

Cetacean Property

A Hegelish Account of Nonhuman Property

CONNOR K. KIANPOUR

Georgia State University

First, I spell out the details of a Hegelish conception of property. To clarify what makes this account unique, I compare it to a labor-mixing conception of property that finds its origins in Locke. In doing so, I highlight strengths of a Hegelish account of property over its Lockean alternative. Then, I show how dolphins, consistent with a Hegelish account of property, are property owners of their oceanic habitats. Finally, I outline the strengths of a Hegelish account of property as it would apply to dolphins and perhaps other nonhuman animals in protecting them. It is not my aim to argue that a Hegelish account of nonhuman property is the only viable path toward recognizing nonhuman property. Rather, I hope to show that such an account holds promise as a tool in the conceptual toolbox handled by theorists of the political turn in animal ethics.

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INTRODUCTION

Recently, there has been what some have termed a “political turn” in the animal ethics literature. Tony Miligan (2015) observes that this turn is in part characterized by two theoretical strategies. First, philosophical ethicists and political theorists that are part of this political turn call for the enforcement of positive rights for nonhuman animals rather than the enforcement of mere negative rights or welfare measures. Second, these ethicists and theorists generally appeal to liberal values when arguing for the recognition of nonhuman rights. Consider an especially important contribution to the political turn in animal ethics: Sue Donaldson and Will Kymlicka’s *Zoopolis* (2011).¹ The political theorists employ the two aforementioned strategies in arguing that domesticated animals ought to be regarded as citizens within a liberal framework, liminal animals as denizens, and wild animals as members of sovereign nations.

Some thinkers have turned to other familiar liberal concepts to explain why we have weighty duties to nonhuman animals. Particularly, contributors to the political turn literature have explored the viability of nonhuman property rights. If nonhuman animals indeed have such rights, then humans not only have duties and obligations to animals themselves but also with respect to those external objects that animals have claims to. Thus far, political turn theorists have considered utilizing interest-based accounts of nonhuman habitat rights (Hadley

2006; Hadley 2015; Cooke 2017) and labor-mixing accounts of nonhuman property rights (Milburn 2017) to the end of protecting nonhuman animals.

This paper argues for the viability of nonhuman property rights consistent with a conception of property that is broadly Hegelian. Although this account of property is inspired by Hegel, it does not purport to be orthodoxly Hegelian. For this reason, the property rights theoretic I defend is termed *Hegelish* rather than *Hegelian*.² This paper specifically argues for the recognition of property rights that dolphins have in their oceanic habitats. That the paper does this does not preclude the appropriation of the arguments advanced in it to justify the recognition of property rights for other nonhuman animals. Recognizing nonhuman property rights lays the groundwork for the development and enforcement of legal rights that would afford nonhuman animals considerable political protection. In this way, the present paper makes a contribution to the burgeoning literature on the political turn in animal ethics. Additionally, the recognition of nonhuman property rights leads us to accept that humans are not the only beings capable of laying claim to the natural world. Some have argued that tensions exist between animal advocacy and environmentalism (Sagoff 1984; Varner 2008; Faria & Paez 2019), and the recognition of nonhuman property rights seems to be one way of resolving such a tension—at least in part.³

It is not my aim to argue that a Hegelish account of nonhuman property is the only viable path toward recognizing nonhuman property. Rather, I hope to show that such an account holds promise as a tool in the conceptual toolbox handled by theorists of the political turn in animal ethics.⁴ First, I spell out the details of a Hegelish conception of property. To clarify what makes this account unique, I compare it to a labor-mixing conception of property that finds its origins in Locke. In doing so, I highlight strengths of a Hegelish account of property over its Lockean alternative. Then, I show how dolphins, consistent with a Hegelish account of property, are property owners of their oceanic habitats. Finally, I outline the strengths of a Hegelish account of property as it would apply to dolphins and perhaps other nonhuman animals in protecting them.

HEGELISH PROPERTY

For the purposes of the present paper, there are two senses in which property rights might be construed. H.L.A. Hart distinguishes between what he calls *special-right-based* and *general-right-based* arguments for private property. The former grounds property rights in some historical event that instantiated them; the latter, on the other hand, involves justifying property rights because property is needed for ethical growth and development (Hart 1955 pp. 175–191).

An example of a special-right-based argument for private property can best be found in the work of John Locke. Locke famously argues that an individual comes to own something when she mixes her labor with an unowned thing to alter it. For example, an individual can come to own an unowned apple after picking it, or mixing labor with it (Locke 2005, 2.27). There is nothing in the individual nor the apple that would incline one to believe that the property relation between the two should exist, yet the apple can still be understood as hers simply because her labor instantiated the property right.

This paper, however, relies on a general-right-based argument for property inspired by G.W.F. Hegel. In his *Philosophy of Right*, Hegel puts forward an argument for private property that has elements of a special-right-based argument, but is at its core a general-right-based argument because property, he contends, allows a person to “translate his freedom into an external sphere in order to exist as Idea” (1896, pp. 51–78). What this means for Hegel specifically is not this paper’s concern, as an orthodox reading of Hegel’s property rights theoretic would commit us to a largely anthropocentric worldview (Stone 2002; Benjamin 2007; Timofeeva

2018, pp. 61–104) that could not account for the recognition of property rights for nonhuman animals. Luckily for us, contemporary scholars have divorced what lies at the core of Hegel’s property rights theorization from the rest of Hegel. Among these scholars are Margaret Jane Radin, Meir Dan-Cohen, and Jeremy Waldron (Wells 2016, pp. 9–11). In what follows, I briefly overview what each of these thinkers takes to be the ethical significance of property and identify a common thread that will serve as the basis for the Hegelish property rights theoretic of concern to this paper. Then, I consider the strengths of this Hegelish account over its Lockean alternative.

Three Hegelish Accounts of Property

Radin (1982) distinguishes two kinds of property. On one hand, there is property “that is perfectly replaceable with other goods of equal market value”—she calls this *fungible property* (Radin 1982, p. 960). On the other hand, there is *personal property*, or property that is “part of the way we constitute ourselves as continuing personal entities in the world” (Radin 1982, p. 959). Fungible and personal properties lie on a continuum, and what moves a particular object in the direction of personal rather than fungible property is the extent to which it helps an individual “to achieve proper self-development” (Radin 1982, p. 957). More precisely, Radin asserts that some kinds of property—namely, personal properties—lie at a “person’s center and sanity” and are integral to her development as a *person* (Radin 1982, p. 977). Because personal property is necessary for the development of personhood, it is accorded a special status and, correlatively, special protection.

For Radin, the home is the paradigmatic example of personal property given the sense in which its residents embody or constitute themselves there (Radin 1982, p. 992). In our homes, we perform daily rituals that in part comprise us and we are afforded securities and luxuries that empower us to develop as individuals. This means that the property right an individual has in her home that she has lived in for years is considerably stronger than the property right that she may have in, say, a pencil she uses a couple of times by virtue of the former’s connection to that individual’s personhood.

Radin notes, however, that the extent to which property is deemed personal is in large part sociocultural. This is true in two respects. First, there may be particular social contexts wherein certain group identities or affiliations are partly or significantly constitutive of their members’ respective identities. Second, community mo-

rality may play a role in delineating between fungible and personal properties (Radin 1982, p. 978).⁵

Dan-Cohen (2001) makes an argument along similar lines, claiming that an individual instantiates a property right in an external object when that object is constitutively owned by the individual. For Dan-Cohen, constitutive ownership occurs when an external object is included “within the boundaries of the self” of the individual who is the object’s rightful owner (2001, p. 424). On this view, an individual’s right to objects that have been included within the boundaries of her self can be analogized to the right she has in her own body. Just as it would violate a comatose patient’s rights to draw blood without his consent, so too would it violate the rights of a homeowner when a teenager runs onto her lawn, without consent, to grab a tennis ball that fell into the yard (Dan-Cohen 2001, p. 431).

One might interpret Dan-Cohen’s account of property in one of two ways. He could be committed to a modest view that bears a striking resemblance to Radin’s, which states “that individuals’ interest in having a continuing identity over time grounds a claim to have long-term rights over the objects that are partially constitutive of the self” (Wells 2016, p. 10). Or he might be committed to the more radical view that results from following his analogy between respect for bodily integrity and property ownership to its logical end, p. enforcing property rights in external objects “is sometimes necessary to sustain the integrity of the person” (Wells 2016, p. 10). Either way, this view is demonstrably Hegelish, given its reliance on the claim that property is an extension of one’s self, or the means by which an individual is able to transmit part of themselves into an external object (Dan-Cohen 2001, p. 413).⁶

Finally, Waldron (1988) draws on Hegel to assert, like Radin and Dan-Cohen, that property ownership is indispensable to the development of the identity and agency of its holders. Of the relationship between agency and the needs that can be met through the instantiation of private property, Waldron says:

Its ethical importance lies in the individual’s ability to relate the pure abstracted thought of himself straight back to particular needs and desires and to associate them with it, so that they take on the character of chosen rather than merely given aims or ends—aims and ends which are in a strong sense his rather than merely happening where it is. (1988, p. 352)

Only when an individual has enforceable property rights is she able to develop a sense for her needs being hers. Furthermore, she is able to satisfy these needs on terms that are uniquely her own. In other words, on Waldron’s understanding, owning an apple is not only important for satiating one’s hunger. Owning an apple is also indispensable to understanding that one’s hunger can be satiated as she pleases insofar as she respects the rights of others, and that it ought to be. In this way, enforceable property rights empower individuals to exercise and fully develop their agential capacities in a manner that strengthens their identity or sense of self.

Because private property is integral to the development of certain capacities in individuals, it follows from Waldron’s account that it is “wrong that some individuals should have...no private property at all” (1988, p. 329). Such a theoretical stipulation entails that a right to private property is not a right *in personam*, but rather a right *in rem*. That is to say, Waldron’s account of private property calls for every individual to hold an amount of property consistent with what the development of agency and identity requires (1988, p.107).⁷

Waldron, unlike Radin and Dan-Cohen, offers an account not only of the ethical significance of property inspired by Hegel but also of how property might be acquired—namely, through the physical modification of objects:

In Hegel’s account, the important thing is that the gap between subjectivity of will and the perceived externality of the objects of the world has been bridged. When the subject labours in the world, his willing is such that it cannot be understood or explained except by making reference to the external objects of his labour; and those objects once they have been worked on become such that certain aspects of them cannot be understood or explained except by making reference to the workings of his will. (1988, p. 365)

Consider, for instance, a violinist and her violin. The violin cannot be understood or explained in full without making reference to the workings of the will of the violinist who owns it. This is not to say that the violin cannot be understood at all without making reference to the will of its violinist. Rather, there is an important aspect of the violin that is lost when it is not regarded alongside its owner. This is because the violin, in large part, is given its character by the manner in which the violinist labors upon it. Every time the violinist plays

Mendelssohn's Violin Concerto, she transmits something of herself into the violin that makes it important with respect to its relation to her will. In order to give the violinist the respect she deserves, one must understand that objects like her violin are inextricably connected to her will and must be treated as intimately connected with her person.

Radin, Dan-Cohen, and Waldron each offer distinct Hegelish accounts of property, but are all united by what seems to be commitments to the individual development of agency and identity within the context of a society. In what follows, I use parts of each of these three accounts to construct an conception of Hegelish property that does not depend on any of these accounts alone.

Agency, Identity, and Sociality

A Hegelish account of property should, first and foremost, acknowledge the significant role that property ownership plays in the development of an owner's identity and agential capacities. Radin suggests that safeguarding property rights in personal property is indispensable to an individual's development as a *person*. We need not, however, use such a loaded term with the potential for exploitation by anthropocentrists.⁸ The aspects of personhood that are of concern to Radin seem to be those characteristics that Dan-Cohen and Waldron are interested in: identity and agency.

Radin, like Waldron, believes that property ownership plays a role in self-development. The means by which an individual is empowered to develop herself with property allows her to develop agential capacities. Property ownership also plays a substantial role in the formation of an individual's identity, as encapsulated by Dan-Cohen's analogy between ownership of the body and ownership of external objects. The Hegelish conception of property advanced in this piece is thus legitimated by the following relationship between an object and its owner: *an object, to be rightfully owned by its owner, must be constitutive of the owner's self and must aid the owner in developing her capacities as an agent.*

As Radin notes, however, an individual's sense of self is heavily reliant upon the sociocultural context in which she is situated. That the home is regarded as a paradigmatically personal form of property, for instance, is in part dependent upon the values that have taken hold in our society. Dan-Cohen also echoes the role that sociality plays in his Hegelish account when he says that the significance of property "derives from those background personalized values, such as autonomy and dignity, whose domain is coextensive with the self and is

therefore sensitive to variations in the latter's socially determined composition and boundaries" (2001, p. 434). Bearing this in mind, I propose the following amendment to my original sketch of Hegelish property: *an object, to be rightfully owned by its owner, must be constitutive of the owner's self and must aid the owner in developing her capacities as an agent, within a particular sociocultural context.*

Since Waldron's account of property is the only one of the three that explains in detail how objects come to be owned, I defer to his theory of property acquisition through the physical modification of objects that aids in the development of identity and agency. When an individual deliberately modifies an object in such a way that the object cannot be understood without making reference to the individual's will, that individual becomes the object's rightful owner. The property right that the individual instantiates in the object is then strengthened in proportion to the extent that the object is incorporated within the bounds of the self and is used to the end of developing the agential capacities of the individual in question.

The Intuitive Draw of the Hegelish Account

Let us now compare the Hegelish conception of property outlined above to its Lockean, or labor-mixing, alternative. Consider the following scenarios:

Starry Night: A person X stumbles upon an unowned blank canvas, paintbrush, and blue and yellow paints. Let us assume that the market value of the art supplies totals 10 dollars. Over the course of three months, X creates an inimitable reinterpretation of Vincent Van Gogh's *Starry Night* in remembrance of his deceased grandmother who adored Van Gogh's artistic career. The moment X sets down her paintbrush upon making the final brushstroke, a thief breaks into X's house and snatches X's painting. The thief runs away with X's painting.

Piss Christ: A person Y stumbles upon an unowned blank canvas, paintbrush, and blue and yellow paints. Let us assume that the market value of the art supplies totals 10 dollars. Y has a petulant sense of humor and decides to make a mockery of Andres Serrano's *Piss Christ*. Y first paints a vertical blue line on the canvas, then paints a horizontal yellow line on the canvas to form a cross. Y proceeds to urinate on the canvas. All of this takes a matter of minutes. Once Y decides that he's finished

with his “painting,” a thief breaks into Y’s house and snatches Y’s painting. The thief runs away with Y’s painting.

Both the labor-mixing property theorist and the Hegelish theorist would acknowledge that a property rights violation occurs in both *Starry Night* and *Piss Christ* when the thieves steal each respective painting. Nevertheless, these two theorists would have different metrics by which to assess the severity of the rights violation in question. Let us assume that both paintings are of the same market value. According to the labor-mixing property theorist, the property rights violation experienced by X in *Starry Night* is roughly as severe as the property rights violation experienced by Y in *Piss Christ*. Now let us assume that, for some reason, Y’s painting has a higher market value than X’s. Perhaps there is a high demand for cheeky modern art. In this case, the property rights violation experienced by Y in *Piss Christ* is more severe than the property rights violation experienced by X in *Starry Night*. This is because Y is being deprived of something that is of greater (market) value than X is, and would therefore be owed more to make up for his losses.

The Hegelish conception of property, however, recognizes the property rights violation experienced by X in *Starry Night* as considerably more severe than the property rights violation experienced by Y in *Piss Christ*, regardless of what the market value of each painting is. There is a strong sense in which X’s painting is an extension of, or a part of, X in a way that Y’s painting is not for Y. Moreover, X’s painting played a substantial role in developing X’s agential capacities in a way that Y’s painting did not for Y. That is, X committed to a meaningful project and was able to willfully carry out that project to completion. For these reasons, X has a strong claim to her painting in *Starry Night* given the extent to which it qualifies as her personal property. Y’s claim to his painting in *Piss Christ*, on the other hand, is not as weighty because the painting is less personal and more fungible in the sense that it could likely be easily replaced by something of equal market value.

That the Hegelish account recognizes a difference in the property rights violations in *Starry Night* and *Piss Christ* whereas the Lockean account does not is, to my mind, a defeasible reason to favor the Hegelish account over the Lockean account. First, this demonstrates that the Hegelish account captures an aspect of the ethical significance of property that the Lockean account does not. Property is not valuable simply because of its market value, but it is valuable in that it plays a role in our

development as agents with identities. This is especially salient in the case of personal properties that we come to understand as extensions of ourselves—things like cell phones, artworks, and homes. Second, this shows that the Hegelish account recognizes that some properties are more intimately connected with one’s person and are subsequently worthy of greater protection than others. Intuitively, it makes sense to say that the property right I have in my house is stronger than the property right I have in a pencil, and not simply because these things have different market values. Again, I have not provided knock-down arguments in favor of the Hegelish conception of property over its Lockean alternative, but I hope at this point to have shown that it is at the very least a conception of property worthy of exploration for the purposes of this paper. Moreover, there seem to be intuitive reasons to favor the Hegelish account over its Lockean alternative.

CETACEAN PROPERTY

The aim of the present section is to show how a Hegelish conception of property can regard not only humans as legitimate property owners, but some non-human animals as well. Specifically, I argue that dolphins are rightful owners of their oceanic habitats and hold property rights in these habitats much in the way that humans hold property rights in their homes. First, I roughly sketch two ways of understanding some non-human animals as agents: an undemanding account of agency and a demanding account of agency. Then, using the demanding account of agency for argumentative purposes, I show how dolphins physically modify the waters that constitute their habitats in a manner that allows them to develop their agential capacities and sense of self. I also overview empirical data that lends itself to the claim that the oceanic habitats of dolphins are personal, rather than fungible, properties. At the end of this section, I briefly discuss the implications of recognizing dolphin habitats as the Hegelish property of dolphins.

Nonhuman Agency

As shown above, a Hegelish account of property finds its authority in developing the agency and identity of property owners within their broader social contexts. To demonstrate that such an account of property can be extended to recognize some nonhuman animals as property owners, it must therefore be shown that the non-human animals in question are agents. In what follows, I overview two strategies for recognizing at least some nonhuman animals as agents. I ultimately remain agnos-

tic with respect to which of the two accounts of agency is correct, but I shall suppose the more demanding account is correct. If it is and I show dolphins thereby have robust property rights, then a less demanding account will show at least as much.

It is beyond the scope of this paper to lay out a particular conception of agency and defend it against its alternatives. Still, it is necessary to roughly outline what agency is and whether nonhuman animals like dolphins can have it, given the role that agency plays in a Hegelian conception of property. Agency, for the purposes of this paper, can be understood as the morally significant capacity to make decisions and perform actions that meaningfully affect the trajectory of an agent's life. There are two ways that somebody could argue that nonhuman animals like dolphins are agents.

One might argue that many nonhuman animals—dolphins included—are agents in that their interests⁹ are not merely reducible to the interests that they have in experiencing pleasure and avoiding pain; they also have interests in being able to shape their interactions with others and choose for themselves what activities to pursue and how to spend their time (Healey & Pepper 2020). Insofar as a nonhuman animal has significant interests in determining the course of her life within a particular sphere and she is a competent decision-maker within a domain activity, somebody could argue that she (the animal) has a right to self-determination. And if she has a right to self-determination, then she is an agent capable of making choices “about the general shape and structure of” her life in a morally significant way (Donaldson & Kymlicka 2016, p. 235).

Healey and Pepper (2020) argue at length that many nonhuman animals have both agential capacities and strong interests in being able to exercise these capacities. Consider the case of a cat named Sorenson, who needs a surgical procedure to be performed on him to correct a non-life-threatening medical complication. However, Sorenson is terrified of the vet and was severely traumatized after his last visit. Insofar as Sorenson leads an overall healthy life—albeit one where he experiences some minor discomfort—it is in his interest *not* to perform the surgical procedure on him given his expression of dissent toward visits to the vet. Sorenson's expression of dissent in this circumstance, according to Healey and Pepper, is one means by which the cat is able to communicate his preference for the way he wants to lead his life.¹⁰ Call this account of agency *the undemanding account of agency*, since it recognizes not only most humans and nonhuman animals similarly capacitated as agents but al-

so many nonhuman animals like dogs, cats, horses, and the like.

The demanding account of agency, on the other hand, recognizes only most humans and those nonhuman animals similarly capacitated as agents. For proponents of the demanding account of agency, part of what makes the decisions and actions of an agent meaningful is the fact that the agent has certain cognitive faculties that, when engaged, show that her ends are chosen by her rather than given to her. Among these capacities are intelligence, the ability to think and reason, reflection, self-consciousness, memory, and foresight (Chan & Harris 2011, p. 306).

Consider the case of a human who is tasked with making a decision about which job offer to accept among three options. The human, according to the proponent of this account, reasons about her choices in this scenario in a manner that is distinct from the way that most nonhuman animals respond to choices they make in their lives. Most nonhuman animals are merely responding to stimuli when they appear to make choices whereas most humans rationally deliberate about their choices in a manner that makes their decision-making capability morally significant, or so it goes. Adhering to this demanding conception of agency leads one to accept that not all humans are agents with the morally significant capacity to make decisions and perform actions that meaningfully affect the trajectory of their lives. Infants, senile adults, and the severely mentally disabled would not qualify as agents on this view given that they lack one of, or a combination of, the aforementioned cognitive faculties. Nonetheless, this demanding account of agency leaves open the possibility of some nonhumans being agents so long as the nonhumans in question have the cognitive capacities that make their decision-making capacities morally significant.

This paper does not take a stand on which account of agency is correct. For the sake of argument, however, I suppose the demanding account of agency is correct. I do this for several reasons. First, I will be in a position to convince those most resistant to arguments for nonhuman property rights of my argument if I rely upon the demanding account of agency. Second, the Hegelian property rights theorists I draw upon to develop my argument would likely endorse the demanding account of agency. Granted, this makes the account no more correct, but it does make my argument more plausible without having to dedicate more space to defending an account of agency (the undemanding account of agency) that is relatively novel.¹¹ And third, it appears that more

people endorse the demanding account of agency than do the undemanding account despite the issues with doing so, making it easier to convince others of the plausibility of Hegelish property for dolphins.

Dolphins and Hegelish Property

Some contributions to the political turn in animal ethics set out to show that humans are not the only animals with sophisticated cognitive faculties and “higher-order” interests. These works furthermore argue that every reason we have to afford humans substantial legal protections are reasons we have to afford nonhuman animals with comparable mental capacities substantial legal protections as well. Steven M. Wise has long argued that Great Apes like chimpanzees and bonobos have robust rights to life, bodily integrity, and liberty because they possess the cognitive preconditions for willful, autonomous behavior like their human counterparts (1996, 2000).¹² Deborah Rook, along similar lines, has argued that human beings, chimpanzees, bonobos, gorillas, and orangutans should be considered a community of equals within which the right to life, the protection of individual liberty, and the prohibition of torture ought to be rigorously enforced (2009).¹³ Great Apes, however, are not the only nonhuman animals that have been acknowledged for their advanced cognition.

Thomas I. White, in his *In Defense of Dolphins*, argues that dolphins should also be afforded substantial legal protections because of their advanced cognition.¹⁴ Dolphins possess a supralimbic lobe in their brains comprised of association cortex, which gives us reason to believe that dolphins are capable of higher order reasoning (White 2007, pp. 37–42); they are able to cooperatively solve complex problems (Kuczaj II & Walker 2012; Eskelinen et al. 2016); they pass the mirror self-recognition test, which gives us reason to believe that they are capable of self-concept (White 2007, pp. 60–62); and they acknowledge the existence of other minds (White 2007, pp. 68–71; Caldwell & Caldwell 1965, pp. 434–435; Janik & Slater 1998, pp. 829–838; Quick & Janik 2012, pp. 2539–2543). The state of the evidence leads us to accept that most dolphins, like most humans, are imbued with the morally significant capacity to make decisions and perform actions that meaningfully affect the trajectory of their lives consistent with the demanding account of agency. Thus, it is at the very least conceivable that dolphins can have property rights in their oceanic habitats consistent with a Hegelish conception of property, seeing as how they have agency, self-concept or identity, and are social.

Let us first examine whether dolphins physically modify their habitats in a manner consistent with property acquisition within the context of a Hegelish conception of property. Though there are perhaps more, there are at least two practices dolphins engage in that suggest they modify water in ways that make it cetacean property. First, dolphins engage in hydroplaning to forage and hunt for food.¹⁵ Bottlenose dolphins have been observed in shallow waters in places like Shark Bay, Australia propelling themselves along the surface of the water. This hunting strategy allows for dolphins to catch fish as the fish seek refuge in shallower waters, even as the waters become too shallow for the dolphins to remain completely submerged (Sargeant et al. 2005, pp. 1400–1410). Essentially, dolphins have learned how to use the water they inhabit as a tool that satisfies their most fundamental need for food. Just as human beings use their homes in different ways to enable them to gather, prepare, and consume food that is necessary for existence, so too do dolphins use their habitations in innovative ways to meet their material needs.

Another foraging strategy that dolphins have developed involving the waters they inhabit can be found in their utilization of mud rings to catch fish like mullet. Upon finding a school of mullet, a dolphin will circle the fish progressively faster until a curtain of mud lifts around the fish. The mullet, in an attempt to find themselves in clearer waters, jump out of the middle of the mud ring and into the mouths of dolphins that cleverly station themselves outside of the circumference of the ring while the original dolphin was drawing it (White 2007, p. 78). Using both the ocean and the ocean floor, dolphins manipulate their surroundings such that they can secure desired ends. A dolphin can have a particular desire (nourishment), assess the most effective means by which to satisfy it (through hydroplaning, the use of mud rings, or another deliberate manipulation of their environment), and modify her environment such that she is able to meet her needs.¹⁶

At this point, one might reasonably accept that dolphins are able to rightfully acquire property consistent with a Hegelish account of property in the form of waters that in part constitute their oceanic habitats. One might then ask: Is this property fungible, or easily replaced by something of equal market value, or is it personal, or something which “causes pain that cannot be relieved by the object's replacement” (Radin 1982, p. 959)? It is clear that the property right that dolphins instantiate in their oceanic habitats is personal. First, these habitats are meaningfully included within the

boundaries of the self of each dolphin who inhabits them. That is to say, it makes sense to say that these oceanic habitats are in some sense *part of* the dolphins. Dolphins would not be able to exist without the waters that largely constitute their habitats, so in this sense a dolphin's habitat can be seen as an extension of self in ways that not even a human habitation would be.

Second, these habitats enable dolphins to exercise agency in their lives. As stated above, dolphins manipulate the waters they inhabit in ways that allow them to satisfy material needs. It is thus appropriate to claim that the waters which dolphins inhabit cannot be understood in full without making reference to those very dolphins. This is especially the case when we take into account that many species of dolphin exhibit a high degree of site fidelity (Wells et al. 2017; Vermeulen et al. 2017; Lodi & Tardin 2018; Passadore et al. 2018; Carlucci et al. 2018; Meager et al. 2018; Ribaric 2018; Durden et al. 2019).¹⁷ What this means is that members of many species of dolphin habitually return to specific locations around which they forage, socialize, play, and sleep. These oceanic habitats, given the regularity with which dolphins inhabit them, cannot be understood in full without making reference to those dolphins. Furthermore, dolphins use these specific habitations as areas where they can conduct matters that are important to them on those terms they deem fit.

Acknowledging the crucial role that oceanic habitats play in enabling dolphins to exercise agency and develop identity leads us to accept that dolphin property ownership is not merely some distant possibility but perhaps a promising reality. One might wonder at this point whether the property right a dolphin instantiates in her oceanic habitat is an individual right, or a collective right. Does each dolphin have a right to occupy a particular piece of the habitat she inhabits, or do pods of dolphins have a right to occupy the habitat in general? Recall the important role that social context plays in the determination of property as personal. In those social contexts where certain groups are constitutive of their members, personal property may be protected in service to the group rather than its individual constituents because the development of agency and identity for those individuals can only be understood within that social context. Provided that dolphins exist in fission-fusion social groupings and do not socially regard their habitat as the kind of thing that is to be divided between members of a social grouping, it would be permissible consistent with a Hegelish conception of property to treat

the property right that dolphins have in their habitat as a collective right.

An oceanic habitat is something that dolphins can claim together as dolphins, much in the way that a tribe of indigenous peoples might claim a right to sacred land. Just as the property owned by indigenous peoples could not simply be replaced by property that land appraisers find is of equal market value, the property owned by dolphins could not be replaced. Both groups identify strongly with their properties, and use their properties as a means by which to solidify and exercise both group and individual agency. Dolphin social groupings, like certain human social groupings, can generate property claims in particular areas that obligate others to allow the property-holders to use those areas as they see fit. When an individual fails to respect the property of these groups, she is required to pay reparations to the property-holders in some form or another. Working out the specifics of reparations for dolphins is beyond this paper, but what can be said here is that dolphins would be owed assistance in the form of assurance that they would have property that would enable them to meaningfully exercise agency both as individuals and members of a collective.¹⁸ Our foremost responsibility as enforcers of cetacean property rights would be to treat the property as something to which other (particularly human) agents do not have a rightful claim, followed by the responsibility to make amends for those instances when this property right is infringed.¹⁹

STRENGTHS OF HEGELISH PROPERTY FOR CETACEANS

Josh Milburn (2017) argues that a labor-mixing account of nonhuman property has advantages over interest-based accounts of nonhuman property in potentially affording nonhuman animals substantial legal protections. I contend that the Hegelish account of nonhuman property defended in this piece holds those very advantages over interest-based accounts, and is also preferable to a labor-mixing account on two fronts. I roughly summarize what lies at the core of the interest-based accounts of nonhuman property defended by John Hadley (2015) and Steve Cooke (2017). Then, I show how a Hegelish account of nonhuman property, like its Lockean competitor, more clearly grounds a property right which is both broader and stronger than the right grounded by an interest-based account. Finally, I argue that a Hegelish account of nonhuman property has two advantages over its Lockean alternative: (1) a Hegelish account has built into it a means by which to adjudicate

between potentially conflicting property claims that the Lockean account does not, and (2) a Hegelish account is not as conceptually messy as the Lockean account when recognizing certain objects as nonhuman property.

Strengths Over Interest-Based Accounts

John Hadley (2015) and Steve Cooke (2017) defend different iterations of interest-based accounts of nonhuman property. Cooke contends that some nonhuman animals have sufficiently strong interests in life that ground a duty not to kill, that they depend on their habitats for survival, and thus have sufficiently strong interests in their habitats that ground a duty not to deprive them of what is necessary for life. There are also some nonhuman animals that have sufficiently strong interests in well-being that ground a duty not to deprive them of what is necessary for well-being and that they depend on their habitats for well-being. Cooke argues that these two sometimes overlapping groups of nonhuman animals have interests that ground a right to their habitats, and that this right should be protected with a usufructuary collective property right (2017, pp. 55–58).

Hadley similarly argues that some nonhuman animals have sufficiently strong interests in using the natural goods that comprise their habitats for survival, and thus have a right to use those very goods. To Hadley, that these nonhuman animals “have a *right to use* natural goods...means that, logically, they have a *property* right in the good concerned” (2015, p. 54; Milburn 2017, p. 641). From this, it is clear that the rights of nonhuman animals to *use* goods and objects is the primary focus of Hadley’s interest-based account. Cooke also makes clear that this is the primary focus of his account when he says that “the interests non-human animals have in their habitats can be met by ensuring they have use of the habitat” (p. 58).

These interest-based accounts of nonhuman property are surely valuable in laying the groundwork for justifying expansive legal protections for nonhuman animals. Milburn (2017) argues, however, that a Lockean labor-mixing account of nonhuman property may have a couple of advantages over interest-based accounts on this front.²⁰ He suggests, for one, that a labor-mixing account of nonhuman property more clearly grounds a property right for nonhuman animals that is *broad*. A labor-mixing account of nonhuman property is not primarily (or perhaps even singularly) concerned with the rights of nonhumans to use goods and objects in their habitats in the way that the interest-based accounts surveyed above are. It is concerned with other aspects of

ownership like rights to exclude, destroy, or relinquish one’s claim in a particular good. As Milburn himself says of the Lockean account he defends, “not only does a squirrel have a right to use her buried nuts [on this account], but she has a right *against* humans using them; not only does a sparrow have a right to use her nest, but she has a right *against* humans using it” (2017, p. 644).

This same advantage exists in the case of Hegelish property. A Hegelish account of property, like a Lockean account, is not only concerned with rights of use but other incidents of ownership as well.²¹ Insofar as these incidents of ownership develop the agential capacities of owners and allow for the expression of identity within a particular social context, the Hegelish account of property will recognize them. In the case of cetaceans like dolphins, such an account of property would be beneficial to the protection of dolphins to a degree that an interest-based account of nonhuman property alone would not be. A dolphin would not only have a right to use what constitutes her oceanic habitat, but she would have a right against humans using these things. To the extent that animal advocates are concerned with creating conditions under which wild animals like dolphins can be agential and self-determining, the Hegelish account of property is superior to interest-based accounts in that it recognizes that nonhuman animals can have rights *against* humans.

Milburn also argues that a labor-mixing account of nonhuman property may be preferable to interest-based accounts because it more clearly grounds a property right that is *strong*. Depending on the specific interest-based account that is being employed, “an interest-based ownership claim is in constant jeopardy of being overridden by competing interests, or else of being challenged on the grounds of the limited interest the owner has in the property” (Milburn 2017, p. 645). Milburn gives the example of a crow’s interest in trinkets that she has gathered to show how the interest-based account alone may fail in strongly protecting the property of certain nonhuman animals where the Lockean account may succeed. On the interest-based account of nonhuman property, the profound interest that passionate ornithologists may have in a crow’s trinkets may be stronger than the ephemeral interest that the crow herself places in them. Thus, an interest-based account of nonhuman property would permit humans to take the trinkets of crows so long as it was done unobtrusively. The Lockean account, however, would forbid such an action so long as the crow mixed labor with an unowned object to instantiate a property right.

A Hegelish account of nonhuman property has this very same advantage. This account is similar to the Lockean account in that both recognize the instantiation of a property right in a once-unowned object when an agent physically modifies it. Where the two accounts come apart is with respect to the role that identity and the development of agency play in strengthening the claims that agents have to their property. In the case of dolphins, the property right they instantiate in their oceanic habitats is deeply personal and therefore incredibly strong. Thus, the property rights produced by adherence to a Hegelish account of nonhuman property is, like its Lockean alternative, considerably stronger than the right that would be produced on an interest-based account. This recognition of considerably strong property rights may, moreover, be valuable to the end of securing expansive legal protections for nonhuman animals.

Strengths Over the Lockean Account

In addition to sharing with the Lockean account of nonhuman property certain advantages over interest-based accounts, the Hegelish account of nonhuman property holds certain advantages over the Lockean account. Insofar as we are willing to advocate for the recognition of nonhuman property rights that extend beyond rights of object use, the Hegelish account holds more promise than the Lockean account. When considering the case of dolphin property specifically, there are two ways in which a Hegelish account of property may be preferable to its Lockean alternative.

First, a Hegelish account of nonhuman property offers a method through which we can adjudicate between potentially conflicting claims to property. The labor-mixing account of property, however, does not. Suppose that a group of human coastal dwellers claim that a particular plot of ocean is their property because they physically modified the surrounding area such that they could live on the water, go fishing to feed themselves, and dispose of their waste in the water so that it wouldn't collect on land. They identify strongly with the plot of ocean in question and believe they are entitled to do whatever they please with it. Suppose further that an animal advocacy group also claims that that same plot of ocean is the property of dolphins who live there year-round. It is not clear whether the humans or the dolphins appropriated the plot of ocean through the act of physically modifying or laboring upon it first. Who rightfully owns the plot of ocean?

The Lockean labor-mixing theorist would have to say that the rightful owner is whoever mixed labor with

it first. But as the scenario specifies, it is not clear whether the humans or dolphins mixed labor first. So the Lockean is not able to provide a means by which to adjudicate this dispute except by way of theory. The adherent of a Hegelish account, however, would be able to adjudicate this dispute by making reference to the extent to which each group relies on the plot of ocean for the development of their agential capacities and the realization of their identity within a social context. In the case of interest, it appears that a strong argument can be made in favor of that plot of ocean being rightfully owned by the dolphins rather than the humans. The dolphins need the water to sustain themselves in ways that the humans simply do not. Granted, the humans need the plot of ocean to catch fish to feed themselves. But the fish from that particular spot could more easily be replaced for the humans by something of equal market value than the entire dolphin habitat for the dolphins. The Hegelish account of nonhuman property, in other words, has the potential for resolving conflict between claimants competing for property in a manner that favors the claims of nonhuman animals.

A Hegelish account is also conceptually "cleaner" than a Lockean account when it is applied to the property right that dolphins instantiate in their oceanic habitats. As this paper has shown, dolphins labor upon the waters they inhabit so as to meet their material needs. On the Lockean account, does each individual dolphin then have a property right in the particular liter of water they labored upon? If we answer yes, as Lockean would be inclined to, then it seems that dolphins will constantly be violating one another's property rights. The Hegelish conception of nonhuman property, however, allows us to account for the protection of collective as well as individual rights so that we don't fall into such conceptual messiness. One who is skeptical of this view may suggest that such a response only pushes the question back. Perhaps dolphins have a collective right to their oceanic habitats, but might also members of other aquatic species, assuming they are agents in the relevant sense, have a collective right to those same habitats? And if this is the case, would not members of these species be violating the rights of one another constantly? To this, I suggest that a Hegelish conception of property might have the infrastructure to recognize the collective right that members of an ecosystem may have to the ecosystem they inhabit. Should someone explore the extent to which such a proposal would be possible on the Hegelish account of nonhuman property, it might be deduced that the Hegelish account additionally holds the

promise of more completely harmonizing the at times disparate aims of animal advocacy and environmentalism.²²

CONCLUSION

The literature on property rights for nonhuman animals is small but growing. This paper aims to make a contribution to this literature that is fairly modest. It acknowledges that the recognition of nonhuman property rights is instrumental to the end of affording nonhuman animals substantive legal protections, and argues that a Hegelish account of nonhuman property is particularly useful when applied specifically to the case of dolphins and their oceanic habitats. Perhaps there are also other nonhuman animals to which my line of argument could compellingly apply. I do not, however, want to leave the reader with the impression that I have attempted to show that the Hegelish account of nonhuman property developed and defended in this piece is the only viable nonhuman property rights theoretic. Rather, I hope to have shown that it is one among several viable tools that political turn theorists and animal advocates can employ to secure meaningful political protections for nonhuman animals.

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NOTES

¹ Other especially important works in the political turn include, but are not limited to: Nussbaum (2006), O’Sullivan (2011), Cochrane (2012), Garner (2013), and Cochrane (2018).

² I thank two anonymous referees for encouraging me to classify my argument as *Hegelish* rather than *Hegelian* so as to avoid committing to an anthropocentric worldview that would undermine the goals of the present project.

³ See Hadley (2005).

⁴ The character of this argument is largely inspired by Milburn (2017), who says of his defense of a Lockean labor-mixing account of nonhuman property: “my purpose in offering this defence is not to say that all talk of interest-based [nonhuman animal] property rights should be replaced with Lockean rights. I do not believe this. Instead, I aim to illustrate that Lockeanism should not simply be dismissed” (642).

⁵ Radin (1982) cites the opinion written in *Stanley v. Georgia* as emblematic of a cultural attitude that sanctifies the home. Radin seems to suggest that, without such a pervasive attitude about its sanctity, the home may not be accorded its status as personal property. More precisely, it would not be regarded among the most personal kinds of property to exist without the force of community morality authorizing its status.

⁶ Dan-Cohen (2001) does not explicitly reference Hegel in the body of his paper, but he mentions in a footnote that “the most influential modern theory of this general type [the type he is advancing] is Hegel’s” (p. 413, fn17).

⁷ One might wonder: How much private property does an individual need to properly develop her agential capacities? Moreover, how might one go about ensuring that every individual in political society meets this basic minimal holdings threshold? While these questions are most intriguing, it is not the object of this paper to settle these empirical matters. These matters would be better settled by social scientists dedicated to the study of the effects that the protection of private property have on the way subject populations develop agency and a sense of self. Similarly, the means by which one might go about ensuring that every individual in political society meets this basic minimal holdings threshold would best be determined by policy analysts who specialize in studying and drafting redistributive policies.

⁸ I thank an anonymous reviewer for suggesting that my paper situate “itself with respect to the trend in political animal studies that engages non-human animals, rather than non-human persons, and thus refrain from taking the boundaries sustaining humanity as grounds for inclusion and recognition.”

⁹ This paper follows Joel Feinberg (1984, pp. 33–34) and Alasdair Cochrane (2009) in regarding an interest as follows: “to have an interest in x is to have some kind of stake in x; and to have a stake in x is to stand to gain or lose depending on the condition of x...That is to say, an individual’s life goes better or worse as a result of the state of x” (Cochrane 2009, p. 662).

¹⁰ This example is lifted directly from Healey and Pepper (2020).

¹¹ Weisberg (2015) charts a way forward for reinterpreting agency in a manner that is inclusive of nonhuman animals. Blattner et al. (2020) is a recent contribution to the political turn literature that “explores individual and collective dimensions of animals' agency through space and place, through practice and routine, and through social roles and norms, to learn about whether/how animals might want to live with us, and how we can recognize and support their agency through our relationships” (p. 1).

¹² In 2018, experts in animal ethics, animal political theory, the philosophy of animal cognition and behavior, and the philosophy of biology submitted an *amicus curiae* brief on behalf of the Nonhuman Rights Project to secure recognition of the personhood rights of Tommy and Kiko, two chimpanzees in the state of New York who were confined in a cage in a shed and in a cage in a cement storefront, respectively. Andrews et al. 2017 is an extended version of the arguments put forward in the brief, with an Epilogue by Steven M. Wise.

¹³ See also The Great Ape Project (2018).

¹⁴ See also Declaration of Rights for Cetaceans: Whales and Dolphins (2010).

¹⁵ Fish might be agents if it turns out that the undemanding account of agency is correct. And if this is the case, would dolphins be prohibited from using their property rights to hunt them in the same way that we are prohibited from using our property rights to bring harm to other people? Perhaps, or perhaps not. It depends upon what respect for nonhuman agency consistent with the undemanding account requires on the part of humans. Since I do not suppose that the undemanding account is correct for the purpose of my argument, it is not necessary that I develop an account of what falls out of our commitment to recognizing and respecting nonhuman agency consistent with the undemanding account.

¹⁶ Some may object that dolphins are merely acting instinctively when they hydroplane, use mud rings, etc. to get food. White (2007) suggests that “the most likely explanation for these...complex strategies is that they're the product of deliberation and choice” (p. 79). Because self-awareness experiments suggest that dolphins are self-aware and since other dolphins survive in similar environments using other orthodox feeding practices, the most likely explanation for these complex and innovative foraging strategies is deliberation of some kind.

¹⁷ I thank Dan Shahar for bringing my attention to the rich literature that exists about nonhuman animal site fidelity, and for encouraging me to connect my account of nonhuman property rights to this body of evidence.

¹⁸ The work of Clare Palmer (2010) may be of interest in helping us flesh out the specifics of what reparations would look like in the case of nonhuman property rights violations.

¹⁹ I thank an anonymous referee for encouraging me to think of the implications that respect for nonhuman property

rights would have beyond obligating humans to habitative noninterference.

²⁰ Originally formulated, Milburn (2017) argues that a labor-mixing account of nonhuman property (1) more clearly grounds a property right than does an interest-based account, (2) grounds property rights that are broader than those grounded by interest-based accounts, and (3) grounds property rights that are considerably stronger than those grounded by interest-based accounts. It is not clear to me that (1) does much work for the argument independently of (2) and (3), so I consolidate the advantages of his account into (1)&(2) and (1)&(3).

²¹ See Honoré (1961) for a fuller account of some of these incidents. Obviously, not all of them will apply to the case of nonhuman animals (the right to the income, for instance) as nonhuman animals come from different sociocultural settings than humans and will have different means by which agency and identity can be expressed through ownership.

²² Fleshing out this idea and its ramifications is beyond the scope of this paper. However, it seems conceivable that the Hegelish account of nonhuman property could authorize the recognition of collective rights in this way.

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