social relations that are connected to land, which are manifested in what he calls 'common appropriation'. He developed a 'French way' of connecting anthropological research with legal studies, engaging African scholars from a wide range of Francophone countries and beyond. Le Roy's comparative analysis of the complexity and diversity of landed property relations relates basic constituents and representations of space with changing property regimes and schemes of appropriation, legal security and legitimacy. Those schemes, taken together, come together to form the concept of *juridicité* (Le Roy, 2011), which contains aspects of the 'public' and the 'private' and widens the very scope of what is considered property law in the European or Western tradition.

Goody (1976; see also Hann, 2008) perhaps offers the most influential attempt to connect property with kin relations and rules of inheritance within an evolutionary framework. Goody postulated fundamental differences in inheritance arrangements between sub-Saharan Africa and Eurasia that are related to a variety of factors, namely how production is organized. Hann (2007) refers to the decline of property studies in anthropology in the period, roughly speaking, between the end of colonialism and the disintegration of the socialist world, during which the anthropology of law to a great extent focused on disputing processes. In the UK, especially after the interest in anthropological property studies had faded with the end of the colonial project, and in the US, property studies resurfaced with postsocialist research and especially with an interest in the new forms of property (discussed below).

Today research is less on efforts to generalize about property relations than on the different forms property takes in social settings and situations. Strathern (1999) holds that property is for anthropologists an empirical fact – that is, something they come across in ethnographic data collection – as well as an analytical concept. For her there is no difference between the anthropological concept of property and what she calls other anthropological artefacts. It is manifest in the shape of a homological relationship between analysis and description, theory and data.

3. BASIC ASSUMPTIONS AND CLASSIC TOPICS OF THE LEGAL ANTHROPOLOGY OF PROPERTY

Given the central importance of property in all aspects of human co-existence, it is no surprise that it is subjected to detailed legal regulation and that property law, including its contestation and role as an unending source of dispute, comprises a wide field. There are different degrees of detailing property law and of setting it apart from other domains of the legal order. Offences against property find expression in highly elaborated normative concepts, such as theft and the regulation of appropriation and transfer. Moreover, property's capacity to generate more property is subjected to legal regulation. From there, sovereignty over definitions of property relations is claimed by the formal legal system. Other normative orders, localized non-standard property regimes (Bell and Parchomovsky, 2013), social norms or religious normative repertoires, in contrast, do not necessarily differentiate to such an extent between, for instance, property, kin and power relations. Thus in the anthropology of law, property is a general and overarching concept that allows for more than one specific approach to the comparative analysis of property (or perhaps more accurately, the translation of concepts of property from one normative framework into a different one). The anthropology of law focuses on practice and goes far beyond juridical dogmatic definitions of property. Owning, a term describing a specific dealing with property as detailed below, is always regarded in a context of sharing and distribution (even if only over generations). Anthropologists look at the multiple functions of property and link it with kin structure and socio-political organization, with its representation in space, place and time, and with issues of identification and culture. This does not mean excluding the normative aspects of property regulation; rather it includes the normativity that property itself generates. In many societies, for instance, an individual's enjoyment of full legal capacity and his or her exercise of property rights mutually validate each other.

The strength of anthropological property research lies in its empirical component. Anthropological theorizing of property reflects the ways in which people address property in conjunction with other realms of human existence. In a narrower sense, anthropologists share many of the basic normative assumptions with scholars from other disciplines (von Benda-Beckmann, 1995; Verdery, 2004; von Benda-Beckmann et al., 2006; Hann, 2007). The concept of property implies the organization and legitimation of rights and obligations with respect to goods and resources regarded as valuable (von Benda-Beckmann et al., 2006: 2). There must be agreement on the ways property can be legitimately acquired, used and transferred. Property connotes how relations among the members of a given society are shaped with regard to valuable goods and routinized as social practice. The ways in which such social practice constitutes, creates and relates to property shape its meaning and significance and find its expression in legal regulations, the legal recognition of property relations and their institutionalization. Thus property constitutes itself as a concept or an idea, as a social practice, as a relationship connecting actors and as a legal institution. Within one and the same social environment property may mean different things in relation to these criteria mentioned. Interactions between the mentioned realms produce complexity and variation in the formal realizations of property, while all realms are subject to constant

change and translation. A schematic approach to property theory in legal anthropology can be presented as a number of steps, proceeding first from the 'property triangle' to the 'four layers', then on to the 'bundle' metaphor and its applications and the systemic character of property, that is, its contextualization. These basic elements are addressed in the next section. They allow, finally, for a critical assessment of the 'Big Four' – private, state, common and open access property regimes – which form the foundation of the standard scheme in property studies and which are met with a degree of scepticism in anthropology.

A. The 'Triangle'

The triangle scheme addresses the relationship among three elements: actors, valuables, and rights and duties (Wiber, 2015). If one looks at the dimension of regulation not through a normative lens, but rather through a descriptive one, three categorical distinctions come to the fore. The first category is that of the social units that are thought capable of holding property rights and obligations. The actors, whether individual or corporate, either dispose of a bundle of rights in and duties towards an object of value as owners, or they are under the duty to respect the rights of an owner with respect to objects of value. To the second category, put in relation, belong the goods and valuables that are considered property, and the ways such valuables may be constructed or generated. The third category contains the specific arrangements of rights and obligations actors may claim with respect to property, and qualifies the different kinds of relationships established in terms of rights and obligations. Placing the three categories in relation to one another allows one to address a great deal of variety of property in time and space and in various social settings. The meaning and significance of property may change depending on the specific configuration of these three components vis-à-vis each other. These components vary greatly in different societies and under different legal regimes, and are influenced by constant political, economic and technological development.

B. The Four Layers

The most convincing framework for analysing property and property relations differentiates four 'layers' in which property is represented (von Benda-Beckmann, 1999; Carruthers and Ariovich, 2004; Hann, 2005: 113f.; 2007: 307–309; von Benda-Beckmann et al., 2006). The basic layer is ideological and provides for the cultural or traditional positioning of property (ideology). At the level of ideology, legitimation and justifications for specific property regimes (e.g., private property) are produced. One may position, for example, Locke's 'labour theory' of property, Blackstone's 'property as exclusive dominion', and utility theory in this layer. The entirety of political and normative registers regulating what objects can be held and transferred in what way composes the second layer. It thus addresses how property is institutionalized (law and institution). This level of legal regulation and institutional frameworks includes cadastral surveys or the state registry for property rights, property codes and taxation law. At layer three property is addressed in its social dimension. It is perceived as a function of social relations, for example kin relations as they are addressed in

inheritance regulations and how such social aspects find expression in the ways property is accessed, transferred and used. Such social relationships may find material expression in marital property, corporate property or business partnerships. The fourth layer consists of practices through which the other three layers become concrete, whether it be in an affirmative way that reinforces the status quo or in a more dynamic way, leading to change in the interaction among the four layers. Significant organizational components of social practices such as production, exchange, reproduction and devolution have an impact on the other layers. Beyond practice, the extent to which change at one layer may affect other layers or initiate change remains a challenge to empirically informed theorizing. Anthropology thus looks at property at all layers of social organization and practice. What exactly property ontologically 'is' at these layers is an empirical question and can vary greatly (Wiber, 2015). The analytical work done at one layer alone may therefore not lead to an adequate unfolding and elucidation of all property characteristics.

C. The 'Bundle' Approach

From there the next step in the theoretical sequencing – the 'bundle of rights' concept – can be approached. Once the layers have been identified and analysed, the embeddedness of property law can be explored. Since Maine first introduced it, the metaphor of the bundle of rights has inspired a great deal of further research and theorizing (von Benda-Beckmann, 1995; von Benda-Beckmann et al., 2006: FN 16:32). The 'bundle' has been represented by many authors from different disciplines in many different ways (e.g. Honoré, 1961; Bromley, 1989; Schlager and Ostrom, 1992) However, it seems that, while the tool is often invoked, it is rarely used properly. This is why anthropologists insist that the bundle metaphor be taken seriously. Used in a consistent and rigorous way, it prevents over-simplifications. Different kinds of rights and obligations may be connected to one specific good. Moreover, what has been bundled in one particular property object may affect other property objects. Sets of lots of rights and/or obligations held by one property-rights bearing unit (individual or collective) may also interact with a number of different bundles (von Benda-Beckmann et al., 2006: 21). Thus the bundle tells anthropologists as much about rights between people as it does about rights over things. Different categorical and concretized property rights appear composed in bundles (von Benda-Beckmann et al., 2006: 25). As such, both theoretical categories and real property relations may produce bundles of rights, albeit of a different character. Theoretical categories altogether may compose, for instance, the 'absolute bundle', the one preferred by legal theorists, meaning that the totality of all rights put together creates the bundle that is considered the ideal type for the set-up of formal legal regulations (guaranteeing the maximal control over and use of property). Such arrangements may exist in theory as the most comprehensive conglomeration possible of rights and obligations according to a formal legal system. They do not, however, describe real property relations, which are much 'fuzzier' (Verdery, 1999) and characterized by a complex overlapping of categories that are, in theory, neatly separated, such as public and private. The 'sticks' from the bundle that different groups of right holders control determine the use they are allowed to make of a territory or other type of property object.

Rights may be completely or partially allocated to other people or legal parties. This implies that communal and individual are not mutually exclusive categories with respect to property. Among such partial rights are the rights to possess, occupy, exclude, use, exploit, extract from, transfer, enjoy the natural products of, alter, destroy, develop and transform. Today in anthropology particular attention is directed towards the protection of rights to property and the involvement of these property rights with economics, politics and power (Moore, 2005).

D. Making Use of the Bundle

So, what does the bundle help us understand in practice? A property rights bundle is considered complete because it contains all the 'sticks' (rights) that characterize a specific property. The specific number of sticks contained in any given property may vary. Authors following Honoré (1961) and Bromley (1989) consider the most complete bundle the most 'desirable'. This is where ownership enters the picture. A prominent place in the property debate is devoted to the concept of ownership. According to Hann (2007: 291; see also 2005; Strang and Busse, 2011), '[o]wnership [is] defined as the greatest possible combination of rights over a valuable object recognized in law'. It is thus more specific than property and specifies the power of disposition. In this narrower sense economists refer to ownership as the rights that allow for the generation of income from property, while the most complete power of disposition is what defines property. This may be laid down in law, but it rarely exists in the real world. Anthropologists, in contrast, are said to have 'sought to broaden the scope of recognized ownership forms beyond the lawyer's narrow understanding of property' (Riles, 2004). This statement, however, may refer to the economic effects of ownership rather than to its legal definition in relation to property.

A specific combination of sticks in a bundle may define a property category, specifying, for instance, the social criteria that entitle ownership such as ethnic identity or family membership. Another property category may specify land as an area for cultivation or as a hunting ground. Such categories may be framed as legal templates. Concrete examples of such templates may contain sticks in different compositions, however, and thus reflect that the templates are embedded in complex legal environments and institutional arrangements. For example, the category of endowment property may be a totally different sort of legal status for a foundation in the US than for a foundation set up in an Islamic state.

The bundle of one property holder, whether an individual or a number of individuals, contains sub-bundles – internally interacting sets of property rights. Actors may reflect upon the various options for combining what components of property rights to achieve what goal, for instance, to increase the value of one component. The interacting sets may also combine legitimate with non-legitimate sticks. Rights may be appropriated in practice; the legitimacy or use of sub-bundles may be the source of social conflict and challenge. Complex arrangements and strategic use appear typical of property holders such as transnational enterprises.

The accumulation of property may result in clashes over rights, meaning one stick holder intends to upgrade his or her own set of sticks at the expense of another. Bio-prospecting may serve as an example. The genetic analysis of a biological resource

creates property claims to genetic data. These claims may challenge the cultural rights of indigenous communities: their knowledge about the natural resource and how to process it paved the way for the genetic research, but the state claims ownership over the same resource. In such a case the disputing claimants may refer to different bodies of legislation.

E. Systemic Property

After having examined the triangle, the four layers and the bundle concept, property can be put in context. Separating out five principal criteria appears to be the most promising way to parse the systemic character of property. Property should be understood, first, as a component of wider configurations in which legal concepts and practices, institutional arrangements and templates of legitimacy interact. Second, concrete schemes of property prove to be integrated into larger property arrangements. Third, concrete forms of property always serve an unspecified number of purposes; they are multifunctional. A piece of land may be accessed, for instance, by different groups of right holders for different uses: one may gather fruit; others may have exclusive hunting rights; while yet a third party may hold a right of way the others do not have. Fourth, at an institutional level, property is embedded in multifaceted arrangements such as infrastructure that allow for its exploitation or use. Political, legal, economic and social institutions interact. Finally, property may be embedded in a number of distinct normative orders and legal repertoires simultaneously. It may be subject to a variety of regulations that interact, affect each other, or are in contradiction. Dynamics in one legal repertoire may affect all others, as do all processes of standard setting, whether they originate from social dynamics or technological innovations (Carruthers and Ariovich, 2004; Rigsby, 2014).

Against this theoretical background, finally, the anthropological critique of the Big Four can be addressed. These are the four types of property conventionally identified as fundamental and comprehensive, namely private, state, common and open access. Von Benda-Beckmann et al. (2006: 22) criticize these categories as inconsistent and misleading, therefore inappropriate for theorizing, because they conflate 'criteria in different combinations of sources, types of rights, types of holders and categories of objects'. In other words, the theoretical and analytical steps presented thus far should make it clear that these four property categories – open access resources, private individual ownership, common/communal property, state/public ownership – cannot adequately serve as analytical tools and empirical categories to meet the complexities that are inherent in the bundles and their embeddedness in the real world. The point is that interconnections are often overlooked in property studies for the sake of normative reduction. Private rights inhere in public resources just as public rights inhere in private property. Private property can be held by an individual, a defined group of people, a lineage, a community, an association or an enterprise. This does not yet say anything about the use of the property or the power of disposition. In the case of private property, making use of that property, in other words the owner's assertion of agency through acts such as renting, sharing or mortgaging, is often under-researched. A differentiation of property types, regimes, forms of ownership and possession according to empirical evidence was apparently perceived as a challenge to the capitalist model of

individualized private property, founded on the concentration of profits in the hands of a few combined with the devolution of costs (for security, maintenance, etc) and risks to the general public. As a result, anthropology became a suspect discipline (Wiber, 2015). On the other hand, anthropological approaches to property based on empirical data are less susceptible to justificatory projects on behalf of particular property ideologies. Thus ideological representations of property contrast with real circumstances and do not always coherently correspond to the formal legal framework or repertoires. The five-step approach to property has also proven to be useful for the analysis of emerging new forms of property.

4. THE ANTHROPOLOGY OF PROPERTY BETWEEN THE ANTHROPOLOGY OF LAW AND THE ANTHROPOLOGY OF ECONOMY

The more specific classic fields of research that are related to an anthropological property theory such as conflict, legal pluralism (von Benda-Beckmann, 2006), social structure, kinship relations and inheritance (Goody, 1962, 1976; Hann, 2008), property and gender (Goody, 1962, 1977; Hirschon, 1984; Thelen, 2003), politics and power relations, land (Le Roy, 2011) and, especially, the commons (Hirsch and Strathern, 2004; Bardhan and Ray, 2008; Rabinowitz, 2010) cannot be addressed in more detail here (some of them are dealt with in other chapters in this *Handbook*). For the sake of space, I will concentrate here on only one specific field in the economic anthropology of property: research on changes in property relations in postsocialist settings.

The anthropological study of property is always oscillating between an emphasis on the normative and an emphasis on the economic. The anthropology of law explores the social workings of law in context. It thus enquires into what property regimes do to people, what the social consequences are, and under what social conditions what legal property regimes generate what consequences. No less important are the economic factors, given that a society's economic system finds its expression in property regulations. Economic growth, in turn, at least according to one of the most influential assumptions, depends on the property security that the legal order is able to ensure. The economic axiom that the state exists to protect property has even gained momentum. Thus the economic lens on property involves the legal exclusion of others from the use of or benefit from a valuable good. However, the various perceptions of what an economically just handling of property may entail, according to the empirical data, do not necessarily appear to be in accordance with a capitalist 'economic rationality'. The debate about human variation in economic property logics was at the heart of grand theories such as capitalism and socialism from their very beginnings; in fact, that debate was never definitively settled and is still reflected in various research traditions to this day.

The research in property experienced a boom in economic anthropology following the break-up of the Soviet Union and the collapse of socialism in the early 1990s, a fact that deserves particular attention because this revitalization gave a push to property research in general and found to an extent its continuation in the exploration of new fields of property and accumulation in a neoliberal world order. Property in the socialist

world posed a challenge to international anthropological research. While this literature is certainly not free of polemics and misinterpretations, it proved very helpful for the study of discrepancies between specific property ideologies and the layer of practice (Verdery, 2003; Hann, 2005, 2007). Hann (2005) states that 'socialist' means 'the absence of private ownership of the means of production in most sectors of the economy'. Property nevertheless played a major role in socialist societies in the form of collective property, with the state as the highest organizational unit of property holding. To provide access to consumer goods, instead, was an integral part of the socialist property logic and may be seen as an incentive to improve on this type of property regime.

After the end of the socialist project in the former Soviet bloc countries, the research focus within the framework of 'postsocialism' was directed towards privatization politics – one keyword was 'decollectivization' – and its social consequences. The change in property relations took place under pressure from international capital and was accompanied by a change of political system. In the search for change from socialist to postsocialist property models and regimes, scholars, most notably anthropologists, combined economic with political analysis (see Chapter 5, Section 1).

In this context, Hann (2005) speaks of the standard liberal model in the economic theorizing of property, which challenges anthropological analysis. The underlying assumption is that 'there can be no alternative to private property as the most basic organizing principle of human economy' (Hann, 2007). Hann differentiates basically two models of dealing with property after the breakdown. One is the 'Hungarian compromise', which refers to navigating between legitimate individual claims to restitution and the economic necessity of maintaining land property in units of a productive size. The other is the Romanian model of total restitution, with all the negative consequences that approach entailed. Postsocialist property research also emphasizes the complexity and variation that existed within the socialist systems of land property regimes, leaving space for diverse forms of property relations. Research on the transition itself also revealed drawbacks of the capitalist intervention, such as the neglect of infrastructure necessary for the exploitation of property, social inequalities, the decline of productivity, and environmental damage. This had social consequences: for example, new patterns of social stratification emerged even as former socialist institutions continued as social networks. Problems with the formalization of claims, such as land registration, resulted from the lack of a legal framework, allowing customary entitlements to continue and challenging the transition process. Other important observations from the postsocialist research address the multiple and at times uneasy ways in which property forms are connected with models of production, such as the role cooperatives played in containing the negative impacts of privatization politics. A lesson from economic anthropology drawn from the dynamics in socialist and postsocialist societies is that it is *not* necessary to provide for a strict legal regulation of private property rights to achieve high rates of economic growth (Hann, 2005).

Anthropological research on property from the legal and economic angles may also be seen as paving the way for an anthropology of the state. Nowadays, beyond analysing property rights in a 'state of nature', the anthropological debate on property cannot be disconnected from the broader political frame of reference regarding property

(Smith, 2013) including concepts such as the rule of law, state sovereignty and, increasingly, institutions of global governance.

5. INTERDISCIPLINARITY AND THE CONTRIBUTION OF ANTHROPOLOGY TO THE DEBATE ON PROPERTY IN LEGAL STUDIES

There is little doubt about the high degree of interreferentiality in the study of property. Anthropology has always developed its conceptualizations and theories of property relations in dialogue with and in contradistinction to other disciplines such as economy and law, as well as religious studies, sociology and geography, to name a few. A disciplinary focus on the anthropology of law and property must therefore include the interconnections within anthropology itself, as well as with other social sciences and beyond in academia. Thus, the anthropology of property is embedded in an interdisciplinary environment with, however, varying degrees of interaction. One has to take into account these inter- and transdisciplinary particularities when attempting to provide an overview of the state of the art of property analysis in the anthropology of law.

Many authors – some of them claiming multiple disciplinary identities – have commented on the relationship between anthropology and other disciplines with regard to property, especially as regards the 'unhappy marriage' between anthropology and law (von Benda-Beckmann, 1995; Riles, 2004; von Benda-Beckmann et al., 2006; Young, 2014; Wiber, 2015). Anthropologists continue, as Strathern (1999) has put it, to work within a framework that can be characterized by a 'we and the rest' dichotomy. She criticizes the terminology of 'rights' embedded in the Western notion of property, arguing that it expresses a fundamental divisiveness between persons and objects. Thus implicitly she sees anthropological property concepts as too closely related to Western normative concepts. Riles (2004) addresses the relationship between anthropology and law from a uniquely American law perspective. She advocates 'an ethnography of legal theory' (2004: 778), and argues that the evident intermingling of legal and anthropological knowledge poses one of the pervasive methodological problems for the anthropology of law (2004: 786). She identifies different streams of interaction between legal and anthropological scholars, ranging from fruitful complementarity to purposeful misinterpretation. In other words, in the controversy about the new legal property theory, both sides refer to anthropological data: one side, in order to support a neoliberal agenda, highlights the facticity of existing property rights but downplays the concomitant social and political implications; the other side, arguing in the opposite direction, highlights the social and political implications but downplays the legal dogmatic of property law. There is in anthropology and legal studies a mutual interest in property studies conducted in the other discipline; indeed, property is a prominent marker of the disciplinary relationship between anthropology and law: 'Property is best understood as a chain of relations of means and ends of anthropological and legal knowledge, each recycling the ends of the other's knowledge into means of its own' (Riles, 2004: 787).

This ties in with the underlying problem of selective use of research findings and theoretical models to support the one or the other disciplinary perspective. Cherry

picking and inadequate comparison may enhance mutual misinterpretation (von Benda-Beckmann et al., 2006: 10–14). Generally speaking, anthropologists do not promote or try to come up with a single dominant model to understand and explain property relations, because doing so inevitably involves using concepts from Western property regimes not only as interpretative schemes, but also as *standards* for the recognition of property relations in post-colonial settings. The challenge is to overcome the divide between instrumental (normative, teleological) and epistemological (empirical, analytical, descriptive) approaches.

Young (2014), from a lawyer's point of view, acknowledges that anthropology has made a significant contribution to the analysis of property by expanding the very notion of property. In particular, he emphasizes collaboration between jurists and anthropologists in the field of 'indigenous issues', as the recognition of indigenous property rights opens up the normative universe of property beyond the narrow Western legal concept. Focusing on the regulation of indigenous land claims in Australia, New Zealand and Canada, he candidly acknowledges the problems that arise when lawyers and anthropologists work together in practice. More concretely he refers to the notion of the 'traditional owner', which was successfully introduced by anthropologists into the land right scheme that was established initially for the Northern Territory after the first acknowledgement of aboriginal title in the *Milirrpum* case (see Young, 2014: 244).[1] The Australian 'central Northern Territory scheme',[2] as Young highlights, was largely shaped by anthropological interpretations of property relations. This inscription of anthropological knowledge into normative processes, however, did not render anthropologists' encounters with the law less challenging for either side.

Drawing on Star's (2010) notion of 'boundary object', Wiber (2015) argues that property as a concept could be analysed as a 'boundary object' in academe. There is a natural gap between empirical and analytical property research in anthropology, addressing what property is on the one hand and theorizing normatively about what it ought to be on the other. While anthropologists are increasingly aware of the great variety of 'propertizable' objects and the ways they are managed, accessed and used, other disciplines, particularly legal studies, are called upon to give even more structure and normative standardization to property in order to meet the requirements of 'property management' (some might simply call it 'privatization') in a global economy. The more expansive analytical approaches in anthropology are the result of increasing empirical complexity, the 'real work that property does in actual ideologies, legal systems, social relations and social practices' (Wiber, 2015: 2).

To avoid the pitfalls of misinterpretation by false reduction of complexity, anthropologists have suggested three major points that need to be addressed in general property theory: first, analysts must be sensitive to the inherent tensions between theoretical assumptions and empirical data; second, they should scrutinize whether public and private loci for property rights can really be viewed as separate and distinct; and third, they should critically examine whether a habitual emphasis on the utilitarian

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[1] *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141 (Northern Territory Supreme Court).
[2] *Aboriginal Land Rights (Northern Territory) Act 1975* (Cth).

justification for property rights obscures other fundamental aspects of property arrangements (Wiber, 1993). The steps that may help overcome this dilemma are summarized in the four layers mentioned above.

6. NEW HORIZONS IN THE ANTHROPOLOGY OF PROPERTY: THE ARCHITECTURE OF A NEW GLOBAL PROPERTY ORDER

New property regimes have emerged in recent decades as a result of technological innovations and new regimes of knowledge produced by advances in, among other things, information technology, genetic engineering and medical sciences (Verdery and Humphrey, 2004; Hirsch, 2010; Strang and Busse, 2011). The anthropology of law explores the intended and unintended social consequences of these developments around the globe and how the social workings of property law regimes reflect these trends. In the debate on the emergence of new types of property, the protection of the profiteering activities of a small minority takes a prominent place. The anthropology of law pays particular attention to this concern. Most legal anthropologists would agree that the emergence of new forms of property brings the anthropology of law closer to science and technology studies.

Technologies of the body, reproductive medicine and organ transplantation have brought up the question of what can be owned or brought to the market and commercialized (Parry, 2004). Individual property rights in one's own person are the basis of the capitalist labour theory of value (beginning with John Locke and Adam Smith), which has been the target of Marxist criticism. The universality of this concept of the person has been contested in anthropology, and the judiciary is now being confronted with these challenges.

The concept of intellectual property is gaining traction and shows great diversification, while legislatures have to keep the concept's normative framings in tune with accelerating patterns of transmission. Rosemary Coombe (1998) presented a legal ethnography of the ways in which intellectual property law shapes cultural politics in consumer societies. How access to inventories of knowledge and knowledge regimes can be efficiently restricted and monitored is hotly debated, particularly within the framework of global governance institutions such as the United Nations and the World Bank. At the same time intellectual property is becoming increasingly intermingled with material property. Intellectual property rights challenge classic forms of property and are placed in the category of 'fictional commodities', as labour used to be.

Such processes involve the emergence of adequate acquisition and accumulation strategies. New mechanisms of trade-offs, of transfers of property from one form into another, have been established. In the case of patents, for instance, property statuses change from an initial innovation or discovery from which legitimate property claims derive to the processing of that innovation or discovery as data, its documentary or indicator value, to its patenting and, finally, its use for the production of value. Moreover, as Maurer and Schwab (2006) argue, new forms of property and its accumulation in a neoliberal economy have tremendously affected the relationship between property and personhood, as has been referred to earlier in this chapter.

The more complex the impact of technological and knowledge-driven interactions on property acquisition and the accumulation of wealth, the more property regimes will be forced to factor in risk assessment and the mastering of the non-calculability of property in a post-industrial society. A topic that has gained in prominence is the evaluation of the risk of treating natural resources as private property, thereby opening the door to unrestricted exploitation. Risk assessment is even more challenging to property when technological processes transform original resources into 'assets and liabilities'. To give an example, who owns nuclear waste and is responsible for its disposal and permanent safeguarding? Here again an interesting interaction between private accumulation and public responsibility comes to the fore. Privatization is accompanied by a corresponding move to pass costs and financial risk down to the general public. Consider the discourse on the consequences of global warming for the maritime and rainforest areas. Anthropological research on pollution taxation, transnational normative constructions such as REDD+ and trading with emission certificates through the Certified Emission Reduction (CER) programme are to be mentioned here (Mahanty et al., 2013). Will the market determine how property law adapts to these challenges? The arrangement of property relations at the global scale has thus attracted increasing interest from anthropologists. The fact that incalculable risk threatens property has led to the close association of property with the notion of security, resulting in property-securing legislation. The set-up of internal normative registers for gated communities is a typical example of this interconnection. Gated communities divide urban spaces around the globe into areas of secured and less-secured property (Setha, 2004; Glasze and Webster, 2006).

The new politics of property protection have given rise to changes in economy and finance, which in turn have been followed by new trends in property law. Trademarks, branding and certification of, for example, geographical region of provenance or forest stewardship or sustainability of fish catch increase the value of tradable property. The concept of virtual property, one of the uses of online resources, would be an example. New terminology such as 'propertization' (Hann, 2007) has been introduced to describe the increasing importance of property in a neoliberal economy. The term propertization generally refers to the creation of exclusive private property as a phenomenon and a strategy that increasingly infiltrates and affects all spheres of life. In the narrower sense it applies to the acquisition of intangible property (Rose, 2004). Strang and Busse (2011) suggest shifting the focus from property to 'appropriation' in order to express more accurately in our anthropological theorizing the increasing contestation of property relations and claims to ownership.

To a great extent, claims, rights and obligations are redefined and preformatted in transnational normative templates that are produced by institutions of global governance (Turner and Wiber, 2009). Competing fields of normativity have emerged at the transnational scale. Indigenous rights, claims to resources, extraction politics, processes of dispossession, cultural heritage, nature conservation as expropriation, valuation and de-valuation of property items, knowledge transfer, genetic resources, virtual property such as technology-based intangible and exclusionary property and much more affect these new property fields. More attention is being paid to global commons that are outside the direct jurisdiction of sovereign states, such as water, air and the high seas (Wiber, 2000; Rabinowitz, 2010). Here property regimes have to cope with greater

uncertainties in resource exploitation than is the case with other legally defined property types such as private property. New dynamics in the transformative process turn the commons (unsecured) into private property (secured). Property arrangements such as the model of pastoral production, in which the owner of private property in livestock holds the right to pasture animals on common land, but is at the same time bound to use that common land in a way that does not affect the rights of others to do the same, find a parallel in maritime economies in which the private ownership of the means of production (boats, nets, etc) meets the maritime commons.

New forms of possession, ownership and property relationships correspond to these developments (Maurer and Schwab, 2006). Epistemic communities, alliances, networks and co-ownership models have appeared. Collective property claims allow for the identification of new emerging social dynamics, as well as the formation of epistemic communities and other forms of interest groups and their collective social actions. Nevertheless, group rights to property pose a serious problem for which legal solutions are sought. In this context anthropological activist literature advocates the protection of indigenous communities' access to and management of resources and their knowledge of extraction strategies. Moreover, such interventions demonstrate how changes in property relations affect the social dimensions of legal regulations. With the transformation of tribal land into an object for land-grab investment, for instance, social commitments such as mutual assistance arrangements in agriculture that are inscribed in the landscape cease to exist.

At the same time, at the other edge of the property universe, individuals lose track of their assets dispersed somewhere in the virtual world of finance; they only perceive their increase (or decrease) in wealth and capital.

Some of the classic topics of anthropology such as indigenous intellectual property and tangible and intangible cultural property resurface in new forms. Immaterial/intangible property, already conceived of in legal anthropology as 'incorporeal property' as early as the 1920s (Lowie, 1928), plays an increasingly important role. In the more classic approach, research on indigenous intellectual property revolved around the ownership of spirits, songs, decorations or ornaments. Immaterial property appears in indigenous societies as transferrable goods that can be acquired or inherited. Immaterial qualities are often attributed to material objects. Tradable artefacts may include supernatural powers, songs and technologies. Even law and legal templates can be possessed and alienated. In fact, in some cases the law cannot properly function if it was not legitimately transferred or acquired. The lively trade in normatively loaded 'fetishes' and other symbols of legal regulations in West African societies is but one example of such practices. The emergence of the modern concept of intellectual property rights has produced its ethnographic counterparts. The UNESCO definition of cultural heritage explicitly includes, in addition to physical artefacts such as monuments and other man-made objects and natural heritage such as landscapes and ecosystems, the intellectual attributes and 'inherited traditions or living expressions', and identifies who has legitimate claims to such property (Brown, 2003). Anthropologists have criticized this approach, arguing that the global normative fixation of property claims in combination with the recognition of collectivities, i.e., ethnic, indigenous or 'cultural' groups, as legitimate owners would deprive cultural expressions

of their dynamic potential for change and lead to a commodification of intellectual and cultural expressions (Lixinski, 2013: 6).

Many anthropologists today are sceptical about the privatization of land and land-based resources because doing so creates the conditions for unlimited exploitation. In the context of increasing concerns about the impact of resource development and environmental degradation, anthropologists invoke the ethical imperative of maintaining resource integrity and sustainability in order to argue for restrictions on private property rights. Others, mostly economists, champion private property in land and natural resources as the best way to achieve environmental protection and nature conservation. The politics of dispossession and expropriation come into play here as they transform collectively held property and resources into commons and even into open-access resources that can then be accessed 'for the benefit of the general public'. The transformation of land on which indigenous groups used to hold usufruct rights into nature reserves or biological heritage of all humanity is such an example. Land grabbing as a form of capitalism is gobbling up all sorts of commonly or collectively held land resources in the Global South. Anthropologists address land grabbing and many other issues connected to globalization and the neoliberal world order (Edelman et al., 2015).

In such cases anthropologists once again often focus on indigenous peoples, their land restitution claims and their resistance against land grabbing, the protection of indigenous intellectual property rights and cultural property, both tangible and intangible (Hirsch, 2010). Such new property politics challenge the above-mentioned new acquisition and distribution strategies, including bio-prospecting, patenting as a means of appropriating indigenous knowledge about the medicinal properties and health benefits of various biological resources, benefit-sharing models[3] and many other techniques of property acquisition. Official recognition of indigenous land claims implies not only the restitution of property; it also challenges the colonial narrative of 'unowned' (and 'unoccupied') land (the *terra nullius* doctrine). Recognition also gives back to indigenous people their own histories, which, otherwise, from the colonial perspective, commence with colonialism. They regain the memory attached to property items or symbolized in them. There is no empty land, there are no unproductive resources; rather, they have value because of their association with other rights such as ancestral belonging. Thus recognition of entitlements includes the emotional and economic attachment to a given resource. Here the standard liberal model (Hann, 2005) confronts local ideas about specific relationships between people and the things that compose their environment. The optimists emphasize that indigenous groups may profit from the standard model, as it may help protect their specific combinations of legitimate use of natural resources and specific skills and knowledge – as long as the protection of territorial claims does not involve the codification and fossilization of otherwise flexible and living practices, as mentioned above.

Today, property law is linked up with the universe of human rights, which is supposed to protect indigenous people's sovereignty over their intellectual and cultural

[3] *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity*, 29 October 2010 (entered into force 12 October 2014) [Nagoya Protocol].

property (Coombe, 2009). Human rights increasingly impact on the reading of property regulations on a more general level as well. The relationship between humans and resources is phrased in the language of rights. The debate over the property rights of refugees and internally displaced persons and over housing rights for immigrants, for example, highlights such interactions that qualify property regimes (Smit, 2012).

Taken together, one may say that legitimations of property claims are in a state of flux, and perceptions of the legitimate use of property are likewise shifting. An obsession with absolute power of disposition appears to be the inductive incentive for the production of neoliberal property theory. This explains, at the level of practice, the motivation to intensify the accumulation of property. However, such neoliberal property theory is based on certain assumptions about human nature that are not borne out by empirical data coming out of anthropology and other disciplines, which leads to a new recognition of 'narrower' property rights and of new forms of (controlling) common property. The introduction of new property objects is exemplified by quotas allocated to right holders for the exploitation of common resources and attempts to connect property claims to a man-made cyberspace. The example of quotas illustrates that legal interventions to regulate access may also lead to inflexibility (Hann, 2005: 118). Moreover, a strategic narrowing of property rights can be achieved by imposing criteria of 'eligibility', 'authenticity' or 'culture'. Counter-tendencies have not gone unnoticed. Setting limits to property rights by consumer behaviour is one example. Consumer goods, for instance food or forest products, are increasingly certified according to the ethical standards of their production. Consumers may avoid purchasing a product if they know that the production process is unsustainable or involves what they consider unethical or exploitative labour practices, even if such forms of exploitation are unobjectionable in legal terms (Carrier and Luetchford, 2012). In this way certifications and other new normative forms of classifying goods affect the use of property for production processes, and consumer behaviour effectively (albeit indirectly) limits property rights.

The ethnography of mixed property regimes constitutes another field. Such overlaps come to the fore in diversified societies and often in the wake of migration, as is shown by, for example, the increasing interaction of Islamic property regimes with domestic regulations in Europe. Turkish property owners in Germany, for instance, introduce their conceptions of real estate, enterprise management and the handling of finance and investment capital in accordance with Islamic law. Inheritance regulations, schemes of solidarity, gender issues, and many other aspects of property regulation may be reinterpreted or renegotiated (Sait and Lim, 2006; Dupret and Thielmann, 2013).

Another field of investigation is 'negative property', that is, debts and liabilities of all sorts. Since the beginning of the financial crisis in 2008 anthropologists have paid particular attention to the association of finance and money with property. In classic anthropological studies the central focus was on the production of social cohesion through lending and borrowing, the establishment of debt and other complicated relations of dependency. Social ties established, for instance, through compensation payments, and the desire to maintain relationships built on debt, obligation and patronage, made it reasonable for an indebted person never to fully pay off a debt. The anthropology of debt and accumulation has traced debt up to its culmination in the recent economic crisis (Peebles, 2010; Graeber, 2011). This is quite controversial

within the discipline and has reverberated throughout academe, as is illustrated by the lively debate surrounding the publication of David Graeber's groundbreaking tome *Debt: The First 5,000 Years*. In addition, new challenges to existing property regimes may come from distributive justice, such as entitlements to welfare benefits and social security, which may be considered a new form of property (Hann, 2007), as well as from the new patterns of succession that are arising in response to new forms of legally recognized unions and cohabitation.

7. CONCLUSION

The anthropology of property is the science of property in context. It started as a colonial enterprise with a focus on customary law (see also Chapter 21 of this book) and local regulations, and as a scientific programme exploring the origins and evolution of property ideas as part of a universal law. Today, anthropologists continue to pay attention to all sorts of property issues and include state and global governance institutions as well as non-state forums and informal institutions in the normative universe in their analysis. The anthropology of law shows that ideologies, legal institutions and real property relations are categories in their own right whose interaction has to be taken into account for property research to be able to arrive at a complete picture. Only through an understanding of their connections is an analysis possible. In this configuration, change at one layer affects all other layers, including resonances at the initial layer.

At the layer of legal regulation, the increasing diversification of property regimes leads to increasing interaction with other fields of law, ranging from social security to freedom of religion. From a perspective of legal pluralism, the multiple entanglements of private and public property categorizations continue to affect more and more domains of development, be they the public commons such as air and water or intellectual domains such as 'culture'. The increasing appropriation of property standard setting by global governance institutions is creating new configurations of legal pluralism on the ground. What seems necessary are more forms of community control over the real outcomes on the ground of global governance regulation that pretends to homogenize property law.

Putting real relations into property categories will further overshadow ongoing processes of illegitimate appropriation. New forms of collectivities with different property needs emerge. Combinations of market-compatible forms with local forms are created. All this seems to demand the provision of a more flexible domestic property legislation that allows for more diversity of community rights. Thus the bundle remains valid; in other words, it continues to be impossible to disconnect rights and entitlements as the source of property relations from their moorings in social relations.

In sum, new challenges to the range of property claims between public and open access, between alienability and non-alienability and between ethically acceptable and no longer acceptable use are on the agenda. The tradability of property is a big question. Can an individual alienate body parts? Where are the boundaries of

intellectual property? Who is entitled to use cultural property and what is the appropriate way to exercise this right? Here again the bundle metaphor facilitates analysis.

There are no easy solutions to property issues and there is no indication that one specific arrangement of the bundle will gain absolute acceptance. Thus legal intervention and regulation do not reflect an ideal solution, and can only be understood in their social and cultural contexts. Property regulation by means of law may profit from the anthropological analysis if the focus is directed towards the effects such regulation may entail for the realities of human existence. From that point of view, an anthropological approach can help determine the stability and sustainability of legal regulation. Anthropology may help understand what the lawmakers may do to normatively determine how property regimes and rights and obligations are made operational for the benefit of entire societies. The ever-changing social significance of property demands a flexible conceptualization of its legal framework.

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