Property, Persons, Boundaries:  
The Argument from Other-Ownership

Robert Nozick’s *Anarchy, State, and Utopia* breathed new life into two quintessentially Lockean questions: Should a person *own* himself? Should a person *be owned* by others? The first question has spawned an extensive literature: libertarians embraced the intuitive attractions of self-ownership, the left-libertarian position became a respectable (even popular) standpoint, political theorists tried to gauge the extent to which egalitarian regimes were consistent with self-ownership, and commentators turned back to the writings of Locke to engage with his thinking on the matter.¹ The second question invokes what we might term *the argument from other-ownership*—an argument to the effect that a political theory or regime entails some people owning, or at least partially owning, others, and being for this reason morally objectionable. This second question remains largely neglected. To be sure, egalitarians and welfare-liberals have occasionally presented, as adjuncts to their primary engagement with self-ownership, some basic responses to the hastier versions of the argument from other-ownership.² Yet such treatments, and the arguments to which they respond, are excursuses rather than explorations.

Nevertheless, even from such brisk treatments one thing is clear. Both sides of the political divide view the argument from other-ownership as a more compelling consideration than self-ownership. Libertarians defend self-ownership by recourse to the argument from other-ownership (rather


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than vice-versa). Egalitarians and welfare liberals willing to reject self-ownership prove unwilling to bite the bullet of other-ownership. Clearly, a detailed treatment of the topic is in order.

In what follows I contend that on this question both sides of the political divide are in error. I argue that the libertarians are wrong that positive duties necessarily imply other-ownership and that the egalitarians are wrong that egalitarian entitlements largely avoid other-ownership. I intend my arguments against the libertarian to prove definitive; I show there are many positive duties that vest no recognizable property rights whatsoever in others, on any plausible account of property. Against the egalitarian however, my claims must be more measured. Liberal egalitarians like Rawls do not allow absolute ownership of others—claims of “slavery” here are simply misplaced. The question at issue, then, is whether liberal egalitarians allow partial ownership of others. And of course there can be reasonable debate on how close to full ownership an entitlement has to be before it starts to count as partial property. Still, I hope to show that the line can be drawn in a sensible place—justified on both conceptual and normative bases—and that the liberal egalitarian is on the wrong side of it. In all, I contend that the argument for other-ownership guides us to a moderate welfare-liberal state of a broadly Lockean sort.

1. The Other-Ownership Argument

The idea that one person should not be owned by another has a substantial intuitive appeal, and many treatments of the topic take such a premise as given. Yet arguments can and have been adduced as to why other-ownership is a serious injustice.

It is perhaps no exaggeration to say that the rejection of all natural subordination—of one person being born as another’s master—was the birth of classical liberalism. Locke began his Second Treatise with the decree that the original liberty and equality of all people ensured that no

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5Kymlicka, Contemporary Political Philosophy, p. 61.
person was naturally subordinate to another, “as if we were made for one another’s uses.” On the contrary, our natural state was to “be free from any superior power on earth, and not to be under the will or legislative authority of man.” From this rejection of natural subordination, it was but a short step (if it was a step at all) to Locke’s rejection of other-ownership. Locke insists that the property we have in our persons and labors is at our own disposal; it does not belong in common to others, and is inconsistent with being subject to their “arbitrary choices,” “pleasures,” and “meddling designs.” In short, Locke’s taproot rejection of natural subordination led him to a prohibition on other-ownership.

But the commitment animating most contemporary engagements with other-ownership is not Locke’s State of Nature but rather the second formulation of Kant’s Categorical Imperative:

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.

The move from this principle to a prohibition on other-ownership is direct and intuitive. If there is any sense in which Angie is Bernard’s property, then it is hard to avoid the conclusion that pro tanto Bernard can treat her as a tool to be intentionally put to his uses, and that in so doing he can treat her as a mere means to his ends. He is licensed to treat her as a thing, not as a person.

We should not be surprised, then, to find modern-day Kantians rejecting other-ownership. Sure enough, John Rawls claimed that his principles of justice “rule out even the tendency to regard men as means to one another’s welfare.” Will Kymlicka went so far as to argue that the hypothetical positions of Rawls and Dworkin “are intended to model the claim that no one is the possession of any other.” But, of course, Robert Nozick argued from the same Kantian premise for his libertarian polis and explicitly challenged Rawls’s egalitarianism on its basis. One way or the other, someone has the outcome of this commitment very wrong. It is our task here to learn who.

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7 Ibid., II:22.
12 Nozick, *Anarchy*, pp. 30-33, 172, 228, 292. Nozick at times speaks as if the problem is not one of one person having property in another, but of the state having property in us all. I follow Attas in viewing the latter charge as misguided, or at best as an oblique way of referring to the former charge. See the reasons given in Attas, “Freedom and Self-Ownership,” p. 9; cf. Cohen, *Self-Ownership*, pp. 233-34.
2. What is Property?

If we are to work out what counts as other-ownership, then we need to be clear about what counts as ownership in the ordinary case. Most recent scholarship on property emphasizes three key features: the open-ended capacity to make personal choices over the use of φ, the capacity to exclude others from φ, and the capacity to alienate (give, transfer, rent, or sell) φ. The first two features are widely seen as fundamental to property—though it is a nice question which is more fundamental. There is less consensus regarding the nature and extent of the third feature. Sufficient to say that various powers of alienation are viewed as indicia of full-blooded ownership, or property-plus-contract, or property-plus-added-factors. If someone has use and exclusionary rights, then she has property; if she has wide powers of alienation, then she has property-plus.

A more comprehensive account of property was proposed by A.M. Honoré, who distilled eleven separate incidents of ownership. Most of Honoré’s incidents are already covered under the three heads we have already noted. Honoré’s rights to income and transmissibility, for instance, are largely parts of what later theorists subsumed under the head of “alienation.” Notwithstanding this recent taxonomic parsimony however, Honoré’s subutilization has its merits. As we will see, one can have Honoré’s property incident of income even in cases where one cannot make any choices about alienation. That is, one can have a stake in any income derived from φ without being able to actually sell φ. Honoré also emphasizes one other feature of ownership that will be important to us: its residuary character. That is, ownership usually entails that whoever might have possession, use, and management powers over the owned entity now, the true owner is the one who will hold title once all the limited-term entitlements have worn off. This incident also draws our attention to one of the major duties property can impose on others—not only the duty to exclude oneself from the owned object, but also (as can

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16 Ibid., p. 117.

17 Ibid., p. 126.
be required by the right of residuary) to place the owner in possession of the object.\(^{18}\)

This, then, is the theory of ownership we will apply. If Bernard has full powers of use, exclusion, alienation, and residuary over Angie’s person, then he owns her absolutely. If he has more limited instances of these property incidents, then he partially owns her. If he has no such claims, then—irrespective of whether or not Angie owns herself—Bernard nowise owns her.\(^{19}\) While this rendering of property may seem somewhat technical, we will later see that the two modes of other-ownership I delineate are able to be derived from a much looser account of what it is to have property rights.\(^{20}\)

### 3. Two Modes of Owning Others

There are two paradigms of other-ownership. First, there is the situation of having the power of command over another person: the relationship of master and slave. Second, there is the straightforward case of having property rights in another person’s body—owning, as Shylock did of Antonio, a “pound of his flesh.” At the limit, these powers come together: owning a person’s complete body will allow command, and having absolute command allows untrammeled disposal of his body.\(^{21}\) But as we move away from the limit case, these property powers can diverge. A slave owner in some societies may have certain rights of command, but not any property rights over pieces of flesh, and—as Shylock himself found out—sometimes rights to flesh do not furnish control over the fate of the owned. Let us consider these two cases in turn.

#### 3.1. Slavery and command

It is widely held that arbitrary and open-ended command over another is the paradigm of other-ownership. Yet a little caution is required here.

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\(^{18}\)Most common law property entitlements can be fully analyzed into rights of possession or rights to take possession. See Bruce Welling, *Property in Things: In the Common Law System* (Gold Coast, Qld: Scribbler’s Publishing, 1996), pp. 29-30, 35.

\(^{19}\)The fact that Bernard can have substantial rights regarding Angie’s positive duties that nevertheless (as we will see) fall short of being property rights is one way of illustrating the error Attas labels “The Fallacy of Exhaustive Ownership.” See Attas, “Freedom and Self-Ownership,” pp. 6-9; cf. Rothbard, *For a New Liberty*, p. 29.

\(^{20}\)See the text to n. 31 below.

\(^{21}\)Actually, even at the limit there can be distinctions. Chattel slavery may be distinguished from status slavery in that in the former, but not the latter, the slave is considered purely as a thing—like a tamed animal—to the extent that she does not herself have duties to do the owner’s bidding. Because the chattel slave is not a person, “it” cannot itself have duties. See Penner, *The Idea of Property in Law*, p. 214.
Ordinary ownership, after all, does not allow open-ended command. All an owner may do, with regard to some article she owns, is command that others exclude themselves from it, or that they place it into her possession. Perhaps, to be sure, the limit case of owning the body, mind, and decision-making and productive powers of a moral agent does indeed involve having powers of arbitrary command, and so of having the (Hohfeldian) power to create new duties in another at will. But we should keep in mind at the outset that less sweeping forms of other-ownership need involve no more command powers than the more ordinary entitlements of ownership—the capability to make some use of some object, irrespective of another’s consent, and against his use of it.

To have command powers over another is to be able to have one’s will trump another’s decisions over her body and actions. In the clear-cut case of command, the master’s will is enunciated in his stated imperative, and the subordinate follows his order. In the purest case, the master (Bernard) has substantial property rights. He is at liberty to choose whether to impose the duty on the slave (Angie), and to decree the nature and direction of that duty. He has the power to unilaterally impose, and subsequently to waive, new duties, and he may sell Angie to another person. He has exclusionary rights in the sense that others’ choices are prevented from controlling Angie’s actions. That is, the exclusionary rights that normally pertain to Angie’s body are now pertaining to a resource of Bernard’s. As Rousseau put it, the slave’s rights now belong to the slave owner: they are now his rights. One invidious aspect of this exclusion—and what makes slavery so alien to liberal thought—is that the command excludes from interference or input the will of the very person being controlled.

As various egalitarians have urged, however, there are at least some cases of positive duties that are not command. For instance, Bernard may benefit from Angie’s duty-bound action, but not be able to make any personal choices about the activation, nature, or direction of the im-

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23After all, we would want chattel slavery to count as other-ownership; see n. 21.
25E.g., Cohen, *Self-Ownership*, pp. 232-33. While illuminating, Cohen’s treatment has serious weaknesses. First, in considering whether the beneficiary has control over the benefactor, Cohen only considers whether the beneficiary can *assume* the duty, and not whether she can personally choose to *trigger* it. Second, Cohen requires the beneficiary to have open-ended choice over the benefactor’s behavior in order for it to count as other-ownership. But as the “Prince David” discussion in the following paragraph shows, even without such choice Bernard has substantial property incidents in Angie. Third, having shown that some positive duties do not effectuate other-ownership, Cohen makes no attempt to delineate what positive duties do so—and whether his own egalitarianism has resources for avoiding such duties.
posed duty. If Bernard is drowning, then Angie may be under a Good Samaritan duty to prevent his death, but Bernard may have had no control over the activation or nature of that duty. Though the duty is unquestionably for his benefit, Bernard has no power of command. His cries for help may clarify the urgency of the situation, but Angie’s duty inheres regardless. It is not Bernard’s choice, but the situation itself imposing the duty. Of course, Bernard may have made a personal choice to swim, but it is reasonable to suppose that if he knew he was going to start drowning he would not have done so. (If not—if Bernard was relying on Angie’s protection in making his decision to swim—then the situation does approach partial other-ownership, as we will see below.) Presuming for our present purposes that Bernard had not made his decision with an eye to Angie’s duties, then the duty-triggering situation was not intentionally chosen by Bernard, and the fact of Angie’s duties was not a motivation for him to make his choice. In such cases, Angie’s duty to rescue is not a duty to follow commands, and so is not a property-right of Bernard’s.

That said, there are problem cases between outright command and no command. Consider an instance when one person may trigger a duty in another by choosing to create a situation he knows will impose a duty on that other. Moreover, let us suppose that the duty is beneficial to him in some way, and, indeed, his choice to act in this way was motivated because of such benefit.26 In some cases such capacity to command must be classified as holding executive power over another. For instance, suppose Cathy is born into a kingdom where the law requires her (irrespective of her choice or consent) to have specific duties to Prince David. If Prince David can summon Cathy to make and bring him delicacies, wine, and entertainments by clapping his hands, then—even though he may not be able to order her to do other things he might wish—he has a partial property right in her. Prince David has the liberty to choose whether and when the action will be done, as well as choices over what will be done with the fruits of Cathy’s commanded labors (i.e., whether he will eat, share, or waste the delicacies). He also has the Hohfeldian power to impose the duty and the exclusionary rights over his resource as it creates this benefit, including the exclusion of the will of Cathy herself over the uses to which she is to be put.

I submit that in cases in which the triggering duty is up to the intentional personal choice of the beneficiary of the duty, we have sufficient resemblance to property to make a plausible claim of one person holding partial property in another. Let us understand “the personal choice of the

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duty-imposer” to mean that the duty-imposer reasonably could go either way on whether to perform the triggering action; it is not a life-or-death matter, and he is not duty-bound to perform the action. The triggering is intentional when at least one of the reasons for the beneficiary performing the trigger, or an action he knows is likely to lead to a triggering state of affairs, is because of the benefit to him of the subsequently imposed duty.27 In such a case of intentional triggering of nonconsensual duties—of which the Prince David scenario above is one example—we have the same above-noted property incidents of use, Hohfeldian power and exclusion. On a more intuitive level, we also have a direct analogy to the entitlements of a slaveholder, who can impose duties at his whim and to his benefit. In cases in which the duty-imposer additionally has property-like entitlements over the fruits of any imposed labor, his overall set of liberties and powers is increased, and (if the arguments of the following subsection are cogent) the partial property is greater again.

Still, for all the resemblance noted above, the property right here is at most a partial one. The duties Prince David can impose are done indirectly. His use of Cathy is not immediate; he can use her only by creating a state of affairs (the hand-clapping) to which she must respond. We can imagine scenarios where his use of her is more mediated again—perhaps if Prince David voluntarily goes without eating for four hours, then the food-preparation duty is imposed on Cathy. Prince David is still able to use Cathy, irrespective of her consent, through his own personal choice, but his doing so requires his creation of a particular state of affairs, and not merely his naked will. In regimes where one person is vested with direct and open-ended command over another, it seems fair to say he has an absolute property right in that other. In such cases talk of slavery becomes apposite. In cases in which the usage is indirect—notwithstanding that it is intentional and nonconsensual—we have only partial other-ownership.

The result, then, is that if Angie is liable to the imposition of positive or intrusive new duties, these duties may be understood as allowing partial-ownership by Bernard if he can intentionally choose to trigger those duties for his own benefit.

3.2. Ownership, income, and residuary: Shylock’s pound of flesh

Perhaps the clearest case of other-ownership is having property in another’s physical body—as Shylock did over Antonio in The Merchant of Venice, when he acquired a “pound of flesh” when Antonio defaulted on repayment of his loan. In that illustrious case, Shylock’s murderous in-

27That is, the imposition of the duty must be intended, not merely foreseen. See Anthony Kenny, “Intention and Purpose,” The Journal of Philosophy 63 (1966): 642-51, pp. 646-47.
tent was undone by his failure to hold various other entitlements over Antonio's body, namely, a right to spill his blood. However, we can easily imagine a case in which Shylock held those rights, or where Antonio was himself required, as can occur in property proceedings, to present into the owner's possession the owned article (and hence would have to shed his own blood). With these entitlements in tow, Shylock's ownership of Antonio's person becomes a clear case of other-ownership. Shylock has the full entitlements of ownership over Antonio's physical body—and he has these at the direct expense of Antonio's previous entitlements.

We can perhaps envisage a more modern version of the story. Suppose baby Eric is grown from (inter alia) elderly Felicity's DNA in order to be an involuntary organ donor for her. Once Eric reaches the age of eighteen, his heart has grown to the requisite size. By law, it is now to be removed from Eric's body (perhaps he is to be given an artificial replacement) and placed into Felicity's chest as—to all extents and purposes—her heart. Again, we have a clear case of other-ownership with Felicity's property entitlements coming at the direct expense of Eric's entitlements over his own body and with Eric being called upon to place parts of his very self into Felicity's possession.

Contrast this involuntary-organ-donor case with the situation considered in the foregoing section where Bernard has Good Samaritan duties owed to him by Angie, for instance, to rescue him from drowning. In the activity of rescue, Angie has no property-like choices over Bernard's activity, and at the end of the activity, there is no object (tangible or otherwise) that Bernard has newly come to have property rights in, much less property rights that come at Angie's expense. There is no activity or object that was once Angie's property (or would have been her property were it not for Bernard and his predicament) that is now owned by Bernard. Rescue does not involve the transference of property.

Again, there are less clear-cut cases. These occur particularly in the case of the products that Angie creates through her free labor and choices. We must proceed carefully here: in order to produce through labor, Angie must have entitlements to further physical resources. Should a constraint on other-ownership have consequences, not just for Angie's body, but also for external resources? Should it be the case that if Angie cannot work productively on (at least some) external resources without Bernard having property in part of what she produces, then Bernard has a partial property right in Angie? There are two good reasons for thinking yes.

The first reason is straightforward. As we saw earlier, rights to income are a key incident of property. Now merely because an entitlement is one incident of property does not ipso facto mean it is a sufficient condition for having property itself. Still, we are here speaking only of partial property, and the move from holding a clear incident of property to an attribution of
partial property rights seems appropriate enough. This move becomes almost unavoidable when the incident is income and the owned entity is a person. Even if we hesitate to say—with Locke or Marx—that being productive is an essential attribute of the human entity, it is nevertheless true that the characteristic needs and deep-seated wants of individuals suffice to make avoiding personal productivity a non-option for most people. As such, control over income is control over a feature of a person that she has profound and abiding interests in exercising. Suppose then we are faced with a situation in which, for any wealth-creating scheme that Angie can engage in, if that scheme starts creating significant income, then Bernard has entitlements to some of that income. Let us further suppose Bernard has such legal entitlements irrespective of Angie’s consent or contract and he has them regardless of what Angie herself owns in the world (Angie cannot avoid Bernard’s entitlements by laboring only on her property). Under such conditions, it is plausible to say that Bernard has an income right in Angie. As such, he has partial property in her.

The line of argument supporting the second reason is more complex. One way of approaching other-ownership is to picture a self-owning person (Angie) and then to add to Angie various duties and liabilities she owes to Bernard until the point arises where those duties and liabilities amount to Bernard holding property rights in what Angie previously (self-)owned. Now it is a controversial question whether self-ownership necessarily includes consequences for world-ownership—in particular whether it includes ownership of the products of one’s labor. While there are at least some dissenters to be found, from Locke onwards most major theorists have thought that self-ownership must carry such an entailment. And there is good reason for an investigation of other-ownership to follow this lead. Simply, persons are embodied. If our capacity to interact with and carry out actions in the physical world were subject to a sufficient host of duties and conditions, then any “formal” protection from other-ownership might be made consonant with actual slavery. Presuming we are interested in other-ownership in substance, and not

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28 For example, Christman and Taylor hold that self-ownership shouldn’t extend to the fungible fruits of labor. See Christman, “Self-Ownership, Equality, and the Structure of Property Rights,” pp. 29-37; Taylor, “Self-Ownership and the Limits of Libertarianism,” pp. 469-71. This may not trouble my larger argument, however, as both authors accept the claim, crucial to my first reason, that income is indeed a property incident (or even property plus): Taylor, ibid., pp. 469-71; Christman, ibid., p. 33.

merely in name, we have good reason to begin with the Lockean view that self-ownership carries consequences for world-ownership and the ownership of the creations of our labor. This in turn provides a second reason to believe that an entitlement transferring ownership of these products from Angie to Bernard transfers property in Angie’s person from her to him. Before the objects are made or transferred by Angie, Bernard has a property entitlement of residuary, income, or right-to-be-placed-in-possession. After transference Bernard has a property right simpliciter. The conclusion is that if Bernard is entitled to unilaterally acquire property that Angie creates, then Bernard has partial property rights in Angie. This conclusion will hold even when Bernard does not have any powers to trigger the transference through his personal choice, but his entitlement becomes even more recognizable as a property right when he can so trigger the expropriation. In this latter case we can compare the situation in which the triggering choice was made to the situation in which it was not, and clearly see that the difference between the two resultant states of affairs is a difference in who has property over what.

This conclusion, however, does not mean that any entitlement Bernard might have to Angie’s produce is a property right, for Bernard must come to have property. If he does not come to have property rights in the product of Angie’s labors, then not only can we not describe his eventual entitlements as property, his prior entitlements are no longer classifiable as the property incidents of residuary or income. Now, suppose the income from Angie’s work is syphoned to pay for a right of healthcare or education for Bernard. Just as with our earlier discussion of property and rescue, Bernard has no recognizable property incidents over such entitlements—the application of “duties of exclusion” to healthcare or education is murky at best, he has no open-ended control over the actions of his teachers or doctors, or over his school or hospital, and he has no power to sell or even gift his entitlement. Indeed, so restricted may be his options, Bernard may be required by law to engage in the activity funded by Angie’s work (for instance, required to attend school). In such cases, Bernard’s entitlement, valuable as it is, simply does not provide him with any of the dimensions of decision-making characteristic of property-holding. This distinction between an income and a specific service may seem a curious one to draw, but in the context of property theory I see few prospects for avoiding it. Even if we set aside conceptual analysis, in the contemporary era courts and legislatures have proven willing to apply the term “property” to all manner of entitlements: not only over land and chattels but over names, trusts, personas, anti-copying monopolies of several types, fugacious resources, airwaves, airspace, fishing licenses, events, information, databases, and more. They have not so understood healthcare and education; practice accords with theory on this point.
The conclusion, then, is this: if Bernard gets property from Angie’s person or the product of her free actions—and it remains as property for Bernard—then he has a property right in Angie. After all, if Bernard holds property in any resource transferred to him, then he effectively has the capacity to absolve Angie’s duty by using his powers of alienation to transfer ownership straight back to her.\footnote{This conclusion dovetails with the argument of §3.1; see esp. n. 25 above.}

3.3. The keystone concept: personal choice and its normative significance

The concept linking the above two modes of other-ownership is one of personal choice. As we saw in §3.1, for command, personal choice is integral to the intentional triggering of duties. For the income and residuary rights of §3.2, and the subsequent full transference of the property right, the beneficiary comes to inherit the same strong powers of personal choice over the transferred entity as the benefactor began with: liberties, powers, transfer, management, and so on. This significance of personal choice to attributions of property should come as no surprise. It is commonly supposed that the core of property is “the right to determine what shall be done with X; the right to choose which of the constrained set of options concerning X shall be realized or attempted.”\footnote{Nozick, Anarchy, p. 171; cf. Cohen, Self-Ownership, pp. 230-34.} So while the above analysis has been performed through the mechanism of somewhat technical accounts of property (e.g., incidents of “income” and “residuary”), the same result can be secured by focusing on the primacy that personal choice has in our commonsense understanding of property. More importantly, in the normative arguments from Kant and Locke with which we began, their censure was directed towards one person being directly subject to another’s personal—or (to use their apt term) arbitrary—choices.\footnote{Kant, Groundwork, pp. 105-6 (Ak. 428); Locke, Two Treatises, II:22, II:23, II:57, II:85.} If our exploration of other-ownership had come to encompass situations in which one person’s arbitrary choice was not directing the actions and powers of another, then we would have to conclude that our conceptual analysis of property had come adrift from its ethical moorings.

Indeed, given the abiding political concerns of Locke and Kant, it should not surprise us that, while our focus here is on property, similar considerations apply to “using others” and “interfering with them.” If we choose to unilaterally impose a duty on another, or if we come, without her consent, to have personal choices over something that was once hers—in such a way that it cannot go on being hers—then there is at least some sense that we are using her person or actions: we are interfering with her. So too, just as drowning-Bernard has no ownership of rescuer-Angie, nor is he either interfering with or using Angie in any recogniz-
able sense of those words. Use and interference, like ownership, imply intentional choice, and the argument from other-ownership provides one way of systematically unpacking such worries.

On a similar tenor, G.A. Cohen has suggested that the normative concern with other-ownership surrounds the question of who has the right to decide whether a person should do some particular act.\textsuperscript{33} He points out that sometimes “nobody” is the right answer to that question. In the above Good Samaritan scenario we saw one case in which this is so. Nobody \textit{arbitrarily chooses} that Angie ought to rescue drowning Bernard—personal choice does not enter at any point into the fact of Angie’s political duty. But in other cases we have considered—in which the duties can be intentionally triggered through personal choice, or where property entitlements are shifted from one person to another—then it \textit{is} the case that one person is making the decision about what another must do.

In all, the foregoing conceptual analysis of other-ownership accords with the normative concerns that initially motivated the investigation. In cases in which Bernard can make personal choices to trigger (positive or otherwise intrusive) duties in Angie, or the duty-imposition transfers a personal choice (regarding the disposition of Angie’s body or the products of her free labor) from Angie to Bernard, Bernard has a partial property right in Angie. In cases in which both of these personal choices obtain, when Bernard can personally choose to impose a duty on Angie and the duty transfers Angie’s property to Bernard, we may be increasingly confident in classifying Bernard’s right as a property right in Angie. On the other hand, when Bernard cannot personally choose to trigger the right, and does not receive property from Angie—I have used the Good Samaritan drowning case as my example—then there are no grounds for thinking Bernard has even a partial property right in Angie.

### 3.4. Three counterarguments

In the literature on other-ownership, there are three counterarguments that might be thought telling against the above result. First, some egalitarians argue that the deep normative reason for the duty-imposition affects whether it is an instance of other-ownership. Robert Taylor thinks that if social contract theory would show that taxation is justified (no matter how much the actual property owner \textit{herself} does not agree to the taking), then this suffices to show that such taxation duties cannot be examples of other-ownership.\textsuperscript{34} On a slightly different tack, Daniel Attas,

\textsuperscript{33}Cohen, \textit{Self-Ownership}, pp. 232-33. Cohen seems not to notice that his restriction on open-ended use nevertheless allows intentional triggering—and so allows \textit{somebody} (i.e., Bernard) to decide whether Angie will perform the act.

\textsuperscript{34}Taylor, “Self-Ownership and the Limits of Libertarianism,” p. 479.
Andrew Williams, and G.A. Cohen all contend that if the imposition of the duties is for some other reason than that of rights—in order to facilitate a required patterned distribution, for example—then it would be wrong to term those impositions property rights. As to this last line of thought, it is unlikely that the commitment is to the abstract patterned principle itself. Surely what is motivating the pattern, on a deep ethical level, is what is owed to each individual as such. We equalize primary goods not because leveling is itself attractive, but rather out of respect for the worst-off persons and their capacities to realize happiness and life-plans. For this reason, speaking of the duties of one person as motivated by the prior rights of another is quite proper. And if those rights happen, on analysis, to be sufficiently property-like, then there is no impediment to speaking of one person having, on a deep ethical level, property rights in another.

More generally, whatever the deep animating reason for needy people having entitlements over others’ persons may be—suppose such entitlements can be justified by social contract theory, for instance—this constitutes no reason whatsoever for concluding that the resultant entitlements cannot be correctly characterized as property rights. After all, innumerable social contract theorists throughout history explicitly understood themselves to be justifying various sorts of property rights. It seems simply gratuitous to assert that such theorists must somehow be conceptually prevented from doing so.

The second counterargument is put forward by Attas. Consider a case in which we might think (on the basis of the foregoing argument) that Bernard has a property right in Angie, such as when Angie is paying him an income. Attas suggests that because Angie could provide for Bernard’s property right in a variety of ways—for instance, by using more or less, and different parts, of her own property—Bernard’s rights are not property rights in Angie. There are perhaps two worries being adverted to here. The first worry seems to be the view that Bernard’s rights are property rights in Angie only if his rights are to specific, demarcated parts of Angie’s property. But this is not right. I have a property right in various sums of money held in a bank—or, if you rather, I have a property right in that monetary value. But which particular dollar bills are

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37 As Attas himself subsequently admits (“Freedom and Self-Ownership,” p. 11).
used to cash out that right or sum to that value is entirely contingent. The same follows for trusts and choses in action like checks, where the property is typically not in particular notes but in a value that may be filled indeterminately. Consider also the case of stock, where one owns a certain share in a corporation and its assets without actually owning any determinate object held by that company (to say nothing of stock options, and even more complex derivatives, where the properties are more indeterminate still). This indeterminacy is also found in many resource-property rights: such as entitlements to a certain quality and quantity of flowing water. Indeed, almost the entirety of Honoré’s property incident of income has this feature of indeterminacy. And intuitively, if a court determined that one of involuntary-organ-donor Eric’s kidneys was to be placed into Felicity’s possession, then I take it that her entitlement is a property right in Eric’s person, even if Eric were faced with the grisly prospect of being allowed to choose which kidney to render up to Felicity. In all, property can be contingent in just the way Attas denies.

The second and perhaps deeper worry to which Attas may be alluding is that the value to which Bernard is entitled might be provided without Angie actually giving up any of her property. Angie may, for instance, be able to convince Reggie to put Bernard in a situation in which he is no longer triggering the duty (by giving him a well-paid job, perhaps). When the indeterminacy of a duty or liability moves outside one person’s resources to encompass another’s, it reasonably will be charged, that duty or liability cannot correlate to a property right. The short answer to this challenge is, I think, to allow that the initial conditional right was not (due to its provisional and indeterminate nature) a property right, but that when its conditions are in fact met, then it becomes a property right. To return to the example, if and when Reggie refuses to give Bernard the job, and Angie is left with no recourse but to accept the debt to Bernard herself, at that point Bernard acquires property in Angie. And at that point, the situation of course becomes objectionable—recall that our conceptual and normative question is whether a political regime or theory allows one person to (without another’s consent) come to have property in that other, not whether a person always has that right in another.

The third and final counterargument might contend that what I have put forward as absolute property rights is in fact the only case in which

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41 Note also that in many cases it is hard to see what normative significance could reside in the question of determinacy. For example, it is hard to see why, if the government took exactly every fourth physical dollar bill earned, this would be any more or less worrisome than a general income tax of 25%.
attributions of property are appropriate.\textsuperscript{42} I argued in \S 3.1 that we had partial property rights when an agent could indirectly but intentionally trigger a beneficial positive duty in others. But it might be objected that the essence of property must be direct, immediate use. The owner can dictate what happens to \( \varphi \) simply by her expressed will. There is no mediate or conditional control—the owner’s will over \( \varphi \) is sovereign simply because \( \varphi \) is hers. For this reason, it may be charged, only direct command counts as other-ownership. There is doubtless something to be said for this challenge, for judgments of what is essential or peripheral to a concept as contested as that of property will always be somewhat controversial. Moreover, presenting the capacity for direct and unconditional use as the sine qua non of property is hardly prima facie implausible. Still, there are at least three strong reasons for resisting this analysis.\textsuperscript{43}

First, we have several intuitive cases of other-ownership that do not involve direct command—such as with our involuntary organ donor, Eric, and with hand-clapping Prince David. Second, in cases without direct command we can still have the substantial property incidents of use, power-to-impose duties, exclusion, income, and residuary (and all of these combined). Third, I argued in \S 3.3 that the partial property I have put forward appropriately captures the normative fundamentals with which we began—concerning who has the right to determine by personal choice what a person must do. The “pure command” theory of other-ownership fails to capture such cases and thus responds poorly to the initial concerns of Locke and Kant. In the final analysis, it would be extraordinary if Bernard could engage through his personal choice in deliberate, self-seeking use of Angie while excluding all others from using her (as well as excluding Angie herself, and irrespective of her consent), without having at least a partial property right in her.

4. Applied Prescriptions

In this section I consider what specific duties and liabilities are consistent with a strict prohibition on other-ownership. My purpose is not to justify the duties in question, but merely to consider whether they present as instances of other-ownership.

\textsuperscript{42}I thank an anonymous reviewer for pressing home to me the significance of this position.

\textsuperscript{43}See also the first paragraph of \S 3.1 and, in particular, n. 23 above. There is also the matter of the many cases of property that do not allow substantial open-ended use of the owned object. I do not speak here only of cases of powerful (e.g., environmental) regulation on private property use, but the deeper constraints on use internal to intellectual property, trusts, some usufructs, choses in action, and resource property rights.
4.1. The minimal state: police, judiciary, and armed forces

Presuming that all individuals are entitled to basic protections from others’ violations of their rights, and to a fair trial, they will require police, judiciary, and armed forces. Rights to such (i.e., rights of Bernard that Angie contributes to the minimal state) do not constitute other-ownership. The service provided is not a property right on the above analysis, and the triggering situation is not brought about by the personal choice of the person requiring the services of the police or armed forces. Typically the reverse is true: the triggering situation requiring intervention by police or army usually involves an event occurring against the person’s consent.

It is true that who exactly contributes what proportion to the provision of these rights may depend on individuals’ personal choices. Citizens can, for instance, choose to avoid the types and extent of work that might move them into a higher tax bracket. Avoiding or lessening their contributions in this way may mean others are called upon to do more. Yet whatever we are to make of this sort of duty-triggering, the crucial issue for our purposes is that it is not the recipient of the duty whose choices are controlling the enlarged duty, and hence this consideration cannot sway us from our initial determination that these rights are not instances of other-ownership.

4.2. Sustenance, education, and healthcare

Throughout I have been using as a touchstone the case of Good Samaritan duties to drowning swimmers. Such duties are not triggered by personal choice, and they do not result in a move of property from one person to another. They are thus not instances of other-ownership. All political duties to others retaining these two features are similarly immune to challenge on this basis. Providing food, education, and at least some types of healthcare for those who—through no fault of their own—cannot achieve such goods is for these reasons not other-ownership. While such political duties do require taking income from Angie, they provide a distinct service to Bernard—a service over which, in the usual cases, Bernard does not have the types of liberties and powers that are the indicia of property rights. Provided the choices Bernard made that precipitated the duty-imposing situation he wound up in were not made with the benefits of the imposition of duties on Angie in mind, such duties do not constitute other-ownership. The same classification may also be relevant for a right to work in cases in which unemployment is not any fault of the individual concerned. An employment opportunity—especially if it is one that the beneficiary has a duty to accept—is not a property right in any ordinary sense.\footnote{Charles Reich argues that we could consider viewing these sorts of entitlements as property \textit{in the sense that} those entitlements determining a person’s livelihood should not be}
4.3. Environmental regulation, zoning, and eminent domain

Suppose a proposed set of liberties and resources owed to all persons included the capacity to enjoy a minimally healthy environment, a quiet night’s sleep, access to potable water, and the capacity to travel (in the sense of there being modes of access from one place to another). Once upon a time, the unkempt expanses of the world may have ensured all these goods, but in the modern world it requires regulation to preserve the environment, zoning to ensure citizens’ peaceful repose, and eminent domain for governments to assure utilities like water and transport. While different instances of regulation, zoning, and eminent domain must of course be assessed on a case-by-case basis, as a general rule it does not seem that individuals’ personal choices are triggering their ongoing rights to these goods, and the goods themselves are not subject to the liberties and powers indicative of property rights. This conclusion therefore supports David Hunter’s legal argument that environmental regulation is different from other democratically chosen regulations. Arbitrary majoritarian value judgments may effectuate other-ownership, but regulations preventing harm to others by preventing harm to the environment do not. 45 Hence, as a general matter, these powers of government do not—or at least there is no necessary reason why they must—allow other-ownership.

4.4 Rawlsian justice as fairness

Several theorists argue that Rawls’s core commitments, if taken seriously, should—at least in the long term—have stronger egalitarian consequences than Rawls himself expressly endorses. 46 Richard Arneson, at least, follows these lines of thought to explicitly endorse other-ownership. 47 For our purposes we will only consider Rawls’s conclusions as he describes them. As readers are no doubt aware, Rawls holds that inequalities in pri-

47 Arneson, ibid., pp. 202, 207. On the analysis here, Arneson is correct that his regime (and his re-rendering of the Rawlsian picture) allows other-ownership. Note, however, that Arneson arrives too quickly at this result by holding, implausibly, that any positive right to aid must (regardless of choice-indexing) be a property right.
mary goods like wealth and income are only justified if they are to the benefit of worst-off persons.\textsuperscript{48} By virtue of this feature, Rawls’s justice as fairness allows other-ownership in both of the senses we have distilled. It mandates transference of property from one person to another, and it allows these transferences to be intentionally triggered.

As to the first charge, citizens acquire property from other citizens (as the income and fruits of their labor) and it remains as property for them in the form of primary goods. While absolute ownership of these primary goods is not required by Rawls, the goods—especially of wealth and income—are manifestly something citizens have strong powers of personal choice over. That is the very point of primary goods—they are resources citizens are to use to pursue their chosen conception of the good.\textsuperscript{49}

The second mode of other-ownership—that of intentional triggering—is more subtle. Justice as fairness allows all citizens to choose what occupation they wish to have, and whether to develop and exercise their talents.\textsuperscript{50} In combination with Rawls’s position that the worst-off representative person is to be identified in terms of her income and wealth,\textsuperscript{51} this allows two forms of triggering. First, when citizens choose unprofitable occupations, or occupations removed from their particular talents, they will swell the ranks of the lower strata of society. They might make such choices to avoid stressful job responsibilities or because they value leisure time more than increased income.\textsuperscript{52} Second, the members of the lowest income-wealth echelon are able to make choices not to improve their position. They are not paternalistically duty-bound to do their best to improve their position vis-à-vis their primary goods—in particular, their income and wealth. For instance, they are not obliged to preserve and enlarge their wealth through prudent investment, or to increase their earning potential through ongoing education.

In both cases, individuals’ choices not to move up the Rawlsian continuum will impact upon the extent of others’ duties to them—for example, it is difficult to imagine how the transfer branch of government could guarantee a certain level of well-being without increasing net transfers to the least-advantaged group when it grows in size.\textsuperscript{53} Of course, attributions of the types of personal choices described in the foregoing paragraph are unrealistic when the economic straits of the worst-off representative person


\textsuperscript{49}Ibid., pp. 79, 123-25.

\textsuperscript{50}This allowance is found in the choices over employment secured by Rawls’s Fair Equality of Opportunity, and also by the integrity of the person in the equal basic liberties: ibid., pp. 73-74, 89; and John Rawls, “Some Reasons for the Maximin Criterion,” \textit{American Economic Review} 64, no. 2 (1974): 141-46, p. 145.

\textsuperscript{51}Rawls, \textit{A Theory of Justice}, revised ed., pp. 79-84.

\textsuperscript{52}Nozick, \textit{Anarchy}, p. 170.

\textsuperscript{53}See Rawls, \textit{A Theory of Justice}, revised ed., p. 244.
are grim, so application of justice as fairness to developing countries cannot be held to involve triggering through personal choice.\textsuperscript{54} However, presuming we are dealing with a well-ordered society under reasonably favorable conditions, conforming to the requirements of justice as fairness, then it is likely that the position of the worst-off representative person will be sufficiently resourceful as to allow these types of personal choice.

It is still a question, however, whether these personal choices are intentional in the requisite sense. Are these choices made by individuals \textit{on the basis} of the subsequent duty-impositions guaranteeing them a certain level of security and comfort? While the answer here will vary from case to case, it seems reasonable to think that at least some individuals would make more prudential choices if they were not relying on the protective safety-net afforded by others’ duties to them. Thus, justice as fairness allows the intentional triggering of positive duties or expropriatory liabilities.

In sum, Rawlsian egalitarianism allows partial other-ownership; it decrees the movement of property from one person to another, and allows such to be triggered by deliberate intentional choice. This conclusion suggests (contrary to some interpretations\textsuperscript{55}) that Rawls did indeed envisage the talents and abilities of gifted individuals as very much “a social asset.”\textsuperscript{56} However, Rawls’s respect for basic liberties and freedom of occupation ensures such abilities are not in \textit{all} respects a common asset.\textsuperscript{57} As distinct from a more thoroughgoing egalitarianism, then, the other-ownership in justice as fairness is only partial.

Before moving on, note the relationship between paternalism and other-ownership at work in both struts of the foregoing argument. If the recipients of goods are required to use those goods to benefit their lives in very specific ways, then (a) the goods have less of the “arbitrary choice” facilitation characteristic of property, and (b) the duty-recipient’s liberty to trigger duties is restrained by her duties to take care of herself. Increased paternalism weakens the scope of other-ownership.

5. Broader Implications: Locke, Persons, Boundaries

Allow me to sketch three broader implications of the foregoing argument.

\textsuperscript{54} As in Pogge, \textit{Realizing Rawls}, pp. 240-80.
\textsuperscript{56} Rawls, \textit{A Theory of Justice}, revised ed., p. 92, cf. pp. 86-87, 156, and “Some Reasons for the Maximin Criterion,” p. 145. In the revised edition of \textit{A Theory of Justice} Rawls redacted his claim (the focus of Nozick’s ire at \textit{Anarchy}, p. 228) that his principles ruled out “even the tendency to regard men as means to one another’s welfare,” perhaps suggesting that he accepted this was something of an overstatement. The Rawls of 1999 still, of course, believed his two principles gave effect to Kant’s principle, but his language is more circumspect (pp. 156-59, 437).
First, the applied prescriptions sketched in §4 bear a strong affinity with
the political regime put forward by the philosopher with whom we began
our investigation in §1: John Locke. While Locke himself did not marshal
anything like the argument presented here, Lockean rights and property are
consistent with this account of other-ownership. Locke allowed for prop-
erty to be taxed for the needs of the state and regulated for the good of the
public.\textsuperscript{58} Further, he held that all individuals had a right to preservation and
employment (indeed, individuals have both these rights because they have
duties to preserve their lives and to labor\textsuperscript{59}). Yet Locke’s political welfa-
rism and concern for the needy did not extend to Rawlsian egalitarianism.\textsuperscript{60}
The analysis here supports the view that Locke’s grounding premise re-
garding the rejection of natural subordination and arbitrary powers was
carried through into the political regime outlined in the Two Treatises.

This leads us to the second implication. Picture a modern-day Lockean
regime modeled on the other-ownership proscription. Such a position
may conceptually begin with a left-libertarian or “starting gate” regime,
where all individuals have self-ownership and equal allotments of exter-
nal resources like land. This superstructure is then tempered with those
positive duties and liabilities consistent with a prohibition on other-
ownership, for instance, duties to provide for the minimal state and
needy others, as well as environmental regulations on uses of property.

Third, we began our exploration of other-ownership with a review in
§2 of the literature on property. We are now in a position to contribute to
that literature. I submit that other-ownership is a useful candidate for de-
lineating property boundaries in general. Locke certainly viewed the pro-
hibition on other-ownership in this fashion: “what property have I in that,
which another may by right take, when he pleases, to himself?”\textsuperscript{61} An
important part of what it means to hold property is not captured by the ex-
tent to which our choices are sovereign over the property, but refers in-
stead to the requirement that other’s choices are not sovereign over it.
Let’s stipulate absolute property as holding without qualification all of
Honore’s property-right incidents in some res. We have already consid-
ered partial property, where the entitlement-holder has at least some of
Honore’s property-right incidents in the res. Let’s now stipulate strong
property as a barrier against partial property. To have strong property in
some res is to have partial property in it and for no other person to have

\textsuperscript{58}Locke, Two Treatises, II:3, II:45, II:120, II:135-140.
\textsuperscript{59}Locke, Two Treatises, I:45, II:32. Such duties mitigate further the scope of other-
ownership, because of the influence of paternalism noted at the end of §4.
\textsuperscript{60}See the measured account of Locke’s principle of charity in Jeremy Waldron, God,
\textsuperscript{61}Locke, Two Treatises, II:140; cf. II:194. Note also Rousseau, who thought that in
respecting the property right of the first occupier, citizens were made aware of “less what
belongs to others as what does not belong to oneself.” Rousseau, The Social Contract, p. 66.
partial property in it. If I hold strong property in Blackacre, then the only individual’s personal choices who can immediately affect Blackacre and my use of it are my own. I cannot do whatever I desire with Blackacre—my use may be regulated in many different ways. But if I have strong property, then Blackacre cannot be regulated in such a way that others’ personal choices can supersede or trump my own.

So defined, this concept of strong property might prove a useful tool in law and policy. This is because all real-world property is inescapably subject to regulation, taxation, takings, and eminent domain. Absolute property therefore has little relevance to property in law. Strong property, in contradistinction, is a salient middling concept; it allows taxation and regulation, but nevertheless repels the powers of nonowners to personally choose what will happen on the property.

6. Conclusion

Against the libertarian, I have shown that some types of positive duties do not constitute other-ownership. If the duty-recipient’s choices cannot trigger the duty, and the duty does not transfer property from one person to another (and remain as property for that other), then the duty-recipient cannot be judged as holding property in another’s person or actions. Against the egalitarian, my claims must be more measured, as subtle questions about the extent and nature of partial property create legitimate room for debate. Still, I hope to have at least shown the point where the argument from other-ownership begins to have purchase on egalitarian designs. When individuals can intentionally trigger, through their personal choices, duties beneficial to them, or when property created by another’s productive action is transferred to them as property, then a case can be made that such duties allow one individual’s body or actions to be owned by another. I have concluded that a commitment to prohibit other-ownership could justify an intermediate position of a broadly Lockean sort. If this is right, then the maxim that no person is born to be put to another’s uses creates a principled place to stand in between the poles of libertarianism and egalitarianism—at once allowing and constraining our positive duties to one another.62

Hugh Breakey
Institute for Ethics, Governance, and Law
Griffith University, Australia
h.breakey@griffith.edu.au

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