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Ownership and Belonging in Urban Green Space

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Introduction

This chapter is concerned with a particular type of communal property: urban green spaces which are used by the general public and are prevalent throughout the UK. 'Urban' refers to spaces within town or city boundaries, and 'green' to areas with vegetation, not paved squares or plazas. In this chapter we have adopted the term 'communal property' to capture the understanding that rights of access, use and enjoyment of these urban green spaces are shared in common by the general public. Urban green spaces transcend the public/private divide and provide natural beauty in urban settings, opportunities for chance encounters, spaces for community development and neighbourhood events; they are 'critical to the social and communal fabric'.[1] Consideration of legal strategies for their development and protection raises many interesting and important issues, particularly relevant at a time of austerity when local authority parks are facing financial cuts, and other sources of funding for urban green spaces are also diminishing.[2]

Green spaces in the UK are strikingly varied in form, governance and ownership arrangements. The traditional fenced or walled park owned by the local authority faces increasing financial pressures. Councils are exploring the practicalities of different forms of management, especially partnership arrangements between public, private and voluntary sector organisations. There are also pocket parks in community management, neighbourhood gardens, and green spaces owned and managed by charitable trusts and private subscription societies, among others.

[1] J. Page, 'Towards an Understanding of Public Property', in N. Hopkins (ed.), *Modern Studies in Property Law*, vol. 7 (Oxford, Hart, 2013), pp. 195–216 at p. 214.
[2] See full discussion of this context in Communities and Local Government Committee, *Public Parks: Seventh Report of Session 2016–17*, House of Commons, HC 45: www.publications.parliament.uk/pa/cm201617/cmselect/cmcomloc/45/45.pdf.

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A number of reasons have been suggested for the changes to urban green spaces since the mid-twentieth century when the majority of UK parks were owned and managed by local authorities. For instance, there has been a resurgence of individual and, particularly, collective ways of engaging with the land;[3] some local authorities have adopted innovative practices to involve residents with their local green spaces; and funding cuts to local authorities since the financial crash in 2008 have prompted the establishment of many partnership arrangements.

The relevant property rights of ownership, management, access and use cannot necessarily be divined through the materiality of the space itself, nor is it always apparent where responsibility lies for a particular space and what kinds of activities are permitted there. This raises the issue of democratic accountability in relation to decision-making over urban green spaces owned and managed both by local authorities and by community groups. As will become apparent, there are difficulties in categorising parks in terms of property law in this jurisdiction, and a bewildering array of possible alternative legal arrangements for the ownership of parks by a range of different organisations. Although these issues are discussed in this chapter, we want to move beyond a single focus on property law to consider the wide range of literature addressing the phenomenon of urban green space.

Urban green spaces have attracted attention from a range of academic disciplines. The interrelationship of this research is used here to illuminate understanding and to contribute to the development of theories of communal property, despite the difficulties caused by similar-sounding terms used in different ways. For example, critical urbanist scholars are concerned with theorising 'public space',[4] and in particular the effects of its commodification and privatisation.[5] Anthropological research highlights the connection between individuals, community and place, closely examining the concepts of belonging and ownership.[6] Recent scholarship on the 'urban commons' describes and theorises the process of claiming space as communal.[7] Similarly, legal geographers use the concept of performativity to

[3] S. Farran, 'Earth under the Nails: The Extraordinary Return to the Land', in N. Hopkins (ed.), *Modern Studies in Property Law*, vol. 7 (Oxford, Hart, 2013), pp. 173–191.

[4] H. Lefebvre, *Writings on Cities*, trans. E. Kofman and E. Lebas (Oxford, Blackwell, 1996; first published in French, 1968).

[5] D. Mitchell, *The Right to the City* (New York, Guilford Press, 2003). See also legal scholarship on this issue: A. Layard, 'Shopping in the Public Realm: A Law of Place', *Journal of Law and Society*, 37 (2010), 412–441.

[6] M. Strathern, *Property Substance and Effect: Anthropological Essays on Persons and Things* (London, Athlone Press, 1999); C. M. Hann (ed.), *Property Relations: Renewing the Anthropological Tradition* (Cambridge, Cambridge University Press, 1998); V. Strang and M. Busse (eds), *Ownership and Appropriation* (Oxford and New York, Berg, 2011).

[7] D. Bollier, *Think Like a Commoner: A Short Introduction to the Life of the Commons* (Gabriola Island, BC, Canada, New Society Publishers, 2014); P. Linebaugh, *The Magna Carta Manifesto: Liberties and Commons for All* (Oakland, University of California Press, 2009); I. Susser and

shed light on ideas of property and possession in land.[8] Landscape researchers have clarified the important distinction between initial acts of place-making and the ongoing process of place-keeping,[9] and have also analysed the partnership arrangements between public, private and third sector organisations, through which many urban green spaces are now owned and managed.[10]

The breadth of the literature referred to above, on which we draw in this chapter, underlines the significance of this type of communal property. A unifying theme is the transformation over time of urban green spaces through human interactions. These collective activities change the look of the land, and drive changes to the legal and practical arrangements for its ownership, management and rights of access and use. This chapter investigates the co-constitutive relationship of people (individuals and communities), place and law in relation to urban green spaces. In contrast to legal scholarship's customary 'sharp boundaries between people and place',[11] we explore feelings and experiences of belonging and ownership, and how community identity coheres around particular spaces.[12] We examine these themes, and not just legality, along a temporal axis.[13]

The rich variation of types of urban green space as communal property, the different disciplinary approaches, and the importance of studying changes over time, all point to the value of detailed contextual research. Analysis of 'practices as well as the spatial, social and legal interaction[s]'[14] at a particular site over time can reveal the mismatch between legal and popular understandings of communal property. This chapter focuses on Heeley People's Park in Sheffield in the UK as a case study, exploring its creation and development over time and the current strategies intended to ensure its future. As trustees of Heeley Development Trust, which holds leasehold title to the park, both authors enjoy 'insider status'[15] giving us access to particular experiences and rich knowledge and information about the

S. Tonnelat, 'Transformative Cities: The Three Urban Commons', *Focaal – Journal of Global and Historical Anthropology*, 66 (2013), 105–132.

[8] N. Blomley, 'Un-Real Estate: Proprietary Space and Public Gardening', *Antipode*, 36 (2004), 614–641.

[9] N. Dempsey and M. Burton, 'Defining Place-Keeping: The Long-Term Management of Public Spaces', *Urban Forestry and Urban Greening*, 11 (2012), 11–21.

[10] C. de Margalhaes and M. Carmona, 'Dimensions and Models of Contemporary Public Space Management in England', *Journal of Environmental Planning and Management*, 52 (2009), 111–129.

[11] A. Layard, 'Public Space: Property, Lines, Interruptions', *Journal of Law, Property, and Society*, 2 (2016): www.alps.syr.ed.u/journal/2016/08/JLPS-2016-08-Lyard.pdf, at p. 47.

[12] D. Cooper, 'Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property', *Law and Social Inquiry*, 32 (2007), 625–664.

[13] A. Margalit, 'Commons and Legality', in G. S. Alexander and E. M. Penalver (eds), *Property and Community* (Oxford, Oxford University Press, 2010), pp. 141–164.

[14] Layard, 'Public Space', 49.

[15] P. Hodkinson, '"Insider Research" in the Study of Youth Cultures', *Journal of Youth Studies*, 8 (2005), 131–149.

park. Combining socio-legal[16] and anthropological[17] perspectives enables us to explore issues of belonging and community as well as property and ownership. This highlights the tensions and gaps between the reality of owning, managing, funding and using a local park, the various conceptualisations of communal property, and the legal frameworks which are currently available in this jurisdiction.

The chapter is structured as follows. We first set out the case study of Heeley People's Park. Current strategies of acquiring assets and establishing a subscription society to raise funds for the continuing maintenance of the park introduce two other urban green spaces in Sheffield. This enables the succeeding, more theoretical, sections on understanding ownership and belonging, and conceptualising urban green space in property law, to be grounded in real-life examples. An overview of the available legal frameworks for urban green space in this jurisdiction is then provided, paying attention to governance and issues of democratic accountability. The following section explores difficulties in articulating the discourse of communal property, especially in relation to the crucial issue of funding maintenance of urban green space. Conclusions are reached in the final section.

Heeley People's Park, Sheffield

Sheffield is a post-industrial city in the north of England with a population of around 550,000. One of the local authorities in the UK that has been worst affected by austerity measures, Sheffield City Council has seen its revenue grant from central government cut by 50 per cent between 2010 and 2015, and overall spending (excluding health) reduced from £970 million to £829 million,[18] with further cuts to come.[19] But Sheffield certainly has advantages. Branding itself in 2015 as 'the UK's first Outdoor City',[20] Sheffield is 'the greenest city in England' with an estimated 2 million trees and is the only core city to include part of a national park, the Peak District, within its boundaries.[21] Sheffield boasts more than 700 green

[16] See R. Pound, 'Law in Books and Law in Action', *American Law Review*, 44 (1910), 12–36; S. Blandy, 'Socio-Legal Approaches to Property Law Research', in S. Bright and S. Blandy (eds), *Researching Property Law* (London, Palgrave Macmillan, 2015), pp. 24–42.

[17] See Strathern, *Property Substance and Effect*; Hann, *Property Relations*; Strang and Busse, *Ownership and Appropriation*.

[18] *Financial Times*: http://ig.ft.com/sites/2015/local-cuts-checker/#E08000019ZZE08000019.

[19] Local Government Association, *Under Pressure: How Councils Are Planning for Future Cuts* (London, LGA, 2014). Sheffield City Council's budget for 2018/19 is estimated to be approximately £400 million: *2018/19 Revenue Budget Report*, Chief Executive and the Executive Director, Resources, Sheffield City Council (undated).

[20] http://theoutdoorcity.co.uk/.

[21] Sport Industry Research Centre, *Valuing the Contribution of the Outdoor Economy in Sheffield* (Sheffield, Sheffield Hallam University, 2014), p. 4.

spaces, of many different kinds and sizes,[22] more than one for every thousand Sheffield inhabitants.

The People's Park lies just to the south of Sheffield city centre in Heeley, an inner-city community of about 4,500 residents. Heeley's population increased ten-fold from 1843 to 1871 during the industrial revolution, then doubled again over the following ten years.[23] The neighbourhood is now characterised by a mixture of industrial buildings dating back to the early nineteenth century, dense Victorian terraced housing, some large detached houses, and social housing stock. Heeley has a diverse, multi-racial population which has long included some 'alternative' middle-class households. Deprivation levels in Heeley are similar to the Sheffield average, except for significantly higher levels of crime and a significantly lower secondary school attendance rate. The population aged between 25 and 44 years is much higher in Heeley (37.0 per cent) than in Sheffield as a whole (27.9 per cent).[24] Notably, Heeley residents have a strong sense of neighbourhood and community.

A large swathe of hillside land in Heeley, to which Sheffield City Council held freehold title, remained derelict after wartime bomb damage and subsequent slum clearance. In the 1970s, plans were published to route a Sheffield South Relief Road across this land, which would have torn the Heeley community in two. Well-organised local residents fiercely and successfully opposed these plans, and the road was never constructed. In 1981 the local authority leased two hectares of the derelict land to establish Heeley City Farm. Like other city farms, Heeley City Farm brings the countryside to the inner city so that adults and children can interact with a range of animals; it remains a popular local resource today.

In 1993 the Millennium Commission was set up, offering National Lottery funding to community projects. This was the catalyst for Heeley residents to organise around developing the remaining unused land into a park, although their first bid was unsuccessful. However, momentum had grown through communal endeavour, organisation and community consultation, and funding was secured in 1996. The council then offered a 125-year lease of the remaining three and a half hectares of the hillside, a 'bramble covered taxi rank which had begun collapsing in on itself, with pockets of wildly overgrown, debris-filled wasteland crumbling inside the remains of post-war terraced cellars'.[25] In order to take leasehold title to this land, then named Heeley Millennium Park, the local activist group adopted a corporate entity: Heeley Development Trust (HDT), which is both a company limited by guarantee and a charity. Community development trusts flourished in

[22] http://theoutdoorcity.co.uk/.
[23] www.oldheeley.supanet.com/oldheeley9.htm.
[24] Sheffield Health and Well-Being Profiles 2012, for Heeley Neighbourhood: www.sheffield.gov.uk/profile.
[25] http://heeleypark.org/history/.

the 1990s–2000s, undertaking asset-based area regeneration and development in deprived areas with devolved funding from central government. HDT is an unusual development trust because its sole initial property was the wasteland destined to become Heeley Park, intended to be accessible and enjoyed by the public. It would first need development with lottery funding, and then continual maintenance as a community park: the antithesis of an income-generating asset.

HDT was incorporated in December 1996, and then registered as a charitable trust in January 1998. Its charitable purposes mirror the aims set out in the company's Memorandum: 'to create and manage Heeley Millennium Park'; to 'promote education, training and learning, particularly in skills relevant to securing employment' in Heeley; and 'to promote other charitable purposes for public benefit'. The HDT company directors took on a dual role as charitable trustees. HDT is subject to top-down regulation from both the Companies Registrar and the Charities Commission, and is accountable to both bodies. However, HDT has no formal duty to make itself accountable to the community it serves. It does not have a membership. Nonetheless the Trust's origins in the local community are clear. The original subscribers to the company were the headteachers of the two local primary schools, a youth worker and a development officer from the local authority, the owner of a local business, and other local residents. Those who witnessed the subscribers' signatures include representatives of the local Youth Centre, Heeley City Farm, and the local Tenants and Residents Association.

Lottery funding made the land safe for public use; then HDT sought the views of 3,000 neighbouring households on how the park should be developed. After numerous public design events, the area was landscaped and planted; traditional play equipment and the first open-access climbing boulder in the city were installed. Over a decade later in 2010, HDT was awarded one of nine national Big Lottery Community Spaces flagship grants to further improve the park and its landscaping. A BMX track, mountain bike and nature trails, a community orchard, a wildflower meadow, a multi-use games area and an amphitheatre were developed. HDT organises music and other festivals in the summer months. In 2016 the park was re-named Heeley People's Park, for reasons which are discussed in the discourse section of the chapter.

Heeley people have seen the park develop over the past 20 years into an exciting and well-run resource. They use and appreciate the facilities, and thousands more enjoy events there. Local residents get involved in planting new trees, shrubs, plants and bulbs. The way the park is landscaped and the facilities it offers constitute an open invitation to public access and use, and make it clear what sort of conduct is expected and acceptable. The impact of HDT is summarised by a resident who has lived in Heeley for over 50 years, who told the local newspaper:

> This [the park] is the best thing that ever happened here. I remember looking at this area from the bus and it was just a load of bricks. I'd never in a month of Sundays think it could look like this. It's unrecognisable compared to what it was, it's a lovely

> place to walk in and these lads do a grand job looking after it and improving it every day.[26]

However, HDT quickly realised that owning a park was less of an opportunity than a liability, since parks require maintenance and there was no obvious source of continuing income. Therefore from an early stage HDT aimed to acquire buildings as assets, to fund park maintenance and to provide accommodation for other community activities. In 2001 HDT took a nil-rent 25-year lease of the Heeley Institute, a converted Methodist chapel, which is now used for community facilities, events and educational courses. More recently, the Trust has taken a long lease from the local authority of a former primary school whose Victorian premises adjoin the park. Funding was obtained to convert the largest of the school's three buildings into managed workspaces, named SUM Studios. The renovation won eight prizes at the 2015 Royal Institute of British Architects Yorkshire awards, including the sustainability award.[27] The building is now fully let at commercial rents, to provide an income stream to support the Trust's charitable purposes.

Faced with an increasing financial challenge as funds from charitable sources as well as from local authority contracts diminished, HDT has recently adopted two particular fundraising strategies. Each strategy has resonances with those adopted in other Sheffield parks. Examining these strategies and connections highlights the importance of a contextual and temporal analysis of urban green spaces, and reveals the mismatch between legal structures and a community's sense of belonging and ownership.

In 2015 HDT proposed to solicit funds through establishing a subscription society, realising that park maintenance costs could be met if local households each paid an average of £10 annually. HDT's approach was supported as a nationally-significant innovation by the Rethinking Parks programme run by Nesta.[28] Yet there is a clear, and geographically nearby, precedent which might give HDT pause for thought. The Sheffield Botanical Gardens were established in 1834 on land purchased by a private subscription society. In legal terms an unincorporated association, its members were local residents concerned about the lack of green space in Sheffield. Rather like HDT 150 years later, their intention was to promote both healthy recreation and education. However, the financial difficulties of maintaining urban green space caused the failure of two successive private subscription societies within 50 years. In 1897 the freehold was transferred to a large local charity, the Sheffield Town Trust, which opened the Gardens to the public. In 1951 the Town Trust leased the Gardens, once more rundown, to the local authority

[26] 'Community Turns Slum Clearance to Parkland', *Sheffield Telegraph*, 27 April 2010: www.sheffieldtelegraph.co.uk/what-s-on/community-turns-slum-clearance-to-parkland-1-802431.
[27] www.architecture.com/StirlingPrize/Awards2015/Yorkshire/SumStudios.aspx.
[28] The National Endowment for Science, Technology and the Arts was established in 1998, becoming in 2010 an independent charity, Nesta, funding innovative ideas and practices.

for a peppercorn rent. In 1996, after ten years of closure, the Sheffield Botanical Gardens Trust was formed and applied successfully to the Heritage Lottery Fund, just as HDT did. Sheffield City Council now manages the fully restored Botanical Gardens, in partnership with the Town Trust which still owns the freehold and with the Botanical Gardens Trust and the Friends of the Botanical Gardens group.

HDT's second strategy, adopted in 2016, was driven by its need for increased income from property assets. This coincided with threats to public parks caused by drastic public finance cuts.[29] About half a mile from Heeley Park is Meersbrook Park, a typical local authority-run large park with varied facilities, including a late eighteenth-century Hall. In 1886 the land and buildings were purchased for the benefit of Sheffield residents by the city council, which has owned and managed the park ever since. Meersbrook Hall was occupied first by the Ruskin Museum, and then by the council Parks department. In 2014 the council decided to relocate its Parks team to city centre offices. Fearing that the council's asset management staff would try to sell the vacant Hall for private development, local residents formed the Friends of Meersbrook Hall group and began campaigning for the Hall to remain in public ownership. They initially hoped to transform the Hall into a community venue themselves, but it became apparent that they needed the assistance of HDT, which, as a Building Preservation Trust,[30] was the relevant local community development organisation with experience of this task. HDT saw the opportunity to add the Hall to its asset base, enabling it to continue its community development activities. In 2016 the Friends and HDT joined forces. At the time of writing, the council has issued a licence permitting HDT to occupy the Hall, allowing it to locate its adult education services in the Hall and to host community meetings there while negotiations for a long lease to HDT continue. HDT is seeking funding for the renovation of the Hall, and will then maintain it through part-letting it as commercial office space, offering the rest for community activities including a café.

This contextual account clearly demonstrates how the status and operation of all three parks have changed over time, alongside the use and ownership of the land. It also shows how the history and future of the Heeley People's Park and HDT are bound up in the land itself, since its acquisition engendered the need to acquire rent-producing assets to maintain the park itself. It is not only the pattern of ownership and the materiality of the land, but also its legal status and people's understandings of that status which have changed over time and feed into current practices. The critical events in Heeley occurred in 1979, when the relief road plans

[29] Ninety-two per cent of park managers report that their maintenance budgets have reduced in the past three years, and 95 per cent expect their funding will continue to reduce: Heritage Lottery Fund, *State of UK Public Parks 2016*: www.hlf.org.uk/state-uk-public-parks-2016.

[30] HDT is a member of the Heritage Trust Network: www.heritagetrustnetwork.org.uk/heeley-development-trustHeritageTrustNetwork.

were abandoned; in 1996 when funding was secured and the newly incorporated HDT took the lease of the land; and in 2015 when the subscription society was launched and the park was re-named as Heeley People's Park; and 2016 when Meersbrook Hall was adopted by HDT.

Ownership and belonging

Heeley exemplifies 'the strength of the feeling people have for their local parks and green spaces, and how much parks are valued by individuals, families and communities'.[31] HDT's activities, in particular the development of the park, express the ways in which the park's particular properties reinforce that feeling of belonging, rather than that the park 'belongs to HDT'. There are no by-laws or rules displayed in the park, yet knowledge of acceptable practices seems to be shared as tacit knowledge, and linked to community governance.[32] Residents certainly report feeling a sense of 'ownership':

> I felt really proud afterwards when we walked past, I thought 'I helped plant those!' (Volunteer at Plant Your Park, 2012). I've just moved back to Heeley after a year away to find a new boulder in the park! Well done and thanks to everyone involved, a wonderful contribution to the community. The whole park looks great and has a fantastic atmosphere. It's great to be back in a community with so much energy and creativity! (Heeley Resident, 2013). Really great – kids and adults all enjoying it. Love these events – so important for the local community (Heeley Resident, Big Boulder festival 2012).[33]

How can this sense of belonging and ownership in relation to communal property be reconciled with legal concepts? Although it is correctly stated that '[d]espite what the layman might think, there is no concept of ownership in English law',[34] much property scholarship recognises that each resource belongs to a named individual (or a corporate body) through the 'name/object correlation', which constitutes the essence of ownership.[35] Recent anthropological debate has highlighted the many forms and sentiments of owning that fall outside the legal definition of title, and many means of relating to property that are not encompassed by property rights.[36] Cooper's attention to what property 'does', in the specific context of the experimental Summerhill school, allows her to identify relations of

[31] Noted generally in House of Commons, *Public Parks*, para. 3.
[32] M. Valverde, *Law's Dream of a Common Knowledge* (Princeton, Princeton University Press, 2003).
[33] HDT, Asset of Community Value Nomination Form (2015), on file with authors.
[34] W. Swadling, 'Unjust Delivery', in A. Burrows and A. Rodger (eds), *Mapping the Law: Essays in Memory of Peter Birks* (Oxford, Oxford University Press, 2006), pp. 277–298 at p. 281.
[35] J. Waldron, *The Right to Private Property* (Oxford, Clarendon Press, 1988).
[36] Strang and Busse, *Ownership and Appropriation.*

belonging shaped by personal, civic and boundary dimensions.[37] The difficulties in applying notions of communal property to urban green spaces should be understood as highlighting the limitations of property as a relation between persons and space, while seeing sharing of property as a way to extend the boundaries of a relationship of owning, as articulated through the legal concept of the corporate body and the institution of trust (as a particular relationship) and Trusts (as a legal form in British law).

One way forward may be the understanding, shared by legal anthropologists[38] and by many property law theorists,[39] that property is concerned with relations between people. Yet property title presumes that it is the thing that is owned by the person, and that relations of ownership are bound by this directional logic. However, in the case of land, it is clear that ownership also moves in the opposite direction, since people not only feel ownership of land, but feel that they belong to it: the land 'owns' them. Anthropological discussions of belonging have considered this ambiguity, and the confusion between belonging to a place and belonging to a people.[40]

Much early anthropological and sociological research (in line with its Western colonial context) presumed an equation between ethnicity and place. Since Tönnies' arguments in the nineteenth century that the authenticity of village life was tied to the land, in contrast to the alienation of urban Modernity, many European intellectuals have romanticised the notion of village life as grounded in land and social relations. Hence we still see maps of ethnic groups laid out in terms of territory, which they either 'own' or 'belong in'. This idiom (widespread but not universal)[41] is also recognisable through its own shadow concept in the twinned romanticisation and persecution of nomads who are seen not to 'belong' to a particular permanent place. The bidirectional relation of ownership/possession, of/by place, is rather inadequately addressed in legal terms through property and trespass, not least in assuming that owning implies exclusion. This could, in fact, be seen to be the very conundrum that the idea of communal property seeks to address, along with apparent compromises such as the Right to Roam, which suspends the potential for trespass on what is otherwise private property.[42] In separating ownership

[37] Cooper, 'Opening up Ownership'.

[38] Hann, *Property Relations*.

[39] See, for example, the definition of property as 'a network of jural relationships between individuals in respect of valued resources', in K. Gray and S. F. Gray, *Elements of Land Law*, 5th edn (Oxford, Oxford University Press, 2009), p. 6.

[40] A. Cohen (ed.), *Belonging: Identity and Social Organisation in British Rural Cultures* (Manchester, Manchester University Press, 1982).

[41] It is always worth reminding ourselves that there are societies in which neither material nor land can be conceptualised into a relationship of ownership, where 'property' is an entirely foreign concept. The ethnographic record is rife with accounts of researchers struggling to keep hold of their supplies in the face of people helping themselves.

[42] Countryside and Rights of Way Act 2000.

from use, the possibility is created that people may feel they belong to places that they do not own.

Through her empirical research into concepts and uses of property, Cooper has developed two dimensions of 'belonging'.[43] The first is the classic subject/object of relationship which is materialised through property law, and the second concerns the 'social relation of belonging' which is constitutive of a part/whole relationship between individuals or communities, and property. This second dimension echoes Radin's perception that the 'physical and social characteristics' of a local neighbourhood 'can become bound up over time with the . . . group's existence as a community'.[44] This suggests both that property relationships can engender community identity, and that time is important in this process; both of these elements are present in Heeley People's Park.

The small group of dedicated activists who established Heeley Park in 1996 must have experienced a great sense of belonging and communal ownership when they successfully defeated the plans for the relief road. Their activities at that time and the nascent park could best be described in the (non-legal) term 'urban commons', coined in recent academic literature to encapsulate ideas of common ownership and participative citizenship.[45] Linebaugh uses the verb form 'common*ing*' to express the concept of the urban commons as a continuous process which requires participation, taking place in a particular local space.[46] Commoning is by definition a group activity, for example the creation of social movement centres from unused buildings.[47] Urban commons are often linked to the concept of the right to the city,[48] which encompasses rights not to be expelled from social life, to use urban space and to participate in decision-making. Lefebvre explained these as neither natural nor contractual rights, but a necessary product of the qualities of urban space: convergence, ceremony, recreation, and commerce. For Lefebvre, the urban is 'more or less the *oeuvre* of its citizens',[49] shaped by their continuing actions in using and claiming space for public use. Anthropologists also recognise that property relations, as 'acts of communicating and upholding ownership, are processual rather than static'.[50] The performance of property can be seen in the appropriation of land through guerrilla gardening.[51]

[43] Cooper, 'Opening up Ownership'.
[44] M. J. Radin, 'Time, Possession, and Alienation', *Washington University Law Quarterly*, 64 (1986), 739–758 at 757.
[45] Bollier, *Think Like a Commoner*. Editors' note: For further discussion of 'commoning projects', see also Pieraccini in this volume.
[46] Linebaugh, *The Magna Carta Manifesto*.
[47] S. Hodkinson and P. Chatterton, 'Autonomy in the City? Reflections on the Social Centres Movement in the UK', *City*, 10 (2006), 305–315.
[48] Lefebvre, *Writings on Cities*.
[49] Lefebvre, *Writings on Cities*, p. 117.
[50] Strang and Busse, *Ownership and Appropriation*, p. 4.
[51] Blomley, 'Un-Real Estate'.

New forms of property relations are thus established through everyday practices; the creation of the Heeley park was an example of this. Urban green spaces offer what might be described as a right to be a citizen, a city-dweller with full access to the opportunities that the city offers. Ideally, therefore, parks are places for civic participation, a means for people to exercise the desire to belong, socially and territorially, to something other than their own immediate property. Observations of Heeley Park suggest that a sense of belonging and ownership, in the sense of constituting a part/whole relationship between individuals and community,[52] is influenced by factors such as proximity, frequency of use and the time and effort invested. Those who live beside the park, or walk through it on the way to work or when taking children to school, are likely to feel that sense of belonging. If you give your time to attending meetings, or to planting trees and flowers, you are likely to feel more 'ownership' and pride in the park as 'ours'.

Conceptualising urban green space in property law

Parks are complex and varied places, as illustrated by the different histories and legal frameworks of the three Sheffield parks, Heeley, Meersbrook and the Botanical Gardens. Urban green spaces pose difficulties for the law. Property law in England and Wales does not recognise public (or communal) property as a category. Most of what is usually understood to be 'common land' in England is actually in private ownership; only the rights to access and use that space are held in common.[53] These lesser rights may in certain circumstances be protected by law through registration of that land as a commons, or as a village green, if it has been used by people in the neighbourhood for recreational pastimes for more than 20 years.[54] However, very few urban green spaces, and none of the three examples considered in this chapter, meet the criteria for protection through registration.

If communal property cannot be categorised as public property or as commons, it must be considered as a form of private property. Some private property theorists emphasise the owner's right to selfishly exploit the property they own,[55] whereas others point to the wider responsibility or stewardship approach to ownership.[56] The conventional model of private property is individual and exclusionary. In Honoré's famous 'incidents of ownership' analysis, the owner of land enjoys rights to determine its governance and rules of use, and to exclude all others from

[52] Cooper, 'Opening up Ownership'.
[53] Editors' note: For rights of common and registration of common land in England and Wales, see Rodgers in this volume.
[54] Commons Registration Act 1965; Commons Act 2006, section 15(2).
[55] J. Harris, *Property and Justice* (Oxford, Oxford University Press, 2001).
[56] G. S. Alexander, E. M. Penalver, J. W. Singer and L. S. Underkuffler, 'A Statement of Progressive Property', *Cornell Law Review*, 94 (2009), 743.

it.[57] Most land owned by local or central government can be categorised as private property (albeit owned by a public institution), because rights of access may be withdrawn.[58] In this jurisdiction there is no general legal doctrine that local authorities hold property on public trust, as municipalities do in the US. However, there are statutory provisions which determine the extent of rights that local authorities may exercise over parks, balancing the owners' rights of management and control with the right of access held by the general public. For example, 'any open space' acquired by a local authority for public access must be held and administered 'in trust to allow . . . the enjoyment thereof by the public'.[59] More recently, the Court of Appeal held that 'the council, whether as owner, possessor or occupier of the [in this case, Farnham] park, was a trustee for the general public in the exercise of its powers and duties of management and control'.[60]

Sheffield City Council therefore acts as trustee for the public in the Botanical Gardens (as leaseholder) and in Meersbrook Park (as freeholder). HDT (as leaseholder of Heeley People's Park) is bound by its charitable purposes to act for the public benefit. Both these landowners have only 'quasi-ownership' rights because they lack 'legitimised self-seekingness', the right to selfish exploitation of their property.[61]

Private property's 'impulse to supervise, control and exclude' is at odds with fostering an integrative sense of community.[62] These opposing aims are well illustrated in the 1886 conveyance of the land that became Meersbrook Park. Mutual covenants were included to ensure that the land would be 'used solely for the purpose of a Public Park and Public Walks or Pleasure Grounds' to benefit the people of Sheffield, but also that a 'substantial iron fence' would be built around the new park. Today, Meersbrook Park remains enclosed in accordance with the 1886 covenant but its gates are now permanently open and there is no caretaker on site. The wall built around the new Botanical Gardens enabled admission to be restricted to paid subscribers, creating restricted-access communal property in which property rights are held in common by members of a group that excludes all others.[63] Until 1897 the Gardens only opened to 'the general public on about 4

[57] A. Honoré, 'Ownership', in A. G. Guest (ed.), *Oxford Essays in Jurisprudence* (Oxford, Oxford University Press, 1961), pp. 107–128.

[58] The exception is public highways, over which there are public rights of use: Highways Act 1980, section 130. But see *City of London v Samede*, [2012] EWHC 34 (QB), for the limitations of these rights, and the discussion in Layard, 'Public Space'.

[59] Open Spaces Act 1906, section 10.

[60] *Waverley Borough Council v Fletcher*, [1996] QB 334, per Auld LJ, at p. 349.

[61] Harris, *Property and Justice*, p. 108.

[62] Gray and Gray, *Elements of Land Law*, p. 1335.

[63] A. Clarke, 'Property Law: Re-Establishing Diversity', in M. Freeman (ed.), *Law and Opinion at the End of the Twentieth Century, Current Legal Problems*, vol. 50 (Oxford, Oxford University Press, 1997), pp. 119–154.

Gala days per year',[64] an illustration of the exclusionary power of private property. The public-private partnership which now runs the Botanical Gardens continues to close its gates between dusk and dawn. Further, in common with a growing national trend,[65] parts of the Gardens are sometimes withdrawn from public access for commercial reasons: to accommodate private, paying events such as concerts and theatre performances. HDT as the leaseholder could regulate access to Heeley Park, although there are no enclosing fences at present and no intention to build any. This park constitutes open-access communal property, to which everyone has the right of access.[66]

There is no need or wish to exclude people from most parks (subject to compliance with rules of conduct acceptable to that locality). In fact the reverse is true: parks 'have value precisely because they reinforce the solidarity and fellow-feeling of the whole community; thus the more members of the community who participate . . . the better'.[67]

Page argues that it makes little sense to define rights associated with communal property through the lens of exclusion, because these are 'collective rights, enjoyed by individuals in common with others'.[68] It may therefore be more relevant to analyse property relations in parks through conceptualising the 'rights of property [as] a bundle of powers, capable of being separately enjoyed',[69] rather than accepting the right of exclusion as the defining feature of property.[70]

We suggest that the relevant rights in the 'bundle' of communal property are those of ownership, of management, of access and of use. In all three parks discussed here, property ownership is currently fragmented between freehold and leasehold titles. The significance of these legal constructs is not easily understandable by non-lawyers. Rights of management in the Botanical Gardens and Meersbrook Park are not devolved to Friends groups, which are very involved and committed but do not 'hold any alienable title or property interest in the resource',[71] nor do they have the right to 'regulate access to the resources, control

[64] http://sbg.org.uk/history.asp.
[65] A. Minton, *Ground Control: Fear and Happiness in the Twenty-First-Century City* (Harmondsworth, Penguin, 2012).
[66] Clarke, 'Property Law: Re-Establishing Diversity'.
[67] C. Rose, 'The Comedy of the Commons: Custom, Commerce and Inherently Public Property', *University of Chicago Law Review*, 53 (1986), 711–781 at 720.
[68] Page, 'Towards an Understanding of Public Property', p. 196.
[69] Sir H. S. Maine, *Village-Communities in the East and West: Six Lectures Delivered at Oxford* (London, John Murray, 1881), pp. 133–134. See also C. B. MacPherson (ed.), *Property: Mainstream and Critical Positions* (Toronto, University of Toronto Press, 1978).
[70] See, for example, H. E. Smith, 'Property as the Law of Things', *Harvard Law Review*, 125 (2012), 1691–1726.
[71] S. Foster, 'Collective Action and the Urban Commons', *Notre Dame Law Review*, 87 (2011), 57–133 at 58.

or impose restrictions on individual behavior'.[72] Friends, like members of the general public, have the rights to use and access these parks determined by their respective owners, discussed above. The local authority's right to manage Meersbrook Park and the Botanical Gardens is embodied in the 1966 'Byelaws with respect to Pleasure Grounds' which apply to all the parks in their ownership; the very extensive provisions include the council's right to close parks from dusk to dawn and various prohibitions on conduct.[73] The lack of any similar managerial rules at Heeley People's Park has already been noted.

The bundle of rights analysis has shown a tension between the social, or perhaps moral, understandings of ownership and belonging, and the legally recognised rights in property, whether public, private or communal. We suggest that a similar analytical approach to property in any particular urban green space will highlight similar complexities.

Legal frameworks available for communal property ownership and governance

The previous section has shown how difficult it is to conceptualise urban green space using conventional property law tools. As Layard observes, '[p]ublic space is not property. Or better put, public space is not *just* property',[74] being created and developed through human interactions and community use. We now turn to the legal frameworks which are available in this jurisdiction for owning, managing and using urban green space. These are discussed in the context of the themes already established: belonging and ownership, communal property, governance and democratic accountability. Time is also an important element. The tension between a place that is continually evolving through the work and use of human actors, and its legal structure, is beautifully expressed by Strang and Busse's observation that the wider interactions 'between people and the environment . . . [can only be] temporarily crystallised through legal artefacts'.[75] Yet a property transaction such as the creation of a long lease is 'a scenario of executed obligation: the "deal" has been "done"'.[76] There is limited opportunity as land and community develop over time to change the legal framework, or to bring in new arrangements for the democratic

[72] Foster, 'Collective Action and the Urban Commons', 108–109.
[73] http://sheffielddemocracy.moderngov.co.uk/documents/s18882/Appendix%203%20-%20Bylaws%20in%20Respect%20of%20Pleasure%20Grounds.pdf.
[74] Layard, 'Public Space', p. 43 (original italics).
[75] Strang and Busse, *Ownership and Appropriation*, p. 5.
[76] K. Gray and S. F. Gray, 'The Rhetoric of Realty', in J. Getzler (ed.), *Rationalizing Property, Equity and Trusts: Essays in Honour of Edward Burn* (London: Butterworths, 2003), pp. 204–280 at p. 241.

governance of an urban green space. Therefore legal frameworks tend to reflect only the initial stage of place-making.[77]

Evaluative research into ongoing place-keeping by urban green space partnerships has identified criteria for success.[78] These factors chime with HDT's experiences and include: continued motivation 'beyond the initial, place-making project stage'; the ability to attract funding; commitment (covering a wide range of activities including unpaid time, sharing knowledge, attendance at meetings, and 'signing up' both to formal constitutional documents and to the organisation's aims); establishing a skills base; and effective communication.[79] One of the emerging themes from this study is the importance of establishing a governance structure for an urban green space that is representative of the local community.[80] A flexible legal framework is needed to facilitate and support ongoing place-keeping activities that meet these criteria.

Property law in this jurisdiction prevents activist or community groups from taking on freehold or leasehold title to urban green space, as land cannot legally be transferred to more than four individuals.[81] A corporate identity is needed before a group can acquire ownership, but Strang and Busse raise the question of whether legal and material ownership vested in one body can lead to 'social disownership' by the community, over time.[82] This is an issue of importance both for non-statutory bodies such as HDT and for local authorities as owners of urban green spaces. Legal ownership should go alongside 'soft ownership': '"It feels like it is mine; legally and technically it might not be, but it feels like it may be mine", [which reflects the feelings of local residents who] make the decisions about what that green space is used for and what benefits really come from that green space'.[83] Participation in decision-making is part of the right to the city[84] and should surely be encouraged as part of an appropriate legal framework, despite the practical difficulties involved in ensuring participation and integrating different voices into decision-making about local urban green spaces.[85] However, as Cooper notes, 'governance, importantly, can operate when no

[77] Dempsey and Burton, 'Defining Place-Keeping'.
[78] A. Mathers, N. Dempsey and J. Froik Molin, 'Place-Keeping in Action: Evaluating the Capacity of Green Space Partnerships in England', *Landscape and Urban Planning*, 139 (2015), 126–136.
[79] Mathers et al., 'Place-Keeping in Action', 128.
[80] Mathers et al., 'Place-Keeping in Action', 133.
[81] Law of Property Act 1925, sections 34 and 36, as amended, establish that co-owners must hold the land on trust; Trustee Act 1925, section 34, provides that there can be no more than four legal co-owners of land.
[82] Strang and Busse, *Ownership and Appropriation*, p. 187.
[83] House of Commons, *Public Parks*, para. 107, citing evidence of Alan Carter (the Land Trust).
[84] Lefebvre, *Writings on Cities*.
[85] See S. Low, D. Taplin and S. Scheld, *Rethinking Urban Parks*: *Public Space and Cultural Diversity* (Austin, University of Texas Press, 2005).

particular or distinctive relationship of belonging with that which is governed exists'.[86]

There is a widely held view that local authorities are 'democratically accountable bodies',[87] based on the argument that they may be challenged under administrative law or at the ballot box. It is debatable whether holding local councillors accountable through elections every few years, or the practical everyday accountability of an incorporated body like HDT, is of greater value to local residents. Although some companies limited by guarantee have established a wide membership to reflect local interests, as we have seen, there is no legal requirement for democratic accountability. HDT staff and trustees would argue that, as a local organisation with open-door offices, providing courses and facilities, it has much closer contact with its community than a local authority; it makes itself accountable on a daily basis. Twenty years on since HDT was founded, some new trustees/directors have been appointed and some founders remain. The trend has been towards a more 'professional' board, although all current directors have strong connections with Heeley, either living or working (or retired from working) in that community. It is surprisingly difficult to discover information about the trustees/directors of HDT, except through searching the records of Companies House or the Charity Commission. Nor does HDT have a membership structure, whereas the Friends of Meersbrook Hall have over 500 members. Thus the Friends group may certainly feel a sense of ownership in the non-legal sense, but the Friends have no property rights in the Hall. This is similar to the position of Park Friends groups in general, whose contribution to a park's management and decision-making is by agreement with the local council which owns it, and which has power to terminate or change the terms of that agreement.

In terms of its legal framework, HDT's founding 'legal artefacts'[88] in 1996 were the trust deed for the charity and the Memorandum and Articles of Association of the company limited by guarantee. Another option would have been to set up HDT as a fully mutual cooperative. This is a long-established form, but cannot be charitable as it must be run for the benefit of the members, thus enabling only restricted-access communal space like the Botanical Gardens.[89] Most community groups have therefore adopted the company limited by guarantee as their legal structure to facilitate ownership and management of urban green spaces. This is a private company controlled not by shareholders but by its members, whose personal liability is limited to the sum guaranteed, usually one pound. It is regulated under the Companies Act 2006, and must register at Companies House and file annual returns. The company must have at least one director, and hold annual

[86] Cooper, 'Opening up Ownership', 629.
[87] House of Commons, *Public Parks*, para. 108.
[88] Strang and Busse, *Ownership and Appropriation*, p. 5.
[89] Co-operative and Community Benefit Societies Act 2014.

and general meetings. Its aims are set out in its Memorandum of Association, aims which in the case of HDT and many similar organisations simply echo their charitable purposes.

For new community organisations currently wishing to incorporate, there are alternative legal structures to the company limited by guarantee. On detailed examination none of these provides a particularly good match with the concept of communal property. Recently there has been a conscious political initiative to shift regulation and management of public resources to the third sector. For example, the community interest company (CIC), limited either by guarantee or by shares, was introduced in 2006 specifically for social enterprises which carry on some trading activities and aim to benefit the community.[90] The CIC Regulator registers CICs and regulates their community benefit objectives, but CICs cannot have charitable status. Further, the term 'company' conveys a corporate image, as discussed in the following section of this chapter.

Community land trusts[91] would seem, on the basis of their name alone, appropriate for community ownership of local urban green spaces. However, the primary purpose of these trusts, which were introduced in 2008, is to develop and manage affordable homes. In 2011 another new legal framework was introduced: the charitable incorporated organisation (CIO).[92] Like a charitable trust, a CIO must have exclusively charitable purposes and is regulated by the Charity Commission. Each CIO is free to determine its degree of democratic accountability, like companies limited by guarantee; decision-making may be limited to the initial company members and directors, or could be opened to a wider membership although this is not a requirement.

Community benefit societies ('bencoms') have been available since 2014.[93] These must operate for the benefit of the community and can have charitable status. Bencom rules may, and often do, include an asset lock on any property that the society owns, limiting its use to purposes for the benefit of the community. Most bencoms have been established to raise finance for purchasing land or property; 'recently, the model has been popular among organisations seeking to galvanise local communities through ownership of community assets, such as pubs'.[94] Membership is open and voluntary, with each member having one vote, which could lead to greater feelings of ownership than in charitable trusts. Enhanced participation and democratic accountability are dependent on the number of members.

[90] Companies (Audit, Investigations and Community Enterprise) Act 2004, as amended by Companies Act 2006, section 6.
[91] Housing and Regeneration Act 2008, section 79.
[92] Charities Act 2011, sections 204–250; *Charities, England and Wales: The Charitable Incorporated Organisations (General) Regulations 2012*, SI No. 3012.
[93] Co-operative and Community Benefit Societies Act 2014.
[94] Co-operatives UK, *Community Benefit Society* (undated): www.uk.coop/the-hive/sites/default/files/uploads/attachments/resource-community-benefit-society.pdf.

However, bencoms operate on a subscription model, thus forming a restricted-access commons. Membership is only achieved by purchasing one or more shares of a specified value which may unfairly exclude poorer people, or make the bencom an inappropriate vehicle for less affluent neighbourhoods.

The legal form of a charitable trust registered with the Charity Commission ensures that purposes are 'for the public benefit',[95] and that a trust's rights and powers are exercised only to further those purposes.[96] Although charitable trusts are subject to top-down regulation, through the trustees' duty to report annually to the Charity Commission on how the trust has carried out its purposes for the public benefit,[97] there is no requirement for democratic accountability such as being answerable to a wider membership. As with HDT, trustees thus clearly retain the power to 'set the agenda' and make decisions about their property.[98] This has led to concerns about the potential for charitable trusts to become 'self-perpetuating oligarchies' exercising control over 'public assets'.[99]

HDT may convert to CIO status when Regulations are brought in to enable this,[100] ending its dual regulation as both charitable trust and company limited by guarantee. Interestingly, HDT made creative use of the law in 2015 when part of Heeley People's Park was threatened by a road-widening scheme. HDT applied for the park to be listed as an Asset of Community Value (ACV).[101] Although this process was not designed for assets already in 'community ownership', Sheffield City Council accepted HDT's application and listed the park for five years. ACVs gain limited protection against sale of the asset by private owners, through giving local groups time to prepare a bid. Also, ACV status constitutes a material consideration in a planning application, meaning it could be used to refuse planning permission for change of use, for example from a park to land for housing development. The legal label, 'an asset of community value', seems a perfect description for Heeley People's Park although it does not affect or reflect either property rights or accountability.

[95] Charities Act 2011, sections 1–4.
[96] *Harries v Church Commissioners for England*, [1993] E All ER 301.
[97] Charities Act 2011, section 162.
[98] L. Katz, 'Exclusion and Exclusivity in Property Law', *University of Toronto Law Journal*, 58 (2008), 275–315.
[99] House of Commons, *Public Parks*, para. 107, citing evidence of Mark Walton (of Shared Assets).
[100] Cabinet Office and The Charity Commission, *Converting to a Charitable Incorporated. Organisation* (London, Cabinet Office, 2016); and *The Charitable Incorporated Organisations (Conversion) Regulations 2017*, No. 1232.
[101] Localism Act 2011, section 8.

Articulating the discourse of communal property

In this section we discuss how the ideas of communal property and belonging can be articulated to the local community, park users, funders and others, given the lack of recognition in property law and mismatch with available legal frameworks. The difficulties that this causes are highlighted by the House of Commons Committee's struggle to define urban parks in its recent report on public parks. It variously described them as 'just one element of our wider green infrastructure networks',[102] 'shared community assets',[103] and 'spaces which are open and available to all'.[104] The Committee concluded that 'local authorities are best placed to make decisions which are appropriate for their local circumstances',[105] and clearly found it difficult to envisage a different model of ownership.

Heeley People's Park, however, is an example of non-local authority ownership and management of urban green space. HDT communicates with neighbourhood residents and disseminates its plans through *Heeley Voice*, the community magazine it publishes and distributes. HDT also makes use of Twitter and Facebook. There is a distinctly pragmatic reason for community use and activities in the park to be recorded in images and reports in *Heeley Voice* and on social media, as potential funders for parks routinely seek evidence of how well the space is used, and by whom, before committing any money. In its grant applications and publicity material, HDT uses the language of community ownership, custodianship, civic responsibility and community stewardship. However, the law remains largely hidden unless and until a deliberate decision is taken to make it visible through a narrative strategically deploying legal terms such as trust, company or charity.

On Facebook, HDT describes itself as 'a small, charitable development trust, founded by local volunteers, business people & residents', delivering 'youth, community, environmental and economic development projects in and around our neighbourhood', with the stated aim of making 'Heeley a great place to live, with a real sense of place, pride and community . . . successful, vibrant and inclusive'. On the Charity Commission website, HDT is described as a 'community-led anchor organisation'. Charitable status is obviously essential for accessing resources from funders which only make grants to charities. However, in terms of strategically communicating the idea of communal ownership, and fitting with community feelings of belonging, a charitable trust has certain drawbacks. Charities have had a bad press recently in the UK because of dubious fundraising activities.[106]

[102] House of Commons, *Public Parks*, para. 265.
[103] House of Commons, *Public Parks*, para. 3.
[104] House of Commons, *Public Parks*, para. 17.
[105] House of Commons, *Public Parks*, para. 265.
[106] The Charity Commission was forced to issue new guidance: *Charity Fundraising: A Guide to Trustee Duties* (London, Charity Commission, 2016).

Similarly, trusts are often seen as vehicles for disguising and ensuring inheritance of wealth.[107]

We now examine the discourses connected with HDT's two recent strategies: the subscription society, and taking on the lease of Meersbrook Hall. Nesta's funding to support HDT with launching the subscription society was partly spent on commissioning a PR campaign from 'one of Sheffield's cooler design and branding companies'[108] (a SUM Studios tenant). Their advice to the HDT trustees at the time was that the Trust itself was seen as an abstract entity with a confusing name and no clear message, so the focus should be on the park, re-branded to 'give people a better sense of connection to a space and a better sense that, "This is my space"'.[109] Heeley Millennium Park was therefore re-named as Heeley People's Park, described as '*Sheffield's first and largest, community owned and managed public green space'*.[110] The PR campaign encouraged people to sign up to the subscription society using the following text:

> This land is ours
>
> Heeley People's Park belongs to the community – paid for and owned by the people and businesses that love it. The more we give, the more we all get – new play equipment, new space, more trees, more events, more to love and play with and relax in. Whatever that park means to you, your help will mean everything to us, and makes the difference between us keeping it, improving it and losing it forever.[111]

This re-branding of Heeley Millennium Park was designed both to encourage people to feel ownership of the park and to contribute towards it if they could. The phrase 'this land is ours' was made famous by the Diggers, who claimed St George's Hill, Surrey, as common land in 1649 during the English Civil War.[112] This sense of ownership is closely tied to the idea of belonging – 'the park is ours, I belong in it' – and contrasts with the fear of trespassing on private land. It is worth remembering that many Sheffield citizens were involved in the mass trespass on Kinder Scout in 1932 that led to the establishment of the National Parks, but also to the imprisonment of five ramblers for walking over private grouse moors in the Peak District;[113] and in the 1990s movement for open access to moorland which paved the way for the Countryside and Rights of Way Act 2000. The notion of

[107] See, for example, FT Adviser, *Using Trusts to Preserve Family Wealth* (2016): www.ftadviser.com/2016/05/05/training/adviser-guides/using-trusts-to-preserve-family-wealth-wNL0QGj1nPfyvuoGCU1IoJ/article.html.

[108] www.nesta.org.uk/blog/peoples-progress.

[109] Oral Evidence of Senior Programme Manager, Nesta, to Communities and Local Government Committee, 23 November 2016: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communities-and-local-government-committee/public-parks/oral/43789.html.

[110] www.heeleypark.org/.

[111] www.heeleypark.org/.

[112] Editors' note: For further discussion on the Diggers, see Malcolm and Clarke in this volume.

[113] See discussion in Layard, 'Public Space'.

'owning' Heeley Park thus echoes these calls for open access and references the history of socialist politics in the city. However, the use of these terms in relation to Heeley People's Park begs the questions of who really owns the park, in what way it can be described as 'ours', and what it means to say that we have 'paid' for it, when most funding has come from outside sources.

Heeley People's Park subscription society was launched in June 2015. It was intended to generate wider local recognition of HDT's role in maintaining the park, and to demonstrate local 'buy-in' to the park to boost the success rate of future funding bids. Disappointingly few people subscribed online in the following year, although those attending Heeley Festival and other events in the park were happy to make one-off donations by text message and in cash. There may be a range of reasons for this, both practical and conceptual. Nesta's evaluation identified the problem that 'people are mistrusting of digital giving and social media campaigns, they want a form to fill in'.[114] It is also likely that social media fails to reach all Heeley residents, especially those who have 'belonged' there for decades and generations. Additionally, the benefits of membership of the new subscription society are not clear; the park was never intended to become restricted-access communal property, excluding non-members as the Botanical Gardens had originally done.

A more entrenched problem is the difficulty of getting across the message that Heeley People's Park is different from most urban parks in Sheffield, which are owned by the local authority, paid for from council tax receipts, and are therefore 'free'. In a sense, HDT may have become the victim of its own success through providing a well-maintained and apparently well-resourced park for so long. During that time, HDT has moved on from its 'commoning' origins, and some of the people involved at that time have moved on from the Trust. Even so, those origins could be used as a powerful reminder of why the park can properly be described as 'ours'. The invention of the subscription society and the People's Park by HDT can be seen as an attempt to change perceptions of the park among local residents from that of land managed by a distant 'someone else' into a shared space for which subscribers have some degree of responsibility, and over which they could claim a form of (moral, if not legal) ownership.

HDT's plans to take a long lease of Meersbrook Hall depended on being able to reassure the Friends group about HDT's identity and intentions. Some local residents initially saw HDT as a remote corporate body and, rather like the House of Commons Committee, viewed transfer of the Hall to HDT from the local authority as a form of privatisation. It was difficult, for the reasons already discussed, for HDT to articulate the discourse of communal property managed by a community body established for public benefit at a time when Meersbrook residents felt, understandably, that their local 'public' asset was under threat. Although the two

[114] www.nesta.org.uk/blog/peoples-progress.

neighbourhoods adjoin each other, and when HDT was formed in 1996 Heeley was understood to include Meersbrook, the latter has emerged as a separate area over the intervening 20 years. The name and the charitable purposes of HDT, which define its geographical scope as Heeley, were therefore among the problems which had to be resolved in a series of meetings with the Friends group.

Conclusions

This detailed, contextual account of the park in Heeley and the comparisons with the two other Sheffield parks has highlighted that property law in England is unable to deal conceptually with communal property. Nor can it provide an appropriate legal framework for the property interests and rights associated with urban green spaces that align with the general understandings and experiences of community belonging and ownership. This failure puts urban green space at risk in a time of austerity as it makes it difficult to articulate a discourse of communal property to both funders and local residents. We have shown how HDT's narrative of civic responsibility, community stewardship, and custodianship of communal land does not match well with its company and charitable trust status.

Funding problems sharpen the issues raised by this mismatch between legal status, belonging and ownership, and local democratic accountability. The challenge is how best to establish a community of reciprocity and to encourage voluntary contributions of time and money, essential for the maintenance of urban green spaces. It is apparent from our contextual analysis that when legal arrangements may never have matched a particular narrative and aspirations, or over time may have become mismatched, then there may be a search for a new legal status that will better reflect popular understanding and ward off threats, such as the move to have Heeley People's Park declared an asset of community value. It therefore seems that legal frameworks matter. However, rather than any strategic approach, legal arrangements have been pragmatically adopted based on the structures available at a particular time, for a variety of different types of space.

The interdisciplinary approach adopted in this chapter has also emphasised the importance of origins and of changes over time to urban green spaces. Community feelings of belonging and ownership develop alongside and co-constitute changes to the land itself. Knowledge about appropriate conduct in that space becomes common, over time, and may also alter as the land changes. The precise form of belonging often comes into focus at moments of change or crisis. It is therefore important to understand the history of a specific urban green space.[115] For example, the sense of ownership and the sense of belonging of users of the Heeley People's

[115] This point is also made in Mathers et al., 'Place-Keeping in Action'.

Park have changed over time, and are different from those of the original 'commoning' activists, but the legal form was crystallised in 1996 when it was chosen from the available alternatives. For urban green spaces in general, it seems that legal frameworks are managed through various compromises, examples of what Lindblom famously described as a process of 'muddling through'.[116]

In this chapter we have tracked the complex shifts in layered legal status, meanings and understandings over time, through the specific context of Heeley People's Park and its connections with two other Sheffield parks. Their associated property rights have, it seems, always been fragmented and have moved between public and private and 'communal' and back again. In the nineteenth century the Botanical Gardens were created by an affluent group for their own private enjoyment, and Meersbrook Park was created as a public park by a benevolent city council. The much more recent activism which brought Heeley Park to life, and the similar process to save Meersbrook Hall, were born out of specific crises. These case studies demonstrate the limitations of analysis through property law. Ownership and management of the Botanical Gardens has shifted from private to public to partnership, whereas the survival of Meersbrook Hall as publicly accessible, communal property has relied on a partnership between the Friends group, the local authority and HDT. The 1886 covenants between the private vendor and the public authority, designed to ensure the continuing dedication of the park and its buildings for public use, also played a significant role in preventing the sale of the Hall to the private sector well over a century later. The lease of the Hall to HDT, currently under negotiation, will transfer rights in public land to a private corporate entity. It is debatable whether this constitutes privatisation or the creation of communal property.

Recent deliberations about community access to Meersbrook Hall demonstrate that property ownership is less significant than who feels that they 'belong' in that building. Ironically, the nature of Heeley People's Park as communal property has been sustained by a series of private property ownership arrangements (acquisition and conversion of SUM Studios, and now Meersbrook Hall) to raise funding for maintenance of the park.

It is apparent that distinctions between public, private and communal property have become very blurred in relation to urban green space. Any differences between local authority ownership ('public sector') and charitable, third sector or community ownership seem largely irrelevant in terms of property rights, as all these bodies are subject to restrictions on the rights usually associated with legal ownership. Although governance and accountability arrangements are very important in communal property, the current legal frameworks available to community organisations with property rights in urban green space do not encourage or require participative democracy.

[116] C. E. Lindblom, 'The Science of "Muddling Through"', *Public Administration Review*, 19 (1959), 79–88.

We conclude that the legal frameworks for ownership, governance, access and use are poorly understood and do not match the dynamic and constitutive relationships of belonging between people and place. This leads to difficulties in articulating the discourse of communal property, with serious consequences for funding the maintenance of urban green spaces which are so important for community and civic life.