

# Matters of ownership: a ‘People’s Port’ for Dover?

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## Abstract

*Focusing upon the recent (and possibly on-going) process of privatisation of the port of Dover, this paper seeks to move away from the idea that appropriation involves the annexation of some pre-existing ‘thing’, by some pre-existing entity that can subsequently act as ‘owner’, in order to begin to ask how it is that processes of appropriating assemble different agents and agendas, so as to constitute the possibility of both the ‘owner’ and the ‘property’ as such. What we see in relation to Dover is a shortfall in the current available mechanisms for owning property, where those who are to be constituted as the owners are identified as the local community – or, as the scheme is referred to in Dover, where the asset is to become the ‘People’s Port’. What this shortfall makes visible is a confluence of various interests, as they endeavour to promote and, where necessary, seek to create, a way to crystallise the asset as a particular (and potentially novel) property form, for the benefit of the locality.*

## Privatisation, appropriation and the Port of Dover

This article examines the events which followed from the Labour government’s announcement, in 2009, that the port of Dover, the largest and probably most culturally significant English port, was to be privatised.

Privatisation, of course, raises the question of appropriation; but in a manner which is far from straightforward. On the face of it, the transfer of an asset from public to private control involves ‘an’ appropriation. However, once we begin to look closely at what is actually involved in such a transfer, things become less obvious than we might have expected. Most noticeably, it is patently wrong, at least in the story concerning the proposed privatisation of the port of Dover, to understand the situation as the movement of some unified thing or asset from one owner to another. Rather than ‘an’ appropriation, we have found that the port has been subject to a complex of appropriations, which seldom fit together smoothly and tightly and are not always pursuing the same agenda. Instead, a number of different interests have come together which have, with varying degrees of success, created the asset, the ‘port of Dover’, on various different levels, and in ad hoc and

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partial ways. Consequently, it is less the case that some thing is being moved from one owner to another, than it is that a whole set of strategies, narratives and interests combine in order to produce an affect, of what might, at best, be thought of as a 'potential asset' (or even an 'asset in potential').

Therefore, it is not inappropriate to consider 'appropriation' as a leitmotif going beyond the materiality of the port itself, and into the very idea of what the port, as asset, might or could be. In an important sense, it is less a thing than a process (a series of 'assetting' procedures) that are yet to resolve what the port might come to be. This is especially clear, as our discussion below will show, in the variety of aspiring ideas about community, community benefit (and responsibility) and community ownership that have been mobilised in relation to the port. Consequently, we might also consider there to be an appropriation of ideas involved, inasmuch as certain parties, quite unfamiliar with the history, values and terminology of mutuals and the co-operative movement, have nevertheless wished to present such ideas as not only having some (yet to be defined) value, but also (and perhaps more surprisingly) relevance to the possible futures of the port. It is not, then, simply a question of who will benefit from future ownership of the port (although this is certainly relevant), but of a more profound inquiry as to what ownership and being an owner, might actually mean: In this case when applied to, or thought through, the port as a contested asset.

### Privatisation of ports

The Labour government's announcement concerning Dover was one of the latest in a well-established policy of privatising those ports remaining in public ownership,<sup>2</sup> and thus should not have been either particularly surprising, or even controversial. The pattern adopted for these privatisation processes is for the existent Harbour Board to construct, in effect, a 'management buy-out', known as a 'voluntary transfer'; and then for the port to be 'sold on' through the accumulation of shares by already established private entrepreneurs or investment groups.

There has been little significant political or public opposition to the policy of privatisation of the ports and, generally, little local opposition when the privatisation process has been carried through. It might well have been the case that the Labour government recognised that a certain political sensitivity would be required when making the announcement that the time had now come for Dover to undergo the process, but they certainly did not foresee that it would provoke not merely vehement opposition, but, more significantly, the development of a proposal that the port of Dover should be moved into a different form of public ownership – that it should become a 'People's Port' 'owned' by the 'people of Dover'.

Historically, opposition to privatisation schemes has been spearheaded by trades unions representing port workers, supported by a network of local activists motivated by a concern to defend the principle of 'public ownership' of assets, as well as by fear of the impact privatisation might have on the local economy. This form of opposition is quite simple – it is an attempt to defend the status quo. Such a strategy is strengthened when worked into a

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2 The privatisation programme is carried in the Ports Act 1991. Other than the small number of ports held by local authorities, and an even smaller number by local trusts, the majority of ports had become placed under central government control through the establishment of local Harbour Boards accountable to the relevant secretary of state. For further detail on the history of port privatisation and the Dover bidding process, see C Archer and A Bottomley, 'Local Assets and Local Interests: The Significance of Dover's "People's Port"' (forthcoming).

vision or scheme for regeneration of the port and its surrounding economy, but it is often difficult to provide, let alone to promote, an 'alternative' to 'privatisation'.

The ports selected were, all too often, in a state of decline. Little money had been available for investment into infrastructure regeneration for a long time, and the management culture in most ports could be characterised as one trapped into ever-smaller circles of 'managing' long-term decline, often through a prism of short-term crises. Technological developments impacting on how shipping could now be used more effectively and changes in patterns of economic investment into transport and infrastructure were, indeed, leaving the 'unreformed' ports behind, rendering them obsolete and potentially redundant. Thus, the evidence presented for supporting privatisation has seemed stark – not only can inward investment and motivated management be delivered through privatisation, but the failure of public ownership to deliver either is manifest. And so, framed as a simple choice between public decline or private potential, and with the traditional stance of union activists focused on a defence of the status quo – we should not have expected more than the usual, muted and short-lived, complaints against privatisation when Dover was added to the list.

Three local factors, however, created a very different scenario in Dover. First, local knowledge of what had happened in local ports which had been privatised<sup>3</sup> was building a compelling dossier of evidence against the 'promise' of privatisation as an economic boost to both port and local community. Instead of regeneration, further economic decline was the norm as jobs were lost and the ports became little more than isolated outposts in a vast global infrastructure of transport conglomerations and investment potentials. Complex ownership structures of shares held in and through international companies and management structures designed as accountable to head offices often located in other jurisdictions removed any focus of concern with, or accountability to, the locality, away to 'another place', or chain of places difficult to track either in material or virtual dimensions.<sup>4</sup> The threads which had woven ports into the texture of their socio-economic environment, their localised materiality, were cut. Communities whose built environment was focused on the central site of the port, found themselves both strangely adrift, cast off and, at the same time, beached in a setting which only made sense as the environs of an active port-focused community. Port sites became enclosed no-go areas, surrounded by the residuum of a socio-economic infrastructure for which they had once been the central focus.

Locals began to compute what privatisation cost – and they now saw it as a form of asset stripping: the port as an asset appropriated from the community, as well as the material and economic assets appropriated from the business which was once the port. This cumulative record alerted those concerned about the future of Dover to a simple truth; that the pursuit of profit could certainly deliver, initially, inward investment and a regenerated management, but that it could also, and quickly, transform a local asset into little more than a cog in a global business. Further, they saw evidence of the extent to which profit had been made from initial undervaluation of port assets<sup>5</sup> and how those involved in managing the

3 The Medway Ports and Sheerness on the Isle of Sheppey.

4 There is a paradoxical virtualisation involved in the operation of multinational companies, which locates them in specific places, whilst simultaneously despatialising them, in terms of their responsibility and commitment to the places where they happen to be. This point has been well made by Z. Bauman, *Globalization: The Human Consequences* (Polity 1998) ch 1. See also A Bottomley and N Moore, 'Blind Stuttering: Diagrammatic City' (2008) 17(2) Griffith Law Review 559–76.

5 In Medway Ports, the management buyout purchased the port for £120 million, which was then sold on, three years later, for £400 million. See P J Arnold and C Cooper, 'A Tale of Two Classes: The Privatization of Medway Ports' (1999) 10(2) Critical Perspectives on Accounting 127–52.

process of the move from public to private ownership had reaped economic benefit for themselves, rather than it being 'invested' in a future for the port as a local concern.

Thus 'local knowledge' of what had happened to other ports added impetus to the trade-union campaign against privatisation, as well as to a general sense of unease amongst the local community – but this, of itself, was not enough to counter what most local people saw as the inevitable move towards privatisation. However, a second, very localised, factor now fed into the growing response of concern.

### A People's Port?

A local resident, Neil Wiggins,<sup>6</sup> with a background in shipping and a long-standing concern with the management of the port, decided to look closely, with a professional eye, at the initial business plan produced by the Harbour Board. He thought that, as he had anticipated, the business model they were pursuing did not utilise the potential of the port and that, even more worryingly, it was more than likely that the future of Dover would mirror that evidenced elsewhere: an economically undervalued asset would be ripe for an external take-over, leaching economic potential away from both the port and the local economic infrastructure which was so dependent on it. As a long-standing local resident, he began to focus on the latter. By his account, he began to think about whether there might be any possibility in building an alternative plan which would tie in the future of the port with a commitment to the economy of the local community. Without any knowledge of how it might be possible, he began to envision some form of community ownership for the port in order to secure it as a local asset.

The idea of securing the port as a local asset was strengthened when it was reported, both locally and nationally, that the Pays de Calais authority and 'Arab countries' had expressed an interest in buying it.<sup>7</sup> The possibility of the port being purchased by French or Arab interests was covered in the local media as a species of invasion – one televised newsreel featured a compelling historical montage of White Cliffs, spitfire planes and the voice of Vera Lynn singing, as it posed the question of whether, having fought off invaders, the port of Dover was now to fall to foreign interests. It was not so much privatisation which was now the issue, as the 'wrong people' (and certainly not Dover) being able to profit from it. At that point, the local businessman came together with the young barrister (Charlie Elphinke) who had been selected as the prospective Tory candidate for the Dover and Deal parliamentary seat – and a general election was in the offing.

A third factor now added a dimension which the Labour government had either not foreseen, or given little credence to. David Cameron, seeking a new profile for a Tory political agenda, had begun to invest in the doubled narrative of 'responsible capitalism' and the 'Big Society'.<sup>8</sup> Elphinke was quick to see how the vision of securing the port as a locally owned asset could fit into this agenda, offering not only a platform for his own election, but a 'case-study' of how the new Tory approach could play out in practice. After the

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6 Drawn from interviews undertaken by Caroline Archer in 2011/2012. We thank him for his co-operation.

7 The significance of purchase of large ports by foreign investors is underscored by the purchase, in 2010, of half of Piraeus by Cosco, a company owned by the Chinese government.

8 See the most intelligent attempt to give form to this in J Norman, *The Big Society: The Anatomy of the New Politics* (University of Buckingham Press 2010). For the Coalition government this agenda includes the promotion of other forms of ownership and benefit other than that of the classical company form for the benefit of shareholders. Hence, recent and current legislative changes in rules relating to co-operatives and community benefit organisations – e.g. Co-operative and Community Benefit Societies and Credit Unions Act 2010 (not yet in force) and the Co-operatives and Community Benefit Societies Consolidation Bill (announced 2012, consultation process commenced July 2013).

initiative taken by Wiggins in raising the possibility of local ownership, Elphinke's role was crucial in translating that idea into a potential.

What arose from this confluence of events was something very different to the conventional defence against privatisation couched as a defence of public ownership in the form of state-held assets (whether national or local), and in its place was conjured a new form of public ownership – that of 'ownership' by the 'community'.

### Ownership matters

For any lawyer, or legal scholar, couching a bid for an asset under the rubric of community ownership is fraught with problems. It is easy to understand the political purchase in employing the idea of community ownership, but being able to translate that into a suitable legal form (carrying a viable business model) is far from obvious. However, to move too quickly into asking how it might be achieved is to miss the crucial first questions. What is it that one is trying to achieve? What is carried in the notion of ownership? What does the strategic appeal to ownership attempt to secure? To probe these questions, we need to keep ourselves firmly grounded in the materiality of what is at stake.

In Dover the question was how the most significant local economic asset could be secured as a continuing (and improved) element of and for the local economy. What needed to be factored in was a means by which the management responsible for the deployment of that asset could be held accountable in terms of securing its economic value (and potential) for the local economy.

Here we encounter a particularly interesting 'threshold' or 'hinge'; one which marks a move from thinking purely in terms of business models towards thinking in terms of property models. A business model is focused on the enterprise in terms of the profits which can be generated by it – the assets held are simply the material infrastructure through which profit is made. How profit is then distributed will depend on the particular form the business model takes and that, in turn, is dependent upon the combination of regulatory constraints with the interests of those who have most control over the business. In recent years, even for those committed to the model of a market economy, a concern with the impact of forms of investment which value only profit, and often only short-term profit, on the materiality of businesses has given rise to a call for 'responsible' or 'sustainable' forms of enterprise. Sustainable pertains to a concern with long-term growth, a concern which only those investors committed to an ongoing relationship with the enterprise are likely to recognise. Responsible focuses on how to link together investment and management into a focus on sustainability. The suggestion seems to be that, in building individual enterprises which address these issues, a new culture of and for<sup>9</sup> the capitalist market economy can emerge.

Finding patterns through which this agenda can be built, let alone delivered, has become a concern for all the major political parties. One means through which they have (all) sought to develop a new economic culture is by an appeal to the idea and practices of ownership. It is as if, by using the term, they seek to reconnect the 'virtual' of 'investment' and 'profit' back into a 'materiality' of 'asset' and 'people'.

However, to suggest that an underlying pattern can be extrapolated from this appeal to ownership is not to imply that it is a coherent or stable narrative. Utilising the idea of

9 By the formulation 'of and for', we wish to signify differences pertaining to the market system which are *of* it, at the same time as their being something different to it: differences which, in their potential, can be considered, even now, to be partially incorporated, or similarly formatted, to market operations, and thus 'for' it. We appreciate that this might seem a little overloaded, not to mention unnecessarily tortuous, but we are trying to avoid any sense of a market 'dialectic', or teleology, in the processes at work.

ownership arises within specific sets of circumstances, making its significance dependent upon the terms of the particular response being mounted to meet the immediate conditions. In other words, each circumstance frames the way in which ownership is being deployed as an idea or image. You will note that we are not using the term 'concept': to do so would be to invoke an underlying rationality of form, of and for each event or circumstance. We have chosen to use the more amorphous term 'idea', to denote not so much an invoking, as an evocation of patterns which are associated with the term ownership. As Gray and Gray remind us, property is a concept 'so fragile, so elusive and so often misused'.<sup>10</sup> As with property, the significance of the use of the term ownership is that, mirage-like, it seems to most people, on most occasions, to carry a great power – one might even say an imperative. An appeal to ownership, and rights associated with it, within ours and many other cultures, is one of the strongest ways to assert a claim to or over an asset.<sup>11</sup> However, remembering Gray and Gray, when we focus on what is actually meant by ownership, it begins to shift and change – no centre seems certain and boundaries become blurred. Two narratives are frequently employed to try and stabilise it. The first is simply common sense, but that narrative implodes quickly. The second is what Gordon refers to as 'the compulsive power of the absolute dominion trope', and he argues that:

. . . the price that has been paid for the compulsive power of the absolute dominion trope has been a heavy one, a maddeningly persistent tendency to suppress and deny the collective and collaborative elements, the necessity of mutual dependence, inherent in social endeavour, and a consequently enormous distortion in our common capacities to understand and regulate our social life.<sup>12</sup>

Gray and Gray remind us that 'property talk is value laden',<sup>13</sup> and never more so than when ownership is framed not merely through private property, but through absolute dominion. Gordon's argument is twofold. First, that this image of property is not sustainable when set within a legal framing, which is, necessarily, more pragmatic in having to recognise and deal with a greater complexity and mess than political philosophy, or common sense, generally recognises. And, second, that the image has a negative impact in suppressing other accounts of property and ownership, the traces of them and the potential in them.

Following from this, it is important to track how the idea/image<sup>14</sup> of property is appealed to in specific events and circumstances. From this we can extrapolate sets of 'themes', or logics,<sup>15</sup> associated with, or carried through, appeals to ownership.

### Investing in ownership

In 2010, the Labour government instigated the Ownership Commission, which as a headline to its 2012 report, makes this statement:

10 K Gray and S Gray 'The Idea of Property in Land' in S Bright and J Dewar (eds), *Land Law: Themes and Perspectives* (OUP 1998) 15.

11 For an outstanding study of the fabrication of property, and one which makes its cultural specificity clear, see M Strathern, *Property, Substance and Effect: Anthropological Essays on Persons and Things* (The Athlone Press 1999)

12 R W Gordon, 'Paradoxical Property' in J Brewer and S Staves (eds), *Early Modern Conceptions of Property* (Routledge 1996) 108.

13 Gray and Gray (n 10).

14 In other circumstances we would have used 'image', rather than 'idea'. However, without further explanation, here it would seem too like suggesting a 'false representation', which is not how we use the term in our scholarship. See e.g. A Bottomley 'Lines of Vision, Lines of Flight: Belly of an Architect' (2010) 31(4) *Cardozo Law Review* 1055–85; and N Moore, 'Get Stupid: Film and Law via Wim Wenders and Others' (2010) 31(4) *Cardozo Law Review* 1195–17.

15 For the usefulness of thinking in terms of competing 'logics', see A Mol, *The Logic of Care* (Routledge 2006).

Ownership matters. Yet Britain does not take ownership sufficiently seriously. The Ownership Commission's task is to open up a debate about good ownership in the UK.<sup>16</sup>

Ownership, here, is being appealed to as means by which to meet a deficit – that of the growing disjuncture between enterprise and investment. And, into this evocation of ownership, slips the moral value of 'good'. Ownership becomes a means through which to model 'accountability'. As discussed previously, a major contemporary theme, mirrored in the report, is that of appealing to shareholders to become more active in thinking of themselves as owners of an enterprise, rather than as investors. Thinking in ownership terms reminds them that it is they who can and should hold management to account and not merely in terms of profit and how it is distributed, but more broadly for how that enterprise as an asset is being developed and deployed.<sup>17</sup> They are, in other words, to become 'responsible owners'. It is not enough to take one aspect of ownership, that of benefit, without undertaking the responsibilities associated with another aspect of ownership – that of taking control, in this case, in holding to account.

The language of ownership, and the evocation of property carried with it, is being used here to provide a (re)grounding – not simply into the business enterprise, but for the business enterprise itself. Thus, the Commission not only argued for a more active ownership model for shareholders, it also advocated different forms of ownership for enterprises, as alternatives to the classical company form. Mutual, co-operative and co-partnership business/property models had already been rediscovered before the Commission began its work. Dubbed as the 'new mutualism', they had become attractive to a Labour government trying to develop a 'third way'. Indeed, it was this rediscovery by the Labour government of what had once been a significant part of the Labour movement that had been a major incentive in setting up the Commission, evidenced in The Co-operative's role as sponsor. The Commission, unsurprisingly, recognised that other forms of ownership for/of enterprises were not only economically viable, but also socially valuable.

The promise, or perhaps rather, hope, of a more responsible capitalism arising from a rethinking of business models through a frame of ownership is evident in both the title given to the Commission and the headline that 'ownership matters'. But it is interesting that the subtitle evidences the outcomes sought through an appeal to (and activation of) ownership: 'Plurality, Stewardship and Engagement'. A 'plural' market economy, encouraging the values and practices of 'stewardship' and 'engagement':<sup>18</sup> conjuring an image of responsible ownership delivering sustainable capitalism. Within this framing, ownership takes a form rather different to that which many would associate with the use of the term – this is not selfish individualism, but rather social, as well as economic, responsibility.

16 See <<http://ownershipcomm.org/>>. The Commission was headed by Will Hutton and, although instigated by the Labour government, was sponsored by The Co-operative. Its report was delivered under the Tory–LibDem Coalition government, on whose behalf Vince Cable welcomed its findings. On the webpage introducing the report is the statement: 'The Commission's starting point is that we believe that companies should be more than networks of contracts, and at their best they can be living, breathing human institutions held together by trust and a sense of common purpose.'

17 See e.g. Vince Cable giving evidence to the Business, Innovation and Skills Committee in July 2012, in relation to bonuses paid by banks to senior executives: 'we start from the premise that share holders are the owners . . .' <[www.publications.parliament.uk/pa/cm201213/cmselect/cmbis/uc460-i/uc46001.htm](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmbis/uc460-i/uc46001.htm)>. On the difficulties of building and sustaining an account of shareholders as owners, see R McQueen, *A Social History of Company Law 1854–1920* (Ashgate 2009).

18 Significantly, the reviving of such values returns us to those of the early stages of modern governance. See M Foucault 'Governmentality' in R Hurley et al (trans), M Foucault, *Power: Essential Works of Foucault 1954–1984* (Penguin 1994).

There are, however, difficulties with this narrative of responsible ownership as the vector for carrying a more sustainable market economy. The first relates to finding models which carry a sufficient sense of ownership. The problems associated with a company shareholder model based on investment are well known. (Although it is crucial to those concerned with building responsible capitalism that it is addressed.) What, then, are the alternatives? This is the point at which the attraction of mutual, co-operative and co-partnership models becomes evident. All three are dependent on forms of membership – it is necessary to become a member to hold any rights in relation to the enterprise. The link into rights in the enterprise through membership is generally carried through the holding of a share; however, the share denotes membership rather than investment. Depending on the actual form the enterprise takes, the share may carry little more than a right to vote and to benefit from a very controlled distribution of profits or use of assets. Unlike investment models, this is generally not a pathway to profit-making, but to benefiting from a service, or from the use of an asset. Arguably, it is membership per se which is designed to carry participation in the enterprise (and thereby facilitating a holding to account, as well as promoting the value of stewardship): a sense of belonging, perhaps, rather than a sense of ownership. However, in the history and contemporary profiles of these organisations, an appeal to thinking of them as ‘owned by the members’ is frequently alluded to, often in contrast to ‘ownership by outside investors’. Here, two images of ownership are being employed. First, that the members have control and, second, that profit (benefit) returns to them rather than leaching out to external investors.

### Matters of property: sharing assets

There is, also, a third element which is implicit in this account – that of where (or in whom or what) the ownership of the assets is vested. What makes the alternative models different from an orthodox business or property model is that the material assets, and capital value represented in them, are locked away, or at least suspended, and held in the enterprise for the benefit of the membership. It is analogous to a trusts model, in which the purpose of the trust is the pursuit of the enterprise for mutual benefit.<sup>19</sup> Thus, rather than thinking in terms of an equity carried in an enterprise which can become available to shareholders once that enterprise is brought to an end, this property model thinks in terms of holding assets and capital in order for the enterprise to continue. Of course, some of these enterprises do come to an end – and the question then is: what happens to the assets held in the enterprise? Is it, for instance, distributed between the members?

In most of the enterprises based on co-operative and co-partnership models<sup>20</sup> the traditional answer is ‘No’. The assets are held by the enterprise and when (if) it comes to an end, depending on the form and rules adopted by the enterprise, the assets are transferred ‘out’, to, for instance, another co-operative, or ‘back’ to the body which initially established the enterprise. However, the term ‘mutual’ has become associated with a rather different history, that of the role of mutual building societies – here members of the enterprise may

19 However, in current (non-charitable) trusts law in this jurisdiction, finding a means through which to either ‘hold for a purpose’, rather than for beneficiaries, or to stop what is held ‘in common’ from being disaggregated is still difficult.

20 The term ‘co-operative’, in this country, has become associated, primarily, with a membership model based on the consumer or user of services provided by the organisation. The term co-partnership generally refers to a membership model based on those who produce – hence John Lewis is a co-partnership, not a co-operative. However, these terms are not defined in law but rather derive, more organically, from the way in which the practices developed and the focus taken in the British co-operative movement on a consumer, rather than production, model. Mutuals are generally used as just another term for co-operatives, but the use of the term became particularly associated, in this country, with building societies.



have access to the capital value of the enterprise through a process of demutualisation, bringing that enterprise to an end, and then distributing the assets between the members. Hence, we can think of one form as locking away property as asset, and the other as suspending property as asset. In the first, ownership will never be more than sharing benefit, whereas in the latter ownership can mean access to distribution of capital.

However, the terms co-operative, co-partnership and mutual are not, in this country, framed through definitions in law.<sup>21</sup> There are no legal forms which, to date, define them, and consequently the terms have been 'mobile' – some enterprises call themselves co-operative or mutual, and yet do not conform to the patterns, or the distinction between them, which we drew above. It is as if, often, the terms are used to suggest a particular set of values, rather than a particular form (rather as the term 'trust' is often employed in the title of an organisation without it actually being incorporated as a trust in law). Further, in as far as legislation has addressed what these things might be, it has added to the confusion by introducing something called 'fully mutuals'<sup>22</sup> which do not allow for demutualisation (thereby being more of, in our terms, a traditional co-operative model).

The Coalition government has committed itself to promoting alternative forms of business practice and thereby alternative forms of ownership of/for enterprises. In a series of legislative reforms, they have begun to draw a distinction between member-based enterprises (for the benefit of members) and community benefit (BenCom) enterprises. Their basic model is that most membership enterprises will not be fully mutual, unless it is clear that they have made themselves so, whereas community benefit enterprises are, by definition, fully mutual – their assets are locked away from any member group. This renders the traditional co-operative model as now bifocated – between (usually) small-scale enterprises, in which the membership will be able to bring the enterprise to an end through a sharing out of the assets between them, and (usually) larger and longer-term enterprises which deem themselves to be (in the rules they adopt) fully mutual. Meanwhile, as an important item on the agenda of building a new spirit of socially orientated business enterprises, the Coalition foregrounds community benefit enterprises, carried either under the regime of BenComs (IPs) or community interest companies.<sup>23</sup>

### Ownership: models, modes and practices

We have now moved through a series of very different forms for enterprise, in which the model of ownership deployed mutates. We began with the concern to link shareholders into a responsibility towards the functioning of an enterprise through the vector of ownership. Then we moved to a model of shared ownership of assets in order to mutually benefit from

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21 That is, as yet. To date the incorporation of them can be carried through a number of legal models, the preferred being that of the Industrial and Provident Society (IPS), which has to be registered and, as part of that process, the registrar considers whether the form and rules conform to the principles of co-operation and mutuality. For detail, see I Snaith, *The Law of Co-operatives* (Waterloo Publishers 1984), and, for up-to-date news and analysis of development in this area, see Ian Snaith on <<http://snaithscoplawnnews.blogspot.co.uk/>>. However, under current legislative proposals (see n 8 above), the IPS legislation is redesigned and a distinction drawn between 'co-operatives' (member-based), and 'community benefit societies' (designed to deliver local benefit, and with potential charitable status). In this sense, we can now collect together mutuals, co-operatives and co-partnerships as member-based, that is for the benefit of members, as opposed to BenComs which are designed for community benefit. As more legislation develops, we are moving closer to a legal form for co-operatives, under which 'ownership' of assets will be held within the organisation, but can be accessed by members by bringing the enterprise to an end (a process of demutualisation) Conversely, in BenComs 'benefit' in terms of use is the focus and, as there is no membership, there is no process through which assets can be demutualised.

22 Co-operative and Community Benefit Societies Act 2003.

23 Introduced by the Companies (Audit, Investigations and Community Enterprise) Act 2004.

the use of them, including the profit thereby generated. Within this framing, we then had to distinguish between those forms which share ownership of capital and assets, in the sense that both can be distributed between the membership, and those which lock away the assets and only allow for the sharing of benefit. Finally, we move to a model which focuses on benefit to a community.

All of these models deploy ownership over two different registers. The first register is concerned with economic value. By this, we mean the aspect of the enterprise which is given a particular economic value: but is this in the material assets, or the capital value which they represent, or is it in the profit made by the enterprise and how it is distributed? What particular aspect of economic value in the enterprise is being claimed under the rubric of ownership? This, of course, shifts. In one sense, in regard to shareholding, it is used to try and reconnect an interest in profit back into a concern in how the company is run. In another sense, it can be used to encourage people to be proactive in coming together to share assets in order to produce shared benefit through profit. Finally, it can be used to encourage enterprise where assets are only valued for their potential productivity in order to benefit a wider grouping. In the final scenario, ownership is stretched to a limit if it remains predicated, as it usually is, on a traditional private property model.

At this point, we have to bring into account a second register – that of social value. If the traditional company form operates, clearly, within a register of economic value, then the Commission wants to activate responsibility as not merely an economic benefit, but also as a social benefit (responsible capitalism). Membership-based organisations promote the social, as well as economic, values of co-operation (another form of responsible capitalism) and community-orientated enterprises, by definition, promote a social value of shared responsibility. Ownership within the social value register moves away from a private property model and becomes much more attuned to the responsibilities of ‘stewardship’.<sup>24</sup> Ownership, in this sense, becomes, on the one hand, the way in which assets are held in and for an enterprise, in order, on the other hand, to benefit a group (which is rather analogous to one use of the trust model). Whether it is necessary for the group to think of themselves as owners is moot and will depend upon whether they feel that the enterprise is being run in a way which does benefit them and whether, in the way it is run, it is sufficiently accountable to them. What we have reached is another limit – the extent to which, legally or socially, the idea of ownership matters. What can it deliver? What does it need to deliver?

The term ownership can be deployed in very different ways, not least with reference to what, as much as how, or why, something is being held ‘in ownership’, or constructed as property relations through a vector of ownership. What is evident is that the grouping of mutuals, co-operatives and co-partnerships shares a set of values, co-operation, which ground a business model within a property model that privileges shared benefit and mutuality over individual rights. How far can an ownership model also be deployed, usefully, to meet a shared benefit for a community?

We suggested earlier that the major imperative in using it within the context of responsible capitalism was to try to reground the relationship between investment and enterprise by making investors think of themselves as owners, thereby becoming proactive in an involvement with the enterprise. We also suggested that deploying this narrative of ownership was a means through which to build a more material relation, between those who think of themselves as owners and that which they (should) think of as owning. In relation to the second focus (on co-operatives etc.), it is membership which carries a relation of ownership and, more specifically, carries it into the enterprise rather than into the capital

24 Gray and Gray (n 10).

value (unless suspended rather than locked away). Thus, the values of responsibility and stewardship, as much as that of shared benefit, which are evident in these forms, do not require the same conjuring of ownership as the carrier of those values – and this differs significantly from the appeal to ownership addressed to shareholders. Ownership comes in many shapes and forms.

Property lawyers and scholars recognise that it is wrong to try and locate property as being (in) a thing; rather it is traced through sets of relations concerned with the control and use of rights in relation to things, which are given value in use or exchange. And it has long been of significance that things given value have a number of value trajectories (logics) clustered through and around them. The simple process of distinguishing a material asset from what it represents in terms of capital value is something we are all familiar with – whether it is in domestic property, a business enterprise, or a trust fund etc. However, we must also contend with the fact that different forms of material assets carry a range of values, each of which may hold a very different significance to different parties concerned with the deployment of that asset. The term ownership to a property lawyer or scholar is, therefore, a very problematic term to deploy when trying to think – image – these sets of competing interests, either as clusters of rights and obligations, or as couched in legal forms. There are many reasons for this; not least of which is the heritage of thinking property relations through not merely ownership, but through a private ownership model. And, of course, it has long been trite economics to argue that there is clear proof that the only economically successful societies are those which are predicated in a regime of private property and thereafter able to develop a market economy driven by selfish individualism and the imperatives of capital. In a sense, the tragedy of the Ownership Commission was that it had to work within not merely the real politic of the consequences of this heritage, but to do so with the very tools which had constructed it.<sup>25</sup> The question is how, and to what extent, if we are to work with the idea of ownership, we can make something of it which does not simply repeat the old errors: does not simply lead us back into the trope of private property, or leave us with business models which continue to do little more than address the profit imperative.

We are left, then, with two issues. First, let us assume that there is a useful potential in thinking of business enterprises in terms of ownership, or, rather in addressing them through the frame of property relations. However, second, what we need to do is to more closely consider what forms of property relations, indeed what forms of ownership, could be developed to open us to the potential 'in our common capacities to understand and regulate our social life'.<sup>26</sup> To consider this, we return to Dover.

### Ownership by 'the people of Dover' (?)

What might it mean to 'the people of Dover' if they were to 'own' the port? The question, of course, arose originally from a negative perspective – what would it mean if they didn't? Their concern was with the very real possibility that, through the process of privatisation, ownership of the port would lead to it being regarded as no more than one asset within an organisation of investors more concerned with the profits they could accrue from the business, rather than having any commitment to developing the port as part of the local economy. This then led to an audacious potential – what if the asset, and the business associated with it, could be owned in such a way as to not only address the concern of it

25 By this we mean using ownership as the vector. The use of 'tragedy' is a reference to the well-known phrase 'the tragedy of the commons'. See G Hardin, 'The Tragedy of the Commons' (1968) 162(13) *Science* 1243–48.

26 Gordon (n 12) 108.

being central to the local economy, but also to ensure its running for the benefit of the local economy? Could a form be found which not only linked asset and business potential into the locale, but locked it in? Ownership, in this sense, was being used as a token of not merely control now, but as a projection into a future secured by a business which was firmly rooted in the material asset of the port. But who then should be the owners of the asset? It would have to be those whose futures most relied upon this security – the people of Dover. A guarantee for them; protected by them. It seems, in its audaciousness, to be a very simple proposition.

When, in 2011, Vera Lynn launched the People's Port, flanked by Neil Wiggins and Charlie Elphinke, in wind and rain on Dover seafront, and sang a few lines of 'There'll be Bluebirds over the White Cliffs of Dover', she said something very interesting: '... if the people of England cannot own the port of Dover, then the people of Dover should'.<sup>27</sup> How had the 'people of England' owned the port? Through it being a publically owned asset; that is it was held under the authority of the nation state. However, the government had given itself the powers to privatise that asset and was now moving to do so. The problem in our jurisdiction is that we have very few models for owning public assets;<sup>28</sup> and, as we have frequently found, those vested in local or national public authority are vulnerable to a decision to sell (privatise) them. In some cases, and this is in part true of Dover, this can give rise to a sense that a national body is not only asset-stripping the nation, but doing so against local interests. In fact, in Dover, a narrative developed which in part figured the inhabitants of Dover as the guardians of the nation's gateway – arguing not only a local interest, but a localised responsibility to defend the port against the potential of foreign invasion, through the taking over and running of the port – let alone taking profits offshore.<sup>29</sup> But the stronger argument which developed was one which focused on local needs – and it seemed that a national body could not be trusted to protect them. However, even a regional public body is open to the same criticism of not, necessarily, securing local interests by keeping material assets (and, in this case, future profits) firmly in public ownership.<sup>30</sup> So the slippage in Lynn's statement is interesting – what the People's Port sought to do was to root ownership into local community, rather than into a public body. Only the people of Dover could be, in this sense, trusted with the asset (and future) of the port, as it was they who had most invested in benefiting from it.

This move away from public ownership in the form in which we are most used to it, chimes, of course, with a major concern of the Big Society agenda: that of responsible citizens doing it for themselves, rather than being dependent upon the state. Moving public assets into new forms of ownership which still have a public value inscribed into and on them, rather than into what has now become dubbed 'full privatisation', has been framed as an alternative to national or local state ownership. The question is how to legally frame (or 'carry' or 'translate') this in practice.

For Wiggins, not then conversant with the legal options open to him, his initial attraction was to use 'some form of mutual'. He willingly admits that he did not know

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27 Video available on [www.peoplesport.org.uk/](http://www.peoplesport.org.uk/).

28 See C Rose, *Property and Persuasion* [www.law.arizona.edu/faculty/FacultyPubs/Documents/Rose/PropertyPersuasion.pdf](http://www.law.arizona.edu/faculty/FacultyPubs/Documents/Rose/PropertyPersuasion.pdf).

29 See the home page of the People's Port, with a picture of white cliffs and the banner slogan of 'Keeping the nations gateway forever England' <[www.peoplesport.org.uk/home/](http://www.peoplesport.org.uk/home/)>.

30 Hence, the increasingly used tactic of trying to secure open spaces owned by public bodies and designated for privatisation by moving to have them registered as commons or village greens, see e.g. *R v Sunderland City Council ex p Beresford* [2003] UKHL 60.

anything about mutuals when this was suggested to him. And he was not alone. As new and aspiring Tory candidates came to grips with the Big Society agenda, they, like their more established colleagues, began to use terms they were very unfamiliar with, and they would prove to be very cavalier in their use of them. Mutuals, co-operatives and co-partnerships were frequently rolled together as if all are the same – a kind of glorious ménage of 'another way'. Suddenly the 'John Lewis' model was being not only frequently evoked as evidence of how successful 'they' could be, but could be transmuted into a mutual or a co-operative (whereas it is actually a co-partnership). But it served a purpose – here was evidence of a solid middle-class high-street shop which we all know, use and love, and: '... did you know? Isn't it extraordinary? And such a success!' Not the radicalism of any kind of counter-culture to capitalism, but solid respectability was just what these new advocates needed. And, in an important sense, they were also right to locate the alternatives, not through an appeal to their radicalism, but through a focus on feel-good factors: co-operation – working together for mutual benefit, being responsible not just to ourselves but to others. This was the message – and the alternatives forms were not only open to being deployed in such a way but, as with the Labour new mutualism of the third way, in great part their traditional supporters welcomed being (again) rediscovered, even if in a different political framing.

When Elphinke was duly elected to Parliament, he drew Cameron's attention to the potential of the People's Port bid as exemplifying what the Big Society agenda could deliver. He was given support from the government, and government offices, in helping to construct the idea as a viable alternative to that brought forward by the Dover Harbour Board. (It must have seemed a very strange turn for Dover Harbour Board, to find that the establishment was not going to simply follow a full privatisation option!) What was now required for the alternative approach to progress was obvious – they needed a sound business plan and a financial package which would require inward, community-centric, investment. To attract investors, they would need to have their governance structure in place. How were they to negotiate a balance between what investors would expect (not merely profit, but security and a level of control over decision making) with the promise of ownership by the people of Dover?

It quickly became evident that 'some form of mutual' was not an option. It would not serve to raise the capital needed and did not deliver a solution as to how to tie in people with port through a frame of ownership. Even the word 'mutual' turned out not to be attractive as a campaigning tool. Locals did not respond to it positively, they were not familiar with it as a term representing a particular form or principle, nor did they find it clear enough to be a compelling idea. Worse, they proved to be somewhat negative about the very suggestion that they could, through mutuality, own the port. And we are returned to the issue of the benefit of using the idea of ownership in particular circumstances.

There is no doubt in our minds that employing the idea of ownership was initially important in actually raising the potential of a third way in the privatisation process. It focused Neil Wiggin's mind and began a conversation between himself and others anxious about the process Dover was about to go through. It also, at least initially, could be deployed to carry, focus, a local conversation about how the future of the port could be secured for local interests. What Wiggins, and Dover, wanted was a sense of being heard about their concerns and, even more importantly, a sense of some input into a decision which was so to affect their destiny. But, when it came down to it, their concerns were rather more specific than could be, or needed to be, met by a generalised appeal to ownership. They wanted the port to thrive and to remain as the central focus of their economy. They wanted monies made available for building and revitalising their local socio-economic

infrastructure, which had been in decline for too long, and they saw the port as a major potential benefactor in a much-needed regeneration programme.

However, this aspiration was becoming de-linked from an appeal to community ownership, largely because of that community's ambivalence over such a notion. Indeed, in many interviews, what was expressed was both a kind of resignation (Why not a Dover Harbour Board management buy-out? It will happen anyway.) blended with a fatalism that the answer did not lie 'with them'. Neil Wiggins found himself in a difficult position – becoming increasingly convinced that his alternative plan was not only viable but 'good for Dover', he was faced with having to try and 'drum up' local support.<sup>31</sup>

In this, we can see a difference between ownership as a vector for first initiating an alternative business model and ownership as an actual form for carrying it through. Thus, it is important to consider the lifecycle of an enterprise, and not merely what survives into an end product. The point here is that an appeal to ownership can be useful in one place or time, or to a particular audience, only to become either unnecessary or insufficient in other circumstances. Of course, we should be sensitive to a style of politics which knowingly deploys such a narrative to simply garner initial support, for instance, when having no intention of following through with it. However, we do not think that happened here, in the sense that, when it was first deployed, it made sufficient and necessary sense in order to raise an issue, focus a concern and begin an initiative. But this was, primarily, operating at a level of rhetoric rather than reality – in that, when thought through, it became clear that actually activating ownership was much more problematic both in what form it could take, as well as in achieving a dialogue between Wiggins and the local community which elicited from them a commitment to the project. In the end, it was not just that finding a suitable form would be difficult, but that the local community had not bought into it. Ownership, here, had reached a limit. But the concerns and the aspirations continued.

Not just at local level, but also at government level, how to put into operation the Big Society agenda of alternatives to full privatisation now had to be faced. By the autumn of 2011, the People's Port plan had begun to change shape. Two particular signals reflected this: first, the terms 'mutual' and 'community' were dropped from their publicity material and replaced with 'trust' and 'communitisation'; second, the proposal was now framed as the Dover People's Port Trust Ltd.<sup>32</sup> Led by a board of local businesspeople (and Charlie Elphinke), the introduction of trust, as a term and a form, makes very clear that the local community is now placed in a position in which its interests were to be protected by local worthies with economic expertise. The ugly term 'communitisation', replacing 'community', suggests a process by which community, of a kind, is to be built *through the bid*, rather than its being already in existence as a ground *for* the bid. Thus, it is a business model which is being 'communitised', rather than a 'community' being invoked as the basis of the business.

The People's Port webpage now describes the form they have adopted in these terms:

We have set up a community trust – the Dover People's Port Trust Limited . . . established and registered with the FSA [Financial Services Authority] as a charitable industrial and provident society – similar to the co-op.

There are some very interesting confluences and slippages in this statement. The term 'community trust' can only really mean for 'the benefit of the community' – this is established through the melding of the trust form, with registration as both a BenCom (under what is still, to date, referred to as one form of an IPS) and as a charity. It is not similar to a co-op, except in as far as co-ops are also registered under the IPS rules. For the

31 Not helped, of course, by the initial stance taken by the trade unions, which was to defend the status quo.

32 <[www.peoplesport.org.uk/our-bid/details-of-our-proposal](http://www.peoplesport.org.uk/our-bid/details-of-our-proposal)>.

People's Port, the trust form has a dual benefit. First, they are signalling an asset lock over the material and capital value of the port and, second, they are emphasising that profit, as benefit, will be kept within the locality. The reference to co-op, is probably a muddle, but a useful one. It keeps open the idea of not only the social value of co-operation, but also signals a role for an active membership, which, although carried also in a BenCom, is lost when emphasis is given to the trust form. It is rather as if, to return to points we made earlier, the terms co-operation and trust are used to signal values, rather than specific forms of enterprise. And, a point well recognised by the Coalition, it is difficult to convey to people the different forms which enterprises can take; what is important is to signal the values they are intended to carry.

The new formulation makes clear that its rational (purpose) lies in a commitment to the recognition of the centrality of the port to the viability of the locale. However, the benefit to the community is now expressed in a manner closely adjacent to a beneficial interest behind a trust, albeit in a manner which muddles the proprietary element with the purpose and/or charitable trust forms. The new objective proposes an economically viable business model, structured on a property form which holds both port and business within a framing which locates it, and its future, firmly into the local environment. Further, it provides that a proportion of profits would be made available to the community through the establishment of a local charitable trust, giving a direct link between profit and local benefit. What has changed from the original concept is the suggestion of a more direct connection between community and enterprise through a framing of 'them' as owning it – now it is held and managed by a board which, akin to trustees, knows what is best (economically) for the port and thereby for the community. In effect, it provides for another form of local establishment running things, rather than the establishment represented in and through its immediate competitor, Dover Harbour Board. It provides a safe option which is recognisable to the businesspeople and local (and national) Tories in their vision of building responsible capitalism, as much as a Big Society.

However, even as it now takes form as a much muted account of ownership, it leaves residual traces which can be activated, not least the issue of holding to account. Even if the local community did not meet the challenge of 'us' owning, it could well be that a narrative has now been laid for activists to recover, and profile, in 'thinking' and 'claiming' rights, or challenging expectations, in future negotiations over port activities. There is, also, a more direct heritage left in the trace of being able to become a member of the People's Port. Although this is somewhat blurred, in that it is designed as much as anything else to evidence support, it remains, in its potential, an important link back into the idea of local ownership.

The outcome achieved a purpose: it built a viable alternative, founded on local interests, which countered the full privatisation bid of the Dover Harbour Board. It also offered a template for putting together a legal and financial package which could carry a third way. However, it has to be recognised that the final structure adopted begins to look far more like not only a conventional business model, but also a conventional social model for dealing with local interests. Evoking trust and using charity recognises the interests and claims of the local community, but very much under a rubric of the protection or stewardship vested in local businesspeople and worthies. Indeed, as the bidding process extended into 2012, the date for decision-making being put back a number of times, the Dover Harbour Board bid also mutated as it committed itself to setting aside a proportion of its profits for local charitable use (and it later increased that proportion), and undertook activities designed to show a commitment to the locality. Often, the issue became which of them offered a better business plan, rather than the merits of one form of privatisation over the other.

The radical image which had initiated the People's Port had become a much safer, more muted account of an alternative. Local businesspeople and Tory party members alike required the development of something they could feel comfortable with. And they could be pleased with themselves in that they had not only found a way, but had also provoked the opposition into a mirroring exercise. Local conditions, political culture and the very real difficulty of thinking differently leave us with, necessarily, a sense that what might have been a radical potential has been tempered away from anything we might think of as transformative.

But this would be to ignore just what has been achieved, and what might still flow from such examples.

### Alternative property practices

Not so long ago, thinking property differently seemed either lost in history, or endlessly deferred in a future utopia which we might dream of, but would never see. But history has returned to allow us to recover alternatives and see the potential in them for us, now. 'Commons' has been reactivated for its potential – not merely in protecting access to, and use of, land and resources, but in reminding us that 'use' rights are important and do not need to be hinged on ownership: they can overlay private property, becoming a defence against the excesses of private ownership. The orthodoxy of the 'tragedy of the commons'<sup>33</sup> is now met with a counter-economic model of the viability of commons.<sup>34</sup> On the internet, strategies have been found in the name of commons to keep open access to knowledge and to privilege and defend the sharing of it. Hardt and Negri,<sup>35</sup> seeking new ways for thinking a political–economic alternative to and in late capitalism, have turned to commons as a model. All of these strategies are couched, in some form, on an image of keeping open, of not enclosing, property in terms of a protection of its use-value. In an important way, they refuse the logic of property relations predicated in private ownership and the rights of individualistic absolute dominion.

Co-operatives, co-partnerships and mutuals carry a radical history of thinking differently about property relations – of people pooling resources, and of acting for mutual benefit, in which, again, use of assets is key to the sets of relations built between people in relation to a resource. More than simply business models, they suggest different ways of holding property, expressing different values. Profit is to be made, but it is to be shared between the group of members. And, again, the importance of use, and thereby the importance of locking away assets and capital, trumps the logic of individualistic ownership which seeks to activate and disaggregate a portion of the assets.

However, the question of how far the vector of ownership can remain central in protecting community interests remains moot. We can think of this question in three ways. First, in social terms, how far do we need, or can we deploy, the strategy of thinking in terms of ownership? At government level, and in many community campaigns, using the language of ownership remains a key component for building the Big Society agenda. For the Coalition it is, clearly, a means through which it seeks to activate communities (communitisation) through giving them responsibilities for managing and delivering local services and assets as an alternative to the role of public authorities.<sup>36</sup> For some activists,

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<sup>33</sup> Hardin (n 25).

<sup>34</sup> E Ostrom, *Governing the Commons* (CUP 1990).

<sup>35</sup> M Hardt and A Negri, *Commonwealth* (Harvard University Press 2009).

<sup>36</sup> See e.g. *Proposals to Introduce a Community Right to Buy: Assets of Community Value* (ISBN 978–1–4098–2802–0 Department for Communities and Local Government Consultation Paper February 2011). This has become 'the community right to bid' under the Localism Act 2012, but does not introduce any new legal forms for community ownership.



the idea of community ownership is a strong trope with which to counter the claims of either private property or state provision, and, often, they particularly appeal to ownership as not just a means through which to build and protect community benefit, but also as a means through which to lock away material assets, protecting them from future privatisation.<sup>37</sup> In these contexts, the appeal of ownership is based on an account of ownership as one of the responsibilities of stewardship. Communities, when the point is pressed, are beneficiaries as well as, often, stewards. How far thinking of the community as owner is useful, depends, we think, on whether the rhetoric of ownership serves a purpose in activating community thinking and practices in terms of taking ownership of (responsibility for) local assets.

Second, in legal terms, the question remains the form, or melding of forms, which can carry the purpose of a community-holding of assets. To date, in England, no new legal forms have been suggested – there is a remodelling of membership and community benefit structures, and charitable trusts have taken on a more active role in meeting new conditions, but, unlike Scotland, we have not engaged with the possibilities of a special, or specific, legal form for community ownership. And so we shift, perhaps usefully, between a blend of co-operatives, BenComs and trusts. As ownership as an idea is mobile, perhaps a mobile, mutating, legal form properly reflects this. Thirdly, and finally, the question is whether we need a notion of ownership to deliver the benefits and protection which communities need. Commons focuses us on use-value, trusts on benefit, and trusts (as well as BenComs and the traditions of co-operatives) can alert us to thinking property ownership as not the only means through which to deliver use-value. And can we, in the end, activate ownership as something more than conveying private property rights? Or do we need to recognise the limits of the use of the term, let alone the legal means by which to deliver it?

In Dover a direct account of ownership by a community proved to be not only a chimera, but also evidence of the limits of thinking in ownership terms. Certainly, a better model for recognising community interests, protecting the asset and distributing the benefit could have emerged, given a different political context and culture. But the narrative of the People's Port bid serves a more modest purpose than that of seeking utopias: it reminds us that, with a vision that we can think differently, and in addressing the pragmatic immediacy of the concerns and models available to us now, we can develop others. We can think the possibility of alternative property practices, but only through an engagement with those events which might, very easily, be dismissed as no more than evidence of failure to deliver, rather than as evidence of potential.

### The outcome, for Dover, for now

In November 2012, rumours began to circulate in Dover that an 'important announcement was about to be made'. The rumours seemed to come from the port, and the suspicion was that Dover Harbour Board had been given an indication that its bid had been successful. Everyone waited and watched. Then, in early December, an announcement was made that Dover Harbour Board had donated money to the National Trust for the purchase of a stretch of the White Cliffs – which could now be protected as a local asset, in perpetuity. This was not, however, the announcement which was being waited for! Some locals suggested that a decision about the future of the port was being postponed until just before the next general election – but could it really wait that long? Then, just days before Christmas, a decision was announced: which was to withdraw the port of Dover from the

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37 For instance, the campaign promoting 'community land trusts', see <[www.cltfund.org.uk/about/about-clts](http://www.cltfund.org.uk/about/about-clts)>.

privatisation process.<sup>38</sup> For the time being the status quo obtains and it is to remain in public ownership. The reason given in the government statement was that:

... the transfer scheme proposed would not ensure a sufficient level of enduring community participation in the port.<sup>39</sup>

In a very important way, Neil Wiggins can claim a victory. The issues he raised, the campaign he mounted and the plans he devised have produced a result. Not only have they, for now, blocked the Harbour Board privatization bid; they have left very interesting traces – a recognition of the value of enduring community participation and benefit, and of the question of how far ownership matters in accomplishing this.

### Appropriate thinking

Consequently, it may be that we need to shift our thinking, as academics and scholars, away from the loaded idea of appropriation, and think more of ‘processes of appropriating’. Not only does this raise questions about the dynamism inherent in the transfer and creation of property forms, it also allows us to broaden our thinking inasmuch as we must look beyond the thing appropriated, to consider the networks and assemblages which that thing is not only caught up in, but effectively materialised through. In this approach, it becomes clear that a whole spectrum of participations and involvements are required, very often from actors and interests that one would not, initially at least, presume to be relevant.

We do not wish to downplay the fact that, of course, it has often been the case that the processes of privatisation can be thought of, properly, as processes of appropriation, in that they have carried a corresponding deprivation for the affected locality. Also, we do not wish to simply join in, uncritically, nor be appropriated by, the agenda and language of the Big Society. We have to track and think clearly about how the competing logics of community activism and community responsabilisation impact upon, or carry, each other. What becomes clear, once we consider processes of appropriating that construct both the owned and the owner in action, is that a certain level of community responsabilisation is inevitable, and that participation, whether as a supporter or a critic, has an impact that must be assessed well beyond the terms or aims of the particular faction in question.

Finally, we cannot consider property to exist as some integrated and uniform thing, which can be transferred cleanly from owner to owner. The situation in Dover reminds us that the thing, as a resource and asset, is formed and takes form not only through transfers, but also through processes of contestation about just what the thing is and overlapping (and not necessarily resolved) perspectives concerning just what it is for. This complicates matters as far as the rather more obvious counters to privatisation are concerned: especially the appeal to commons. Dover is evidence that the idea of a virgin, ‘un-owned’ thing simply doesn’t exist – rather, there are resources which, as soon as they are recognised as such, are caught up in processes which are, already, forming them as property and potential property. Therefore, we would argue that, in fact, to refer at this point to ‘property’ and ‘potential property’ is actually to refer to the same practices and processes of appropriating – the potential *is* the property.

<sup>38</sup> <[www.gov.uk/government/speeches/the-port-of-dover](http://www.gov.uk/government/speeches/the-port-of-dover)>.

<sup>39</sup> In 2011/2012, the government amended the Ports Act 1991 to expand upon the criterion of ‘serving the interests of the community’ (one of the criteria used in determining whether to accept a voluntary transfer scheme), to thereafter include a reference to an ‘enduring and significant level of community participation’. See Amendments to Government Criteria for Consideration of Sales under the Port’s Act 1991, Hansard, 16 May 2011 col 4WS.