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# Review of: Shelly Kreiczer-Levy, *Destabilized Property* (Cambridge University Press 2019)

Sally Zhu\*

Shelly Kreiczer-Levy's *Destabilized Property* is an installment in the ongoing academic engagement with the sharing economy phenomenon. However, this book addresses what was a pressing gap in this field. It provides a legal analysis of property that is doctrinally rigorous and sociologically sensitive, systematically analyzing the ubiquitous yet seemingly ambiguous role of one of our most important legal and social institutions. Kreiczer-Levy joins a discourse that anticipates the decline of ownership and the rise of access and on-demand as our new form of material interaction with things in the world. She sharpens the argument, analyses its legal and social implications in a nuanced fashion, and situates those developments within a broader trend of technologically enabled unmooring from past forms of property. She offers compelling normative positions and practical legal solutions in what remains an undertheorized area, that will enable richer conversations on the place of property in the sharing economy.

Kreiczer-Levy presents a complex area of law and sociology in a concise and accessible way that will appeal to legal scholars and general audience alike, and signposts difficult concepts in a way that makes the progression of her arguments easy to follow. The book follows a dialectical structure. The thesis of ownership property as stability is followed by the antithesis of access property as flexibility, and the points of conflict between the two

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are explored. The normative implications of this dialectic provide a potential synthesis, focused on the role of law in facilitating that resolution.

Although readers familiar with scholarship on access property may find some parts of Kreiczer-Levy's book redundant, each chapter is a thoughtful and nuanced contribution to the literature that rewards thorough reading. She provides a chronological account of the gradual shift to access property, using sociological developments from the mid-twentieth century onward as themes. However, she does not always effectively integrate the historical and social elements of the book into her theory of property. The book may have benefited from emphasizing the historical contingency of its theoretical claims.

In the first two chapters, Kreiczer-Levy uses the dichotomies of stability/flexibility and use/exchange value to establish her thesis. She uses an overview of dominant property theories, in particular property as independence and personhood, to show that traditional ownership property depends on stability of use. For Kreiczer-Levy, stability means endurance over time, as opposed to certainty of expectation, so the crucial element of ownership property is control, rather than rights or entitlement. She supports this theoretical argument with examples from legal doctrine. For example, the law privileges the home by protecting tenants from eviction and guaranteeing them quiet enjoyment. She also contrasts legal doctrines that protect stability in use with those that promote flexibility in exchange and concludes there is an "inherent tension ... in property law" (18). This is a striking observation that also applies to the paradoxical functions of property as a physical platform for stable social relations and as a form of capital that is tradable in the market. And while Kreiczer-Levy does not further develop this point, its implications are evident throughout the book, as the author

shows how property practices maneuver between ownership and access.

Chapter 3 zooms out from the focus on property theory and doctrine to reflect on the “decline of stability in the new millennium” (38). Kreiczer-Levy begins with the bold claim that stability is a “social value” and a “marker of wellbeing” that is a legitimate goal of law and policy (38). She presents a vision of stable property characterized by homeownership and the commitment to family and community it encourages as an unproblematic aspiration that the shift to access property is disrupting. Here, the book would benefit from explicit acknowledgement of the historical and social context it describes, specifically post-WW2 American society, which valorizes homeownership as a social ideal in a way that contemporary European societies do not. However, Kreiczer-Levy shows a laudable sensitivity to economic factors and material conditions of life in her later discussion of how the post-2008 structural changes in employment, housing, and consumption caused widespread precarity, and encouraged the rise of the sharing economy. It is refreshing to see a nuanced approach to the sharing economy that does not reduce it to exploitation or a new-wave lifestyle, but rather sees it as a negotiation within real economic constraints. Kreiczer-Levy also observes that technological advances and changing social attitudes enable the creation of access property. Again, explaining the specific socio-historical context of the study (advanced economies in the Global North) would better situate the argument, because the sharing economy is now a global phenomenon and present in many countries where social trends diverge from those she describes. For example, China’s economy was not heavily disrupted by the 2008 crisis, but it hosts the largest sharing economy in the world.

Chapter 4 switches perspective from the incumbent to the novel as Kreiczer-Levy gives an overview of the sharing

economy. While the issues she raises are familiar, she made the highly original and conceptually effective decision to map sharing activities according to their institutional structure, instead of using the typical profit/nonprofit or consumer-to-consumer/business-to-consumer frameworks. This differentiation of projects based on their institutional form not only draws out the unique nuances of their normative and ethical dynamics, but also helps identify the type of law and regulation that each project requires. Her analysis of institutional models also throws into relief the structure of legal property relation, which gives the argument analytical clarity and rigor: peer-to-peer models and commercial companies are private ownership, communal models are collective ownership, and government models are often a public-private collaboration. It also avoids the lazy normative assumption that for-profit equals neoliberalism, by showing how each institutional model contains its own logic of action and power, and its own problems.

Chapter 5 formally introduces the concept of “access” as the foil to ownership. Kreiczer-Levy defines access as “short-term casual use of a thing,” and describes it as a type of property *relation*, which is different from a property *right*, because property rights are connected to particular objects, while access involves many different objects. In keeping with her broader sociological claim that property is a physical platform for social relations, Kreiczer-Levy argues that access enables new forms of flexible social interactions and norms that compete with ownership. Freedom from interference is replaced by freedom of choice and mobility; attachment to self and identity gives way to experimentation and change; physical neighborhoods and stable communities are supplanted by global virtual tribes. Kreiczer-Levy insightfully highlights some paradoxes: property ownership promotes altruism in a community, but also encourages homogeneity, which makes diverse community

members even less able to access resources (89-90). But if the benefits of stability and security created by ownership were never available to all, neither will the benefits of flexibility and mobility created by access (93-94). Ownership and access both depend on exclusivity, so sharing cannot be the panacea to the ills of capitalism that some commentators claim. The chapter concludes with some observations on the ways in which the law encourages the use of commercial companies and other centralized models to provide access, rather than the peer-to-peer model, which is largely uninsured, unregulated, and untaxed.

Chapter 6 reflects a change in tone, as Kreiczer-Levy addresses the personal/commercial dichotomy in traditional legal conceptions of property, and how access is challenging that dichotomy, even as it is hindered by regulations that reinforce the dichotomy. The first half of the chapter focuses on how the law constructs intimacy by controlling the use of property through residential zoning laws and private contracts, such as those used by common interest communities. The second half introduces the concept of “personal markets” (121), in which economic relations are no longer purely personal or commercial, and personality and intimacy become part of the value of the goods and services being traded. Kreiczer-Levy predicts personal markets will affect property, as private and market relations dialectically influence each other, and increases in the market price of property will make intimacy more expensive. While a discussion of intimate property was necessary, because it is one justification for exempting private accommodation from anti-discrimination laws, it is questionable whether it required a separate chapter. Nevertheless, this chapter is suitable for standalone reading as an interesting take on one legal issue (anti-discrimination) in relation to one component of the sharing economy (accommodation sharing).

Chapter 7 is the most original, presenting Kreiczer-Levy's evaluation of the normative aspects of access as a viable property relation. She analyzes the amount of flexibility and mobility and the distribution of power inherent to each of the four institutional models. The peer-to-peer model offers the most flexibility and the least concentration of power in individual owners, but is also currently disfavored by the law, whereas the commercial company model receives legal and policy support but threatens to erode consumer power and increase consumer dependence on a few powerful corporations. The biggest challenge to a viable peer-to-peer model is the power exercised by platforms, and her solution is to re-imagine their role and devise regulations that protect against abuses of power. Kreiczer-Levy presents a few different possible approaches, including public utility theory and information fiduciary theory, but stresses that the goal of any regulation should be to protect the consumer expectation "of a reasonable and fair service that supports their flexibility in use" (154). Accordingly, the aim of the law should be to either regulate platforms as "market-constituting fiduciaries" or promote platform alternatives, like platform cooperatives or technological intermediaries. In evaluating the normative implications of stability and flexibility, Kreiczer-Levy draws a distinction between stability as a strong relationship to particular property, and stability of access, which requires free entry into the market and the availability of a choice of markets. Her normative conclusion is that certain forms of stability will be crucial to ensuring that flexible access does not become involuntary precarity. Income and housing require legally protected stability, but other areas could benefit from more flexibility. Although Kreiczer-Levy provides no concrete solutions, her proposed guidelines are based on robust normative reasoning and offer a clear direction forward for legal regulation.

The book ends on a speculative note, with the author providing a glimpse of a future dominated by big data, AI, and the Internet of

Things. The place for access in that future and the appropriate regulatory response remains clear: “encourage peer-to-peer markets provided the power of platforms is restrained” (174). Overall the book is a unique contribution to scholarship on the sharing economy, as the only monograph dedicated to the study of property from a socio-legal perspective. Some parts of the book are heavy on general theoretical claims and light on concrete critique, and the proposed solutions may not be transferable to all national economies. Yet it is a standard bearer in its field, and above all an enjoyable and enlightening read.