
Book Section:
Blandy, S. (2021) Narratives of property and the limits of legal reform in the English leasehold system and its counterparts in other jurisdictions. In: Lippert, R.K. and Treffers, S., (eds.) Condominium Governance and Law in Global Urban Context. Routledge , London , pp. 13-28. ISBN 9780367897093

https://doi.org/10.4324/9781003141600-3

Chapter 1: ***Narratives of property and the limits of legal reform in the English leasehold system and its counterparts in other jurisdictions***

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Introduction

Leasehold provides the legal framework for most multi-owned housing developments in England and Wales.[1] Some of these leasehold sites are self-governed by a company formed of the leaseholders which owns the freehold title, sharing some features with condominium and strata title. However, in the majority of leasehold developments the power to manage rests with a separate freeholder. Recent revelations about exploitative practices by developers, freeholders and their lawyers have added to the existing, decades-old pressure for reform of the leasehold sector. The UK government now favours a move from leasehold to commonhold, the English equivalent of strata or condominium title in which each unit is owned on freehold, and the unit owner automatically becomes a member of the Commonhold Association which owns and manages the whole site. This new form of tenure was introduced by the Commonhold and Leasehold Reform Act 2002, but not made mandatory. The key reforms put forward in the Law Commission's consultation paper "Reinvigorating Commonhold" (2018) include simplifying the process for converting from leasehold to commonhold, and the compulsory use of standardised documents. Launching "Reinvigorating Commonhold" on December 10 2018, the Law Commissioner Nick Hopkins declared that "[t]he time is right for commonhold… It involves a culture change, moving away from an 'us and them' mindset, towards 'us and ourselves'." "Us and them" refers to the traditional freeholder/leaseholder structure, whereas "us and ourselves" is intended to convey a new narrative for self-governed multi-owned housing in the form of commonhold.

The theoretical framework adopted in this chapter is based on the concept of narrative, by which I mean a story or explanation, following Carol Rose's influential work on property as persuasion (1990, 1994). The proposed reforms to leasehold and commonhold are not discussed in detail here; the chapter focuses on what an analysis of property narratives may offer for understanding problematic issues associated with self-managed housing. In my previous empirical socio-legal projects researching English self-governed leasehold sites and commonhold sites, I found some deep-seated difficulties which mirror those revealed by international research: owner apathy, lack of community and low levels of participation in governance (see overview in Easthope 2019, chapter 6). The strikingly similar findings from jurisdictions where legal frameworks have been supposedly tailored to the needs of self-governed residential developments challenge the confidence that legal reform alone can resolve these issues. In using the lens of narrative to explore the underlying reasons for these problems found in multi-owned housing sites across the world, this chapter's innovative approach makes a significant contribution to the international research literature.

[1] Scotland has a separate legal system. With apologies to the Welsh, I will shorten "England and Wales" to "England" for the remainder of the chapter.

Two types or levels of narrative are considered here: the abstract or the "meta-narrative", and the everyday or "ontological" narratives which concern how people experience reality (Somers and Gibson 1994). Narratives have a powerful influence on our experiences, our understanding of how the world works and therefore how to live in it. Rose (1994, 5-6) argues that property narrative and "community norms" combine to maintain "the common beliefs, understandings and culture that hold property regimes together." Both types of narrative are constantly evolving and so is the relationship between them. As Macpherson (1978, 1) explains, the concept of the property "is both cause and effect of what it is at any time… changes in what is there are due partly to changes in the ideas people have of it". A major change since the mid 20th century has been the growing acceptance in the developed world of a narrative of property as exclusionary dominion (derived from Blackstone, 1768, 2). It is rarely pointed out that Blackstone's eighteenth century exposition of property law and relationships also acknowledged "that common ownership ... and communal rights were commonplace, so to speak" (Schorr 2009, 112). The powerful meta-narrative of property as individual, exclusive, sovereign control over territorial space has taken hold across both civil and common law jurisdictions. As Rose 1990, 54) points out, "the dominant story-teller can make his position seem to be the natural one" and so the narrative of property as cooperation has been displaced by that of exclusionary, individual dominion.

A number of factors, including legal discourse, have combined to create this successful meta-narrative of property which provides an unquestioned, universal explanation of how things are in the world. Although "ownership" is not a legal concept in the common law world, it carries a powerful charge. Research has found that owning property, particularly one's own home, is associated with security, privacy, control and financial value (see Saunders 1990), and that the home is a particular type of property, in which residents invest time, effort and emotions (Mallett 2004). Government encouragement of homeownership over the past decades has added political force to the idea of property as individual possession, which is powerfully associated with raw feelings, existing interests and familiar values.

Over the same time period when a narrative of property as individual dominion became established, multi-owned housing has emerged as a major form of residential accommodation. But this individualistic meta-narrative is clearly inadequate to explain property relations at multi-owned housing sites where there are no physical or legal boundaries to separate one share in the common property from another, and which are managed collectively. These sites combine individual with collective property, and that property is bound up with governance and community (see Harris, this volume). Owners must cooperate to make multi-owned housing work successfully, but as Perin (1988, 77) pointed out in her anthropological study of relations between suburban neighbours in the USA, "Common ownership, predicated on Cooperation and Sharing is incongruent with American ideals of Individuality and Independence".

At the everyday level of narrative, individuals and groups of owners therefore struggle to make sense of their experiences in self-governed housing. In this chapter the interactions between the abstract and ontological narratives of property are illustrated by examples

drawn from qualitative interviews carried out with owners at a range of English self-governed multi-owned sites. These show that the currently dominant individualistic, exclusionary narrative of property fails to take account of the new ways of living, managing and sharing space in self-governed residential developments. Owners articulated a range of everyday property narratives, from insisting that their home is their castle and therefore resisting the need to participate in governance, to embracing a counter-narrative of property that is based on intentional sharing.

Urbanisation and multi-owned housing

The term "multi-owned housing" encompasses master-planned housing estates, gated communities, apartment blocks, and large houses converted into apartments - or flats as they are known in England. This kind of residential accommodation has become increasingly commonplace across the world as a response to increased pressure on urban space (OECD 2012). Simultaneously, homeownership rates have grown, while renting has declined in many (although not all) developed countries. Over the past half-century or so state policies have emphasised individual choice and personal responsibility, while levels of trust in community and neighbourhood have declined (Atkinson and Blandy 2016). The idea that owning your home is natural and normal (see Gurney 1990, in relation to the UK) has been fostered over time by a range of western states described by Ronald (2008, 162) as "ideologically convergent". These concurrent adjustments in both the provision and ideology of housing have led to tensions in property narratives. As explored further in subsequent sections of the chapter, the individually owned "home as my castle" metaphor does not sit easily with the reality of homeowners sharing space, responsibilities and governance arrangements with their neighbours.

In multi-owned housing, the owners hold rights in common over the shared spaces. A further key feature is that the individual dwellings to which owners hold property rights are inevitably interdependent, either because they form part of the same physical structure and/or because they are all subject to the same management and governance arrangements. Therefore both the physical layout and the governance framework of multi-owned housing require some form of sharing by the homeowners. Every multi-owned housing site is subject to a specific legal framework designed to reflect and support these features.

In the English jurisdiction, these sites are characterised by three fundamentally important property features. The whole site must be owned by a recognised legal entity such as a company or a Commonhold Association, rather than co-owned by the individuals who own dwellings there, because s. 34 Law of Property Act 1925 provides that there can be no more than four legal co-owners of land. In contrast, the legal arrangements for multi-owned housing in continental Europe (van der Merwe 2015) and in other common law countries combine individual with co-ownership. The second property feature in England is that the property rights to each individual dwelling are granted by and held from the legal entity which owns the whole site. These individual property rights are legally linked to each owner's rights of use and access over the shared spaces, and to their legal obligations to pay for repair and maintenance of the common parts. The third essential characteristic of multi-

owned housing is that a legal arrangement is needed for the governance and management of the whole site.

Perhaps the most remarkable aspect of multi-owned housing in the English jurisdiction is the lack of both standardisation and oversight by the state (apart from existing commonhold sites which are governed by the the Commonhold Regulations 2004). There is no requirement to adopt a particular legal form, and setting up a multi-owned housing site is not linked in any way to registration of its title. There is no requirement to appoint a property manager, and if appointed, property managers are not regulated. Unlike the Strata committees and Homeowner Associations, in Australia and in the US respectively, or the French syndic de copropriété, there is no requirement to establish a self-governing resident body. Significantly for self-management, there is no statutory equivalent in England to the powers of resident organisations to make enforceable rules which are binding on all the owners, such as the French Règlement de copropriété or the condominium house rules and bylaws in North America. There are several serious disadvantages to the English "ad hoc" approach to multi-owned housing, that are addressed in the next section of the chapter. However, this approach makes for a rich field of research. Owners negotiate their own rules, written or unwritten, to guide their everyday use of shared spaces and to develop means of governing the site. In doing so, they are constructing, adapting and making apparent their own property narratives.

Leasehold and multi-owned housing

In this jurisdiction there is a range of possible legal frameworks which can be adopted for multi-owned property (see Blandy, 2010), but the leasehold system remains the most common. There are "no comprehensive statistics on the number of leasehold residential properties" (Wilson and Barton, 2019, 13), but the government's best estimate is that there are approximately 4.3 million leasehold dwellings in England, or 18 percent of the housing stock. Of these, 2.3 million are owner-occupied; the owners of another 1.7 million dwellings rent them out to short-term tenants; the rest are owned by not-for-profit landlords (MHCLG 2019a).

Leasehold tenure dates back to the Middle Ages when feudal lords granted the right to use a part of their land for a predetermined length of time, in exchange for work or produce. Leasehold was adopted by the burgeoning housebuilding industry in the nineteenth century. The developer would acquire the freehold of the whole site, and then sell off the individual dwellings on a long lease (meaning a term of more than 21 years, sometimes up to 999 years), rather than creating short-term tenancies. Although leaseholders pay annual "ground rent" to the freeholder, which has conventionally been set very low, long leasehold properties are bought and sold on the open market and can be passed on when the owner dies in the same way as freehold properties. From the 1960s onwards, England saw more multi-owned housing built to cater to the increased need for urban dwellings, but there was no reform of the well-established leasehold system at that time, as happened in North America, Australia, and in many European countries. Thus developers retained their power to derive an income stream from owners' ground rents and contributions to repairs and maintenance (see Blandy, Dupuis and Dixon 2010).

A particular quirk of English law makes freehold tenure unsuitable for developing and managing interdependent properties. Essential requirements, for example that owners pay contributions and behave acceptably, are achieved through inserting into the property deed enforceable promises (covenants) that can be tailored to a particular development. However, the legal doctrine of privity of contract means that covenants cannot be enforced against successors in title to freehold property because they were not parties to the original deed. The decision in *Tulk v Moxhay* (1848) 2 Ph 774 solved this problem for restrictive covenants, for example the prohibition of nuisance to neighbours, making these binding in equity on subsequent owners. But positive covenants, for example to make payments towards the maintenance of multi-owned properties, cannot bind successors to a freehold title even in equity (most recently confirmed in *Rhone v Stephens* [1994] 2 AC 310). In contrast, a leasehold title can change hands many times yet both restrictive and positive covenants remain enforceable against the current leaseholder. In certain circumstances, breach of covenant can even result in forfeiture of the lease itself, depriving the leaseholder of their property. Therefore in English multi-owned housing sites the title to the land is divided between a freehold title registered for the whole property and multiple leasehold titles, one for each of the dwellings.

This chapter focuses on self-governed leasehold sites, in which the freehold title is held by a company comprising the leaseholders, which amount to a small proportion of the total. Unfortunately there is no reliable information on the number of English leasehold properties which are self-governed by "Residents Management Companies", or RMCs. RMCs, which operate similarly to a condominium in North America or strata corporation in Australia, can be established in one of two ways. The developer of a multi-owned housing site may choose to set up a RMC and will transfer the freehold to it once all the leasehold interests have been sold out. Alternatively, the leasehold owners themselves may set up a RMC to collectively purchase the freehold. This "right to enfranchise", established by the Leasehold Reform, Housing and Development Act 1993, can be exercised without the agreement of the freeholder. Either route leads to the leaseholders acquiring the freehold title and sharing the responsibility for ownership and governance of the whole site. In legal terms, multi-owned housing sites in England where the freehold is owned by a RMC are therefore similar to co-operatives (see Low, Donovan and Gieseking 2012): each owner has an interest or share in the entire building as well as leasing their own unit. This lease is between the freeholder and the leaseholder, meaning that each owner in an RMC-run site has two concurrent interests in the property: as a member of the freeholder body and as the leaseholder of their dwelling.

RMCs are usually limited by guarantee, rather than by shares, and they are governed by the Companies Act 2006. There is no statutory format prescribed for the company documents. The RMC Articles, like condominium bylaws, set out the types and frequency of company meetings, quora, majorities for decisions, election of officers, and dissolution arrangements. Enforceable rules about payment of contributions and how to live together are contained in covenants in the lease. Leases are long, legally complex documents; there is no standardisation or statutory requirement for their contents, unlike for example the Davis–Stirling Common Interest Development Act 1985, and the Californian Civil Code which prescribe the content of Covenants, Conditions & Restrictions (CC&Rs) for condominiums.

Drafting errors in English leases lead to many legal disputes about the meaning of particular clauses.

A major difference between the powers of English RMCs and similar self-governing bodies in multi-owned housing in other jurisdictions relates to making rules about owners' conduct, for example prohibitions on keeping pets or smoking. The RMC cannot itself make enforceable rules; these must be in the lease. In other jurisdictions the corporate entity can make rules, bylaws or equivalent that are binding on other owners, although bylaw amendments commonly require a 75% vote among the owners. In English multi-owned housing sites owners must negotiate either tacitly or explicitly over their conduct within their own dwelling and use of shared spaces. For example, can you smoke on your balcony if your neighbour objects? Is it acceptable to hang pictures outside your unit door in the shared stairwell or the landing? Can your teenage son and his friends play a ball game in the grounds of your gated community if another resident is already enjoying a quiet picnic with friends there? These are property issues that must be negotiated, a process which contributes to the development of everyday narratives and sheds light on the owners' higher-level understandings and narratives of property.

Leasehold reform, the present "scandal", and further reform proposals in international context

In the conventional form of leasehold where the freehold title is owned by an individual or by a company which is not an RMC, the balance of power lies firmly with the freeholder (see Blandy, Dupuis and Dixon 2010). Despite piecemeal reforms over the past fifty years (see Blandy and Robinson 2001; on Australian piecemeal reforms, see Johnston, this volume), campaigns for the reform or abolition of residential leasehold have persisted. One result was the much-heralded Commonhold and Leasehold Reform Act 2002 which introduced commonhold as a new sub-species of freehold and came into force in 2004. This new form of tenure is, in complete contrast to leasehold, very much a creature of statute like its counterparts in other jurisdictions.

This initial form of commonhold has failed spectacularly, with only twenty developments built to date. The concept was unpopular with developers, who wanted to retain the advantages of leasehold; one described commonhold to me as "a dead duck", even before the Act had come into force. Converting an existing leasehold site to commonhold is very burdensome, requiring consent from all the leaseholders, mortgage lenders and the freeholder. The commonhold system lacked flexibility for larger, more complex developments; and significantly, many mortgage lenders have been reluctant to provide loans against new commonhold properties (see Xu 2015).

After the introduction of commonhold, continuing problems with the leasehold system were highlighted in a survey of leaseholders and RMC directors carried out by Brady Solicitors with the government-funded Leasehold Advisory Service (LEASE 2016). The sample was admittedly small with 1,244 responses, but the results were startling: more than half the respondents regretted buying a leasehold property; over two-thirds had little or no confidence in the ability of their property manager to deal with a problem; and over two-thirds wanted more information about their rights and responsibilities. However, RMC

directors were found to be generally more content with their leasehold properties than "ordinary" leaseholders, attributed to a greater "sense of control over their leasehold property", and two-thirds of directors felt they had good relationships with their fellow directors and leaseholders. The recommendations from this survey report included the development of "softer" skills amongst RMC office-holders, such as collaborative working and project management, as well as improved legal and procedural expertise; clearer communications between property managers and leaseholders; and more "education" and provision of information for leaseholders (LEASE 2016). Clare Brady of Brady Solicitors commented that "[t]he challenges of communal living emerge strongly" from the survey results (Wilson and Barton 2019).

By 2017, irate leaseholders backed by the National Leasehold Campaign which aims "to abolish feudal leasehold laws" ensured that the hashtags *#leaseholdscandal* and *#fleecehold* were trending on Twitter. The "scandal" referred to new-build houses being sold on leasehold rather than freehold tenure, and new leaseholders were being "fleeced" by clauses in their leases which enabled freeholders to impose huge annual increases in ground rent. Public outcry led to a flurry of government consultation papers (see summary in Wilson and Barton 2019). The UK government is now committed to preventing the sale of new houses on leasehold tenure, to limiting the ground rent in new residential leases of houses and flats to zero financial value, and to regulating property managers. In conjunction with the Law Commission, it also plans to reform the law on freehold covenants to reduce the need for leasehold. More importantly for this chapter, the government is considering incentivising or compelling the use of commonhold for self-governed multi-owned housing in England. As would be expected, the Law Commission's recommendations in "Reinvigorating Commonhold" are focused on technical legal issues, but commonhold is clearly now seen as the answer to problems in the "us and them" English leasehold system.

Commonhold is presented as the "us and ourselves" version of property relations. However, there is little evidence that this narrative has been embraced by already-established commonhold or RMC-managed sites. My socio-legal qualitative research, which aimed to capture respondents' experiences and understanding in their own words, found that some self-governed sites work well, while others are riven with dissent; owners' apathy can cause difficulties for effective self-government; and there is widespread dissatisfaction with property managers. Further, many owners do not understand their own legal position. I found that some leaseholders did not realise that they were purchasing a long leasehold, nor becoming a member of a company which owns the freehold of the whole site and which is responsible for its management. These features were common amongst both leaseholders and commonhold owners. It seems that at the stage of looking for and buying property, purchasers focusing on choosing a house or apartment as their home and then leave it to their conveyancer to deal with "the legal paperwork" and complete the purchase. This was confirmed in a survey of 1,500 people who had bought or sold property within the previous two years (SRA, 2018). It found that 20 percent of purchasers of leasehold property could not remember receiving any information about the length of their lease, service charges and other payments; and the consequences of purchasing leasehold property were poorly explained to them.

The Law Commissioner was right to emphasise the need for greater consumer awareness about the differences between living in multi-owned, interdependent, self-governed housing and in an individual home. A change in property narrative is required. However, this has not been achieved in jurisdictions with long-established equivalents to commonhold. International research has called attention to common problems including applying the relevant law to practical problems such as disrepair, refurbishment and dissolving corporate bodies. These difficulties cause high levels of disputes between owners, between elected officers and owners, between owners and short-term tenants, and between owners, boards and property managers (see Lippert 2019; and overview of international research in Easthope 2019, chapter 6).

My focus here is on the deep-seated "non-legal problems": lack of information and apathy amongst owners, and difficulties in building a sense of community. These are associated with multi-owned housing in many different jurisdictions and were discussed, for instance, at a workshop of academics, practitioners, policy-makers and decision-makers from Australia (NSW and Western Australia), Scotland, England, New Zealand, and Hong Kong (see Blandy, Mouat and Sherry 2018); and at a comparative seminar[2] attended by scholars from France, Italy, Portugal, Belgium, Québec, Japan and England (see also Chantepie 2020). The widespread concern about similar problems challenges the UK government's confidence that a move to commonhold, will resolve the issues currently faced by self-governed residential developments. I argue that the roots of these problems lie in a meta-narrative of property as individual and exclusionary, which is inappropriate for owners of self-managed housing.

Everyday narratives of property in multi-owned housing

Everyday ontological narratives enable individuals and communities to make sense of their lives and to develop a sense of identity, and help develop a set of collective norms to guide the understandings and practices of property in a particular place. These narratives also underpin and develop the meta-narrative of property, which operates at a more abstract level. In order to explore multi-owned housing through the lens of narrative I have re-analysed the transcripts of previous interviews with owners in several sites. These semi-structured interviews were intended to stimulate discussion about the legal, social and spatial aspects of self-governed developments. I did not ask owners direct questions about property, or the legal framework and governance arrangements. Instead I asked them about their understanding of the boundaries between spaces they understood as 'mine', 'ours' and 'yours'. In my re-analysis, I identified passages in which the following topics were addressed: engagement with the legal framework (see Lippert, this volume); property as individual and as collective; and governance. The topic of "community", which has been raised in many studies of multi-owned housing (see for example Leshinsky and Mouat 2015), links these issues together.

[2] See Chaigneau, Aurore; Chantepie, Gaël; Elie, Lucie; François, Camille; Lefeuvre, Marie-Pierre; Leone, Flavia; Melot, Romain and Schijman, Emilia. 2019. *Rapport final: Entre propriété privée et gestion collective, les "mondes sociaux de la copropriété"* [Final report: Between private property and collective management, the "social worlds of co-ownership"]; comparative research for Plan Urbanisme Construction Architecture, Paris. Not yet published, on file with author.

This chapter draws on interviews with owners at commonhold sites, with leasehold owners in RMC-run developments, and with leaseholders hoping to establish a RMC to acquire the freehold of their site. While not necessarily representative of multi-owned housing nor even of their own site, the words and views of the owners I interviewed shed light on the interplay between everyday narratives and the meta-narrative of property in multi-owned housing. Two of the RMC-run sites are gated communities, and one is a cohousing community. Cohousing is not a legal concept; the site where I conducted interviews used a standard RMC-run leasehold framework. At present there are only just over twenty cohousing sites in the UK, the same number as commonhold sites, but with fifty more "in development" according to the UK Co-housing Network, which describes cohousing as "intentional communities… created and run by their residents. Each household has a self-contained, personal and private home but residents come together to manage their community, share activities, eat together." Cohousing owners share a common house where meals are cooked and eaten together. They also share the task of collective governance through intensive discussions and consensus decision-making. Excerpts from interviews with owners at this site are included as examples of an alternative narrative of property.

It is important to note that all the sites where I conducted research are small compared to the scale of master-planned communities in the U.S., Asia or Australia. Size makes a difference to the effectiveness of self-governed sites, where ownership as "agenda-setting" (Katz, 2008) must be exercised collectively rather than individually. My research sites are more typical of English multi-housing developments, ranging between 10 dwellings (one of the commonhold sites) and 200 dwellings (one of the gated communities). Condominium governance models were designed for this scale, but in many countries the size and complexity of contemporary developments make it impossible for a group of owners to exert meaningful control (Lippert 2019). Further, as noted previously, the relationship between owners and tenants is often problematic in multi-owned housing, but that topic is beyond the scope of this chapter.

All the interviewees quoted here saw themselves as owner-occupiers (Cole and Robinson 2000). The importance of homeownership is an integral part of the general property narrative which they articulated. Yet leaseholders' position in law is not quite equivalent to homeownership, as explained in the government's guidance document "How to Lease":

> Leasehold is a type of long-term tenancy; it is not the same as outright ownership. When you "buy" a leasehold property, you do not become the owner of the property: you acquire the right to occupy it for the amount of time that is remaining on the lease (MHCLG 2019b).

This complex message did not seem to have been explained to most of my leaseholder interviewees (see SRA 2018); or perhaps they simply did not want to accept that leasehold is legally equivalent to a tenancy.

However, one leaseholder demonstrated a sophisticated understanding, stating that her preference for owning a freehold home is "more of a heart thing than a head thing … if you own, then clearly you're more in charge of your destiny than you are with leasehold." One of the most-cited advantages of commonhold is that the individual units are bought and sold as freehold. A commonhold interviewee certainly appreciated this, saying: "We bought

our flat; that's better than leasehold, we have more control over it." The themes of control and being "in charge of your destiny", associated with the narrative of property as homeownership, come through strongly in these interviews. Translating these established ideas into an everyday narrative which makes sense of living in multi-owned housing proved challenging. An owner in a different commonhold site admitted, "I don't know what this commonhold thing is, really, although I spoke at length to the solicitor." She told me that "we own our houses as a terrace, no different from that." Traditional English terraced houses are physically attached to each other but not legally linked. This owner was using the analogy of a terrace to assert that her property also was individually owned, rejecting the combination of individual property with collective ownership and responsibility which is the essence of commonhold.

The exclusionary, individualistic meta-narrative of property also places importance on clear boundaries between private and collective space. Non-private space is often seen as problematic, lacking accepted rules to guide its use (see Newman 1972). One leaseholder told me, "we're quite fortunate actually in that we don't have a lot of shared space", meaning that relations with co-owners would therefore be minimized. At a different RMC-run site, a leaseholder explained that "I just step out and that's the piece of ground that belongs to this flat and that's as much as it interests me." At this site, the boundary to each dwelling was drawn at the front door so there was no "ground that belongs to this flat". This was an example of the appropriation of collective spaces by adjoining owners, which led to disputes in many sites. In a gated community, a leaseholder complained about a neighbor who had placed table and chairs outside her house in the shared grounds: "it's not her space, it's everybody's space." In one commonhold site, an owner had appropriated a flower bed. She told me, "[i]t's not my property and I suspect it's part of the commonhold," but she justified her actions because "it is in front of my kitchen window." These examples of everyday narratives demonstrate the difficulties of applying exclusionary individualism to property in multi-owned housing. At the cohousing site, boundaries around the privately owned homes are not physically marked, but what one owner referred to as "the idea of having a place to retreat back to" is scrupulously respected. Alongside this, "there is a perception that we own the common spaces together", and feel "a sort of collective responsibility … people go and clear it up after the kids have dropped litter." Here, combining private with shared space has been successfully achieved, and a collective everyday property narrative was clearly understood and articulated by each cohousing owner I interviewed.

Research has shown that many purchasers of dwellings in multi-owned housing sites are not prepared in advance for the combination of private and collective property rights, obligations and self-governance into which they are buying (SRA 2018). English leasehold documents are invariably complex, lengthy and non-negotiable, making it difficult for owners to engage properly with the relevant legal framework. For example, the documents for properties in a newly-developed gated community included a twenty-three page lease with seven schedules, as well as lengthy legal forms relating to the RMC. "Well, I wasn't very happy about it but I just had to sign it" said one interviewee whose attempt to amend covenants in the lease was met with blank refusal by the developer's lawyers. She had been through the lease with her own lawyer and knew what it contained, whereas other new

owners I interviewed at this site were simply not interested in the legal framework and could recall little of the documents they had signed.

The fact that purchasers in this gated community had very different levels of understanding about its legal framework was an indicator of future problems with covenant compliance and participation in governance. By contrast, the owners' leases at the cohousing site included a covenant requiring the leaseholder to "adhere to the principles of cohousing." One owner told me that "the lease that we had to sign … ties you all into being a community." The lease was seen as a living document, frequently referred to at meetings; another cohousing interviewee said that "we all have to get the lease out and trawl through it and come to an interpretation of the lease that everyone is happy with."

At the time of the interviews, the freehold of both these sites was in the process of being transferred to the RMC from the original owner. Each purchaser at the gated community had signed the documents to become a member of the RMC on moving in, but most interviewees expressed concerned about their own role and responsibilities and about how the RMC officers would be elected. However, the same transfer process seemed almost irrelevant to owners in the cohousing site; one interviewee said casually, "we're all members of whatever we call it now, the housing committee or something..." The transfer to the RMC was seen as a legal detail, as the owners were already making collective decisions about the governance of their cohousing site.

There is no doubt that participation in the governance of multi-owned housing takes time and effort (see Ellickson 2008). Without property narratives at both levels that incorporate the need for self-governance, engagement may not be forthcoming at all or may dwindle over time. One leaseholder interviewee was the driving force behind efforts to set up a RMC and take over the freehold: he complained that "there are always a number of people who just don't take any notice, aren't interested, you can't contact them." At a commonhold site, an owner described how "over the last two years the movement has been downwards in terms of involvement. We've gone from ten, to six or seven, to four people attending Commonhold Association meetings," concluding that "the ethics and ethos of commonhold don't really work." He had been prepared for self-governance and initially committed to it, whereas another commonholder had decided to stop attending because "we've had lots of silly little meetings and nothing happened." At the cohousing site, there is an expectation that all owners will attend the fortnightly meetings. An owner told me that "the fact that we've had endless fraught meetings as well as nice meetings is the glue" that binds them together. The everyday narrative of property at this site includes the acceptance of time-consuming shared decision-making.

The Parliamentary select committee considering the proposed commonhold reforms emphasised the importance of "ensuring appropriate resident participation in the management of buildings" (House of Commons 2019, para. 42). No suggestion was made about how this might be achieved; the duty to participate could not be enshrined in law. Dagan (2013, 6) has analysed the role of law in setting up appropriate frameworks for what has been termed "governance property" (Alexander 2012). Dagan suggests that legalistic, hierarchical arrangements suit predominantly "economic property institutions", giving the example of a condominium board, whereas law acts "in softer ways" to facilitate informal

and participatory governance arrangements in more "social property institutions" such as the household. The problem of hierarchical arrangements is illustrated by a gated community where I carried out interviews. Here the RMC board members are responsible for governance, rather than it being seen as a collective task. An owner told me that "the board members took a very hard line", sending formal letters to neighbours rather than attempting to resolve issues face to face. He said that this officious approach had led to the resignation of some board members and "the destruction of any community spirit."

The second, "softer" type of governance arrangement can be seen at the cohousing site. In answer to my question about how the gardening sub-group was formed, an owner replied that "somebody who's really interested in it will hold a meeting, and anybody who's also interested will go. It seems to be… ad hoc and informal but it works." However, at this site decisions made at the main meetings were formally recorded, and often consulted later. Rather than the important distinctions being between legalism and informality, economic and social, it seems that owners' expectations are the key to participation, together with the adoption of a style and form of governance which are appropriate to the site and its size. Everyday narratives and practices must also be allowed to evolve over time. A cohousing leaseholder told me that "as we live together longer and these things develop, you know what the rules are, what the unwritten rules are, what the conventions are."

An important feature of successful self-governed multi-owned housing is a sense of community which enables cooperation between owners. However, as Rose (1990, 54), observes, cooperation is not the dominant narrative where property is concerned. Nevertheless, the development of community in self-governed sites can offer a solution to some of the problems outlined above. For example, community facilitates discussions between neighbours about the legal framework so they can learn about it together; participation in self-governance becomes more likely with increased interest in the site and neighbourly relations with fellow-owners. If the individual property narrative is predominant, then "everybody keeps themselves to themselves and just gets on with it", as a gated community RMC director told me. The development of community is dependent on a number of factors. These include the scale and design of the site, owners' prior expectations about living in self-governed housing, property practices on the ground, and the proportion of investment properties rented out to tenants. Encouraging a sense of community is not a legal issue. As one commonholder told me: "[y]ou can make laws until you're blue in the face … it's down to how you get on with other people."

Conclusions

The starting point of this chapter was the proposed radical reform of the English leasehold system, compelling or incentivising the use of commonhold for new-build housing and the conversion of existing leasehold sites to commonhold. This would certainly improve the experience of many leaseholders who are currently exploited by freeholders, characterised by the Law Commissioner as an "us and them" narrative of property relations. Many of the concerns about commonhold's current legal framework can be resolved through legislation and standardising regulations. However, research findings from jurisdictions where the counterparts to commonhold such as copropriété, condominium and strata title were

adopted many years ago indicate that these legal frameworks have not resolved some of the fundamental problems of multi-owned housing. This chapter's re-examination of these issues through the lens of narrative has highlighted the limits of legal reform. Therefore moving towards an "us and ourselves" narrative of property will not be simple.

Extracts from interviews with English owners in self-governed sites have been used in this chapter to illustrate the differing ways in which everyday narratives of property reveal perceptions and experiences. If these mirror the dominant meta-narrative of property as individual and exclusionary, the development of community and of participation in collective governance arrangements are undermined. We have seen how the everyday narratives of cohousing owners combine the meta-narrative of individual ownership (which applies to their own dwellings) with the commitment to the principles and practices of cohousing (which apply to the site as a whole). Although cohousing will never become a major form of multi-owned housing, the everyday narratives and practices of cohousing owners exemplify some possibilities which could be built on more widely, and might even slowly change the meta-narrative of property. Some interviewees in my other RMC-run research sites also had a good understanding of what living in multi-owned housing entails, but they were few: the everyday narratives of owners in one site were rarely shared, meaning that community is unlikely to develop and self-governance arrangements will be susceptible to apathy amongst the owners.

Multi-owned housing is an important, growing form of housing provision throughout the world. It is characterised by the sharing of spaces, obligations, rights and self-governance arrangements, and therefore fitting poorly into the dominant narrative of property as individual and exclusionary. The meta-narrative must be expanded to take account of self-governed housing which encompasses more than individual dwellings, so that everyday narratives of property can be developed to include an understanding of the obligations and benefits of community cooperation. Such a narrative could also support innovative ways to address the current problems of self-governance arrangements in large-scale, and complex sites. The UK government has now joined the calls for better education and more information to be provided to potential purchasers of units in multi-owned housing development. This is a welcome step towards an "us and ourselves" property narrative but must be constantly reinforced, and extended to include tenants in multi-owned housing. However, the challenges involved in reshaping "the common beliefs, understandings and culture that hold property regimes together" (Rose 1994, 5-6) should not be underestimated.

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