ME, MYSELF & MINE
The Scope of Ownership

PETER MARTIN JAWORSKI

May, 2012

Committee:
Fred Miller (Chair)
David Shoemaker, Steven Wall, Daniel Jacobson, Neil Englehart
This dissertation is an attempt to defend the following thesis: The scope of legitimate ownership claims is much more narrow than what Lockean liberals have traditionally thought. Firstly, it is more narrow with respect to the particular claims that are justified by Locke’s labour-mixing argument. It is more difficult to come to own things in the first place. Secondly, it is more narrow with respect to the kinds of things that are open to the ownership relation. Some things, like persons and, maybe, cultural artifacts, are not open to the ownership relation but are, rather, fit objects for the guardianship, in the case of the former, and stewardship, in the case of the latter, relationship. To own, rather than merely have a property in, some object requires the liberty to smash, sell, or let spoil the object owned. Finally, the scope of ownership claims appear to be restricted over time. We can lose our claims in virtue of a change in us, a change that makes it the case that we are no longer responsible for some past action, like the morally interesting action required for justifying ownership claims.
ACKNOWLEDGEMENTS:

Much of this work has benefited from too many people to list. However, a few warrant special mention. My committee, of course, deserves recognition. I’m grateful to Fred Miller for his many, many hours of pouring over my various manuscripts and rough drafts. I’m similarly grateful to Steven Wall, David Shoemaker, Dan Jacobson, and Neil Englehart who round out my committee. Jonathan Miller, while not on my committee, effectively functioned like a member.

Terrence Watson commented on every part of this dissertation, and was a sounding-board for all of the ideas contained within. David Faraci also listened patiently, and helped me sort out many arguments, especially on the topic of ownership, guardianship and stewardship, the section on the no-new-reasons condition of ownership in particular. Jacob Sparks and Mark Herman were lovely people who listened very patiently and helped out whenever they could. As did Mark Wells. Many of my students, but in particular those in my upper-year seminar entitled “Property, Persons, and Things,” let me talk about my dissertation frequently, and helped me get clearer on the arguments that had holes. The various students who made up our dissertation group, including Ben Dyer, Christoph Hanish, Nico Maloberti, Sangeeta Sangha, Brandon Byrd, Pam Philips, and so on, all played some role in helping me make my arguments, and improved my dissertation a great deal.

I have conferenced several chapters of my dissertation. I am grateful to Mara from the University of Chicago whose comments at the Midwest Political Science Conference were thorough and very helpful. Students at the College of Wooster, Aaron Novick and Sean Hunter in particular, spent a great deal of time talking with me about my dissertation, and helping it become better. Garrett Thomson and Ronald Hustwit at the College were also significantly involved, and lent their ear every time I came up with what I thought was a good idea (I wasn’t always wrong about the evaluation). Pete Boettke, Pete Leeson, Chris Coyne, and Tyler Cowen at George Mason University gave several helpful comments when they invited me to give a talk for their workshop in Politics, Philosophy & Economics. I’m afraid I don’t remember the name of the philosopher who spent a great deal of time talking to me about my dissertation when I presented at the University of Warwick. Her comments led to more than a few changes, and I’m afraid she’ll have to be anonymous, in spite of the debt of gratitude that I owe her.

The first part has benefited a great deal from Roland Hall, editor at the Journal of Locke Studies. The last part benefited from two anonymous referees at Ethics who, while ultimately rejecting my paper for publication, still thought there was something important there worth commenting upon at great length.

The final part was written while I was a Summer Research Fellow with the Institute for Humane Studies. Their support was critical. William Glod not only guided me through that part of my dissertation, but provided valuable commentary on many parts of this dissertation besides. He
didn’t have to, it was supererogatory, and so I’m deeply grateful. A draft of the final part of my dissertation was thoroughly looked over by many people, including Marya Schechtman who was under no obligation to spend as much time as she did helping a student from some other school do work on something that was not her own, and to provide enormously helpful comments and encouragement. It’s people like Marya who remind me why I want to be a philosopher more than anything else.

I am also grateful to my family, my sister Agata in particular, for patiently humouring me. My sister was eager to read what I had written, and she offered much in the way of criticism, commentary, and words of encouragement. She’s a good egg, that one. All of the above, in fact, are good eggs.

It is traditional to suggest that all errors are the fault of the author, that anything that is good is the result of some collaboration and some comments from people who helped a great deal. That’s traditional, but it’s surely false. What’s true is that what is good and what is bad in this dissertation is the result not only of me, but of a great number of people who either stepped in when they should have, or did not step in when, really, they should have.

I put in a lot of labour, but so did others. I take full ownership for this work, good and bad, but the genesis, progression, and particular details of the ideas contained within are anyone’s guess, really.
CONTENTS

INTRODUCTION ................................................................. 2

PART 1

THE METAPHYSICS OF LOCKE’S LABOUR VIEW

1. THE LABOUR VIEW ......................................................... 4

2. OBJECTIONS AND RESPONSES ......................................... 7

2.1 THE SHALLOW LABOUR VIEW ........................................... 13

2.1.1 THE STRONG IDENTITY CLAIM .................................. 13

2.1.2 THE WEAK IDENTITY_claim .................................... 15

2.2 THE DEEP LABOUR VIEW .............................................. 16

2.2.1 PURPOSE ............................................................. 17

2.2.2 VALUE/PRODUCTIVITY .......................................... 17

2.2.3 PROJECTS ............................................................ 21

2.2.4 TRANSFER ........................................................... 26

3. FURTHER OBJECTIONS .................................................. 30

3.1. ATTENDING TO Q .................................................... 33

3.1.1. THE RECIPROCITY CLAIM .................................. 36

3.1.2. THE EMPATHY CLAIM ....................................... 36

3.1.3. THE ENFORCEMENT CLAIM ................................. 37

3.2. THE CARBON-COPY IMMEDIATE REPLACER ................. 38

4. CONCLUSION .............................................................. 40
4.1. WHAT’S LEFT OF THE LABOUR VIEW? ................. 42

PART 2

OWNERSHIP, GUARDIANSHIP, STEWARDSHIP

5. RES NULLA ...................................................... 44

5.1. THE PUZZLE .................................................. 46

5.2. MISSION & METHOD ....................................... 47

5.3. HONORE’S ACCOUNT AS A BUNDLE ................. 50

6. NO NEW REASONS ............................................ 54

6.1 LIABILITY & THE DUTY OF CARE ..................... 56

6.2 RISK ............................................................ 60

6.3 INCREASING RISK ........................................... 63

7. SELF-OWNERSHIP ........................................... 69

7.1 THE CIRCULARITY PROBLEM ........................... 71

7.2 CLEARER CONCEPTUAL CONFUSIONS ............... 72

7.3 SOVEREIGNTY ................................................ 75

8. GUARDIANSHIP ............................................... 77

8.1 THE PARENT-CHILD RELATION ....................... 81

8.1.1. TENURE OVER CHILDREN COMES WITH DUTIES .. 83

8.1.1.1. “OWNING” CHILDREN IS DISTURBING .......... 86

8.1.2. MARKET-ALIENABILITY ............................. 87

8.1.3. SELF-SEEKINGNESS ................................. 91
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1.4. THE LIBERTY TO DESTROY</td>
<td>92</td>
</tr>
<tr>
<td>8.2. GUARDIANSHIP</td>
<td>93</td>
</tr>
<tr>
<td>8.3. OBJECTION: GENERAL BACKGROUND DUTIES</td>
<td>95</td>
</tr>
<tr>
<td>9. STEWARDSHIP</td>
<td>100</td>
</tr>
<tr>
<td>9.1. CULTURAL ARTIFACTS</td>
<td>102</td>
</tr>
<tr>
<td>9.2. WHY CARE ABOUT ORIGINALS?</td>
<td>107</td>
</tr>
<tr>
<td>9.2.1. FIRSTNESS: CITY OF ATLANTIS</td>
<td>112</td>
</tr>
<tr>
<td>9.2.2. INDEPENDENT DISCOVERY: OBSCURE ARTIST</td>
<td>113</td>
</tr>
<tr>
<td>9.2.3. INFLUENCE: MIRRORVERMEER</td>
<td>115</td>
</tr>
<tr>
<td>9.3. CONCLUSION</td>
<td>118</td>
</tr>
<tr>
<td><strong>PART 3</strong></td>
<td></td>
</tr>
<tr>
<td>THE PROBLEM OF THE CONTINUITY OF CLAIMS</td>
<td></td>
</tr>
<tr>
<td>10. OWNERSHIP OVER TIME</td>
<td>120</td>
</tr>
<tr>
<td>10.1. THE BROADEST POSSIBLE FORMULA</td>
<td>121</td>
</tr>
<tr>
<td>10.2. MOTIVATING THE PROBLEM</td>
<td>123</td>
</tr>
<tr>
<td>10.2.1. RESPONSIBILITY</td>
<td>124</td>
</tr>
<tr>
<td>10.3. THE OPTIONS</td>
<td>127</td>
</tr>
<tr>
<td>10.3.1. MORALLY-RELEVANT METAPHYSICAL UNITS</td>
<td>127</td>
</tr>
<tr>
<td>10.4. IDENTITY-RELEVANT VIEWS (VIEWS TRACKING IDENTITY)</td>
<td>131</td>
</tr>
<tr>
<td>10.4.1. IDENTITY OF LIVING HUMAN BEING VIEW</td>
<td>132</td>
</tr>
<tr>
<td>10.4.2. THE IDENTITY OF PERSONS VIEW</td>
<td>135</td>
</tr>
<tr>
<td>10.4.3. THE IDENTITY OF SELVES VIEW</td>
<td>138</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>--------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>11. JUSTICE IN TRANSFER</td>
<td>143</td>
</tr>
<tr>
<td>11.1. VIEWS TRACKING JUSTICE IN TRANSFER</td>
<td>143</td>
</tr>
<tr>
<td>11.2. THE TACIT TRANSFER</td>
<td>145</td>
</tr>
<tr>
<td>11.2.1. THE CONDITIONAL TRANSFER</td>
<td>147</td>
</tr>
<tr>
<td>11.3. THE INHERITANCE VIEW</td>
<td>150</td>
</tr>
<tr>
<td>12. INHERITANCE</td>
<td>153</td>
</tr>
<tr>
<td>12.1. MY DEATH AND MY STUFF</td>
<td>153</td>
</tr>
<tr>
<td>12.2. SYMMETRY OF HARM</td>
<td>160</td>
</tr>
<tr>
<td>12.3. HARMS &amp; WRONGINGS</td>
<td>162</td>
</tr>
<tr>
<td>12.3.1. BACK TO THE INHERITANCE VIEW</td>
<td>163</td>
</tr>
<tr>
<td>13. VIEWS TRACKING SOMETHING OTHER THAN RESPONSIBILITY</td>
<td>165</td>
</tr>
<tr>
<td>14. CONCLUSION</td>
<td>166</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>169</td>
</tr>
</tbody>
</table>
ME, MYSELF & MINE: THE SCOPE OF OWNERSHIP

We teach them not to notice the different senses of the possessive pronoun, the finely graded differences that run from "my boots" through "my dog", "my servant", "my wife", "my father", "my master" and "my country", to "my God". They can be taught to reduce all these senses to that of "my boots," the "my" of ownership.

Even in the nursery a child can be taught to mean by "my Teddy-bear" not the old imagined recipient of affection to whom it stands in a special relation... but "the bear I can pull to pieces if I like."... And all the time the joke is that the word "Mine" in its fully possessive sense cannot be uttered by a human being about anything... They will find out in the end, never fear, to whom their time, their souls, and their bodies really belong -- certainly not to them, whatever happens.

- C.S. Lewis, The Screwtape Letters

All I can hear
I me mine, I me mine, I me mine
Even those tears
I me mine, I me mine, I me mine

No one's frightened of playing it
Everyone's saying it
Flowing more freely than wine

- The Beatles, I Me Mine
INTRODUCTION

The purpose of my dissertation is to analyze the concept of ownership as one specific kind or species of "tenure" within a broadly Lockean tradition. This analysis will be primarily directed at the scope of ownership claims in terms of the objects that are "open" or "fit" for ownership, and the persistence of ownership claims across time.

My project is most broadly situated within, and primarily inspired by, the Lockean tradition. My dissertation does not, therefore, deal significantly with alternative possible ownership stories and justifications like those found in Hegel or various economic, utilitarian, or purely instrumentalist justifications and accounts of ownership. It is also restricted to physical, tangible property and does not deal with, nor seek to be a contribution to, discussions about intellectual or intangible property.

My conclusion is that the scope of legitimate ownership claims is (much) more narrow than what Lockean liberals tend to think. This is true of the particular claims justified by Locke's labour-mixing argument, the temporal scope of ownership claims, and what objects or things ownership claims can range over.

The dissertation is structured as follows. It has three major parts. The first major part addresses itself to the Lockean labour view justification of property. There are two questions that I try to answer. The first is, what is the Lockean labour view? The second is, does the Lockean labour view prove what it aims to prove? To answer these questions, I analyze the metaphysical moves that Locke makes, and try to make them as plausible as possible. It turns out that we will have to abandon Locke's metaphysical labour-mixing argument in favour of an alternative, but still broadly Lockean, argument.
The second major part is motivated by a puzzle in Kant and Locke. Both Kant and Locke believe that we have authority over ourselves and our own affairs. They both believe that there are certain moral obligations that we have in virtue of being in this privileged position, but they disagree about whether or not we are self-owners. Locke thinks we are, while Kant thinks we are not. This is especially puzzling because both Kant and Locke appear to think that our obligations with respect to ourselves have the same content. To make the puzzle less puzzling, I introduce guardianship and stewardship as rival concepts to "ownership," and provide a defense of what I call the no-new-reasons condition of ownership.

The final major part takes aim at the application of ownership over time. I seek to answer one question. On Lockean-like, action-grounded claims to ownership, do our claims persist over time? In order to answer this question, I assume a reductionist account of personal identity, argue for either a self-based, or a person-based view of personal identity, and then demonstrate that on these plausible views it turns out that our ownership persists only on the condition that we continue to be responsible for the action that generated the claim in the first place.
PART 1

THE METAPHYSICS OF LOCKE'S LABOUR VIEW

What sort of argument would be needed to ground the claim that someone is justified in having exclusive control over some object or thing in the world? John Locke developed a theory about property that sought to justify such an exclusive private property right. The purpose of this part of my dissertation is to evaluate Locke’s theory.

This part is arranged as follows. Chapter 1 will set out Locke’s labour view. Chapter 2 will address several possible objections to the labour view. Those objections are objections against the conceptual coherence of the argument, against the metaphysical implications of the view, and foundational criticisms of the moral significance of labour and the moral significance of my relations with objects that are grounded in labour under certain conditions and circumstances. This chapter attempts to answer each of these objections in a Lockean spirit. These answers will include strange metaphysical moves. Chapter 3 raises further objections that are more significant because they cannot be squared with the labour view. Finally, I address the question of what is left of the labour view at the end.

CHAPTER 1: THE LABOUR VIEW

According to Locke,¹ we own our body, our labour, and the work of our hands. This claim has come to be called the self-ownership assumption. From self-ownership, we can come to own external objects and things by the mechanism of labour. The argument is this: I own myself; my labour is a part of me, it is part of the self. When I labour on something, I mix a part of my self

with the external world -- I externalize my self into the object (II. §27). For anyone to take this object would also be taking the part of me that is in the object, which amounts to her having a property in me, or slavery. Because all forms of slavery, including by consent, are wrong (II. §4), it follows that I have a right to own what I am in, the objects I have laboured upon.

We cannot, however, take just as much as we’d like, because we must respect what have come to be called the “Lockean provisos.” These provisos are the waste and spoilage provisos, as well as the “enough and as good for others” proviso (II. §§27, 31, 33, 46). They amount to this: when accumulating property, I can come to own (by mixing my labour) only that which I can actually use, else it become “wasted” (for Locke, anything that is not actually used or put to use, like untilled land, is waste [II. §§37-38, 42, 45-6]); only so much as I can use without any of it spoiling; and only so much such that others are still left with “enough and as good” (II. §27).² With a general understanding of Locke’s labour theory, our second task is to define property. This task is a significant one, and the debate over whether or not property is sufficiently meaningful and coherent or an “essentially contested” concept is not over.³ However, A.M.

---

² It should be noted, in passing, that the reference to ‘enough and as good left in common for others’ is mentioned only twice by Locke, unlike the other provisos which are often repeated. This might be surprising given how much ink has been spilled on this proviso by subsequent commentators. Jeremy Waldron denies that this proviso has much significance at all, or at least not the sort of significance that many subsequent commentators attach to it. Jeremy Waldron (1988). The Right to Private Property, (Oxford: Clarendon Press) at pp. 209-218. For reasons to think that this proviso is more important than Locke’s passing references to it imply, see especially Clark Wolf (1995). “Contemporary Property Rights, Lockean Provisos, and the Interests of Future Generations,” Ethics, vol. 105/4, pp. 791-818.

Honore has captured what many believe is the best account of what property amounts to. According to Honore, property is a “bundle of rights” with many particular “sticks.” These sticks, sometimes called “incidents”, are rights to (1) possess, (2) use, (3) manage, (4) and receive income; the power to (5) transfer, (6) waive, (7) exclude and (8) abandon; the liberties to (9) consume or destroy; (10) immunity from expropriation; (11) the duty not to use property harmfully; and (12) liability for execution to satisfy a court ordered judgment.

To say that P owns x is, on this analysis, to say that P has an adequate number of the incidents adumbrated by Honore. Full ownership includes every instance in the list. Waldron makes this idea clearer: “Ownership… expresses the very abstract idea of an object being correlated with the name of some individual, in relation to a rule which says that society will uphold that individual’s decision as final when there is any dispute about what is to be done with the object. The owner of an object is the person who has been put in that privileged position.” This privileged position we can call “authority,” and we can rephrase Waldron's quote by saying that the owner of x has “authority” over or with respect to x. Call this the authority condition. The authority condition is a necessary condition for ownership -- no conception of

---


5. This is taken from J. C. Becker and T. W. Kelsey, “Philosophical and political foundations of property rights,” in Property Rights: Interests and Perspectives, Penn State University (http://extension.aers.psu.edu/pubs/PropertyRights2.pdf) accessed Oct. 27, 2010, at p. 8, ff. 17. The original appears in Honore, Ownership, at p. 113 ff.

6. There does not appear to be a good account of what is to be deemed an “adequate number.” This, then, is a vagueness that contributes to the claim that property is a meaningless (or at least deeply confused) concept.

7. Jeremy Waldron, “What is private property?”, at p. 333. That this is not quite sufficient is shown by Pavlos Eleftheriadis: ‘The problem is this: if the owner of the thing is identified as “the person who is put in [this] privileged position”, and whose decision will be upheld “as final when there is any dispute about how the object should be used”, then there is nothing to stop us from concluding that in any Western legal system everything is owned by the judiciary.’ Pavlos Eleftheriadis, “The analysis of property rights,” at p. 35. There is a possible response. The task of a judiciary, on this view, would not be to determine what is to be done with an x the ownership of which is disputed. The judiciary’s task is to determine who is to determine what is to be done with x. This difference might be enough for Waldron’s definition to get around the objection.
ownership is possible without the authority condition. We can call the incidents captured by the authority the *scope* of the authority condition. On Honore's account, for anyone to count as an owner of x, it has to be the case that the scope of authority over x ranges over a sufficient number of the incidents in the property bundle.

Put formally, P is an owner of x just in case:

1. P has authority over x (authority condition) and
2. P has a sufficient number of the incidents in the property bundle constituting authority (scope of authority)

Locke’s argument is intended to justify full ownership by P over some previously unowned x through the mechanism of labour.

**CHAPTER 2: OBJECTIONS AND RESPONSES**

On a natural reading of Locke, what is mixed in with an object to make it my property is my labour. When Locke says that taking something I have laboured upon is stealing my labour, it looks as though for labour-theft to be possible, labour must be something *in* an object. There are at least two worries with this argument. For one, it does not appear to be plausible to say that we can literally mix our labour with anything at all. Our labour is an activity that might make it the case that two or more *other* things get mixed, but it, as an activity, cannot be so mixed. We can mix salt and water together to make saltwater, but the labour that mixes the salt and water is not a third element in the mixing. What gets mixed is just the salt and water, and not salt, water, and labour.

Jeremy Waldron criticizes the idea that labour is something that can be “mixed” with anything. He writes,
On the face of it, the proposition,

(P) Individual $A$ mixes his labour with object $O$

seems to involve some sort of category mistake. Surely the only things that can be mixed with objects are other objects. But labour consists of actions not objects. How can a series of actions be mixed with a physical object?\textsuperscript{8}

Later, he writes, “It is not just that the idea of mixing one’s labour treats labour as a thing which can be mixed with other things. It is rather that the phrase ‘mixing one’s labour’ is shown to have the logical form of ‘mixing one’s mixing’. And that just seems defective.”\textsuperscript{9} It is defective.

There is a second conceptual difficulty facing the labour view, assuming self-ownership is also not a category mistake.\textsuperscript{10} Locke’s move from self-ownership to ownership of labour and the work of my hands, to ownership of external objects appears to equivocate on two distinct senses of “property.” In one sense, we say that blue is a property of P’s eyes, if P has blue eyes. The sense of property here is as a “part of P”; blue is a part of P’s eyes. In the other sense, property marks out what things belong to P. P’s eyes “belong” to P (they are a property of his), even if the blueness of the eyes do not belong to him (blueness is not the kind of thing that can be owned).\textsuperscript{11} According to this objection, labour is like the blueness of the eyes.\textsuperscript{12}


\textsuperscript{9} Ibid., at p. 41.

\textsuperscript{10} The question “who owns Sam?” is disturbing. The purported answer, “Sam owns Sam,” is convenient, but does not, as I see it, remove the disturbing element. Instead, the right answer might be, “no one does. Persons do not fall into the category of things open to the ownership relation.” I maintain that this is the right answer, but this is controversial.

\textsuperscript{11} This might be confused with the claim that colours cannot be owned, and this is why the ‘blueness’ of my eyes is not property in the right sense. This is not what is meant here. The question of whether or not colours can be owned has added significance given the existence of a patented colour. The French artist Yves Klein has a patent for ‘International Klein Blue’ or ‘IKB’ as artists call it (www.international-klein-blue.com).

\textsuperscript{12} This objection may have originated with P.J. Proudhon. Lawrence Becker quotes Proudhon as follows: “The word property has two meanings: 1. It designates the quality which makes a thing what it is… 2. It expresses the right of absolute control over a thing.” Lawrence Becker (1976). “The Labor Theory of Property Acquisition,” The Journal of Philosophy, vol. 73, pp. 653-664, at p. 656.
It is not, and cannot be, literally true that I own an activity or an action. I could not own my throwing, or my running. J.P. Day elaborates on this objection when he writes, “For labour, or labouring, is an activity, and although activities can be engaged in, performed or done, they cannot be owned.” If it is responded that what we own is not the labour but the capacity to labour, Day has the following to say: “…it is no more significant to talk of owning a capacity for work than it is to talk of owning work. Powers are used or disused; they are not owned or unowned.” He summarizes the two senses of property as follows: “It is necessary to distinguish X is the property of A, meaning X appertains to A, from X is a property of A, meaning X characterizes A.”

To meet these objections, the labour view would need to be altered. A different interpretation of Locke’s view is possible. The following passage might help:

The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, hath by this labour something annexed to it, that excludes the common right of other Men. (All emphasis mine, §27)

The first emphasis above is intended for the following reason: If what was meant was that labour was mixed in with the object, then a more natural way of phrasing the sentence would be “and joyned to it the labour that is his own.” As it stands, we can read the conjunction as referring to a

---

13 One example of this mistake in the literature comes from Karl Marx. Marx writes: “...labour-power can appear upon the market as a commodity, only if, and so far as, its possessor, the individual whose labour-power it is, offers it for sale, or sells it, as a commodity. In order that he may be able to do this, he must have it at his disposal, must be the untrammelled owner of his capacity for labour, i.e., of his person.” Jon Elster (1986). Karl Marx: A Reader (Cambridge: Cambridge University Press), at pp. 137-8.


15 Ibid., at p. 214.
“something” that is not the labour in the first conjunct. This interpretation is strengthened by appeal to the second emphasized line above. If the “something” in question were labour, we could reformulate the sentence to read “hath by this labour labour annexed to it,” which does not seem right. The natural reading of the emphasized sentence is that what Locke means is for labour to serve as the mechanism that carries “something of me” into the object, something that is not identical to labour.

This (re)interpretation may be false. The reason for this is not merely the weight of the commentators on Locke who have agreed that the literal mixing of labour into the object is the right interpretation of Locke. The sentence that immediately follows the above passage points us in this direction: “Labour being the unquestionable Property of the Labourer, no man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others.” (§27) The “that” in “what that is joyned to” appears to refer to the first instance of “Labour.”

Even so, many have chosen to change “labour” into something else, possibly because of the “labour is not property-in-the-right-sense” and “labour cannot be mixed” objections. Karl Olivecrona uses “spiritual ego” in the first instance, and “personality” in subsequent references as the thing that is mixed in. Dudley Knowles, commenting on Locke’s view from a

---


17 Ibid., at, for instance, p. 227.
Hegelian perspective, also uses “personality” as the thing that is mixed in. As does Andrzej Rapaczynski, using “personality” throughout. This could be the “something of me” that gets mixed in by the mechanism of labour. This would avoid both objections. Because, for our purposes, we need not settle whether it is the “will,” “personality,” “spiritual ego,” or whatever else the “something of me” refers to, we will call it “S.” S may be property in the same sense that my eyes are my property. It would not characterize me, but would belong to me. S is also not an activity, but precisely the kind of thing that, at least conceptually, could be mixed in with objects and things in the world. Finally, it can still be called a labour view because of the necessary (and sufficient?) role that labour plays in the transference of my S into an object or thing in the world.

This new labour view is prima facie plausible. Consider the following cases. Patricia, an artist, paints a picture. She feels like the picture captures something about her. It expresses something about her personality. It is not the labour that does this, but, through labour, something of her is “in” the painting. Likewise, Quincy the farmer is proud of his crops. He feels like the soil is an organic part of him. He naturally moves from thoughts of who he is and what meaning his life has to thoughts of his corn fields and pastures, and he considers his farm to reflect


20 Olivecrona insists on this reading when he writes, “It would be absurd to contend that the ‘labour’ of killing a deer or picking an acorn from the ground is, in the exact sense of the expression, ‘mixed’ with the deer or the acorn respectively. Locke cannot have meant it so. His meaning can only have been that the action of killing deer or picking the acorn was the means by which something of the spiritual ego was infused into the object.” Olivecrona, “Locke’s theory of appropriation,” at p. 226.
something significant about him. Quentin, an acclaimed author, has just finished writing another novel. This novel is rich with emotion, and manages to neatly convey how Quentin feels about the world. It took him a great deal of effort to write the prose, but he is pleased with the outcome, and feels like it is a true representation of his worldly outlook.

In each of these cases, the people in them consider the respective products of their work -- the painting, the farm, and the work of authorship -- to contain something of them in it. On the labour view, our thinking this is literally true, and not merely a metaphor. It is a metaphysical truth. Notice also that in each of the above cases, we called the person in question an “artist,” a “farmer,” and an “author.” We did not say “Patricia who sometimes paints pictures,” “Quincy who spends a lot of his time farming,” and “Quentin who writes novels.” Our language implies that some activities can be part of us in the sense that our identity is wrapped up in what we do. On one interpretation, this linguistic fact is a descriptive shorthand and nothing more. On the labour view, this linguistic insight is not merely a descriptive shorthand, but captures the truth of identity. We are, amongst other things, what we do. These conventional ways of speaking capture the metaphysical truth on the labour view.

This appeal to ordinary language has only limited application. The farmer may occasionally paint as a hobby, but that would not make him a farming painter. Perhaps if the farmer spent a significant amount of time on painting and invested himself in both activities, then he might be a painter/farmer. But he might not. His painting may be a very rare thing. He could do it once every six or so years. When we think of the activities that people identify themselves with and spend a great deal of time on, we think that it is “right,” “fitting,” or “appropriate,” that
they should own the objects and things that are the consequence of this sort of labour. The
tougher case for the Lockean is to argue not for the farmer’s claim to his farm, but to the farmer’s
claim to the painting he has made that he does not identify with or, worse, does not care about.

2.1 THE SHALLOW LABOUR VIEW

Locke’s metaphysical picture does not recognize a difference between what P labours on and
cares about, and what P labours on and is indifferent about. What matters for ownership is that P
expends labour on something. We can call this the shallow labour view. On the shallow view, the
physical fact of labour transfers S into an object, and therefore makes it mine. It does not matter
if I care about the outcome, or if I have patterns of concern for the object laboured upon. This
seems wrong. Our claims to property should have something to do with what we care about, at
least prima facie. If P does not care about the product of her labour, it is difficult to say that she
should be granted ownership of it. If P kicks a stone, she has laboured on it, but if her purposes
are merely to watch it fly, and not to secure a property in it, then it is hard to believe that we have
reason to mark the stone to recognize the metaphysical fact of P’s mixing.21

2.1.1. THE STRONG IDENTITY CLAIM

There are many reasons why P may not care about the product of her labour. Sometimes, P’s
failure to care is a failure that we can criticize in P. If P was the mother of Q, it would be a failing
on P’s part not to care for Q. Perhaps one rejoinder to the labour of indifference objection is to
insist that whenever someone, P, labours on some object x and fails to extend patterns of concern

---

21 On the shallow view, we always have a reason to do this.
to the object, then either she, or her circumstances, are subject to criticism. Suppose, for instance, that P fails to care about her son, Q, because she does not know or does not believe that Q is her son. If she knew he was her son, she would come to care about him, or be open to criticism. The same response may be made on behalf of the labour view. The “why should P care?” argument would run as follows:

1. P ought always to care about her S
2. P’s S can be in an object x
3. P’s labouring on x puts P’s S into x
4. If P has laboured on x, then P’s S is in x
5. If P’s S is in x, then P ought to care about x.

This argument hinges on the normativity of the identity claim. This claim tells us that, whatever or whoever else we care about, we ought to care about ourselves. It makes caring about me a moral requirement for me. This moral requirement is implausible if the claim that P should care about herself is the claim that she should care about everything that is P. Consider P’s fingernails, her skin, or her hair. Each day, P sheds skin flakes, as we all do. If P was required to care about her skin flakes because those flakes were a part of her, then this requirement would be absurd. The same is true when P cuts her fingernails, or gets a hair cut. Some barbers do not ask their customers what they would like done with their hair clippings. They sweep up, mixing P’s hair with other people’s hair in the process, and do with it whatever they wish. If the identity claim

---

22 This may be the Marxian view. This is not the place to discuss this, but a few notes may be worth considering. For Marx, our species-being, or our “essence,” is captured by labour. We do not care about our labour in modern contexts because we are alienated from the products of our labour. While Marx does not appear to want to draw any moral conclusions from this “fact”, many neo-Marxists do. They say that the modern system of capitalism is (morally) criticizable for allowing this alienation. Thus, for the Marxist, not caring about labour is not caring about our S (here meaning species-being), and this is a wrong-making feature of the capitalist system.
were the strong claim that we ought care about everything that makes P P, then P and the barber would be criticizable for not heeding this moral requirement. But to criticize barbers and their customers for this is silly. For these reasons, the strong identity claim is false.

2.1.2. THE WEAK IDENTITY CLAIM

A weaker identity claim would not claim that everything that makes P P is something that P ought care about. This version of the thesis says that there is some privileged fact or facts about P that make P P, that P ought care about. We need not settle on one of the theories of personal identity for our purposes. All we need to say is that on the weaker identity claim we need not care about *everything* that makes us us, but only some narrower set of facts about us. We can call this narrower set of facts the “essential self.” According to this claim, P is only criticizable if she does not care about her “essential self”; she is not criticizable if she does not care about her non-essential self (like her fingernails, hair clippings, or skin flakes). For the labour view to be plausible, it needs to capture the insight of the weaker identity claim. It needs to be true that the S that gets mixed into objects is part of the “essential self.”

If this is true, caring or concern would no longer be an external criterion for justifying P’s claim to x. The labour view would also be a theory of appropriate or proper concern. It would say to any of us that, when we labour on something, we ought always care about the object of our labour. This is so because (a) our S would be in the object, (b) S is part of our “essential self”, and (c) we should always care about (or we have reason to care about) our “essential self.” P may not know, or may not believe, the metaphysical truth. If she knew or believed that a
privileged “something of her” was in an object, she would come to care about it or be criticizable. Thus the labour of indifference objection proves not to be an objection at all.23

2.2. THE DEEP LABOUR VIEW

Our new version of the labour view is still too shallow. It is shallow because it does not specify the type of labour that carries P’s S into an x. It says that labour of any sort is of the right sort. This opens the shallow labour view to the animals and robots objection. This objection runs as follows: Animals can labour in the sense of expending energy, and robots can move their robot parts in ways that resemble labour. If labour simpliciter mattered, then animals and robots could come to own things.24 The view that robots could literally own things is absurd. It may be retorted that robots do not have an S, that only creatures of a certain sort do. This is a good rejoinder to the robots objection. The view that non-human animals could own things is not obviously absurd, but it is deeply implausible. The truth of this view does not matter however, because it is not something to which Locke would assent to. He did not think that we can sensibly say that a beaver owns the beaver dam it constructed. This is so even though the beaver laboured on the dam.

23 As Waldron puts it, “Once the labour has become embodied in the object, the labourer acquires an interest in the object—an interest as important as his interest in his labour—which he did not have before.” Waldron, The Right to Private Property, at p. 184.

24 This is Andrzej Rapaczynski’s objection. He writes, “Labor, by which a person transforms the environment, may be seen as having two distinct functions: it is an exercise of physical force similar to other forces which shape the course of natural events, and it is a ‘spiritual’ operation which endows things with value (§§40, 42), imparting to them something which material objects do not possess by themselves (§43). If we confuse these two distinct functions of labor, we shall be forced to conclude that animals, certainly capable of exercising physical force to provide for their subsistence, and perhaps even machines are capable of owning property.” Rapaczynski, “Locke on Property and Leibniz’s Principle,” at p. 307.
2.2.1. PURPOSE

One popular, substantive possibility for the type of labour that matters is that it be *purposive*. A. John Simmons, for example, insists that not only must labour be purposive, the “aboutness” of the labour matters as well. Simmons explains this position with reference to Locke: “It is our “intellectual nature” that makes us “capable of dominion” (I, 30); the laborer must be acting freely and intentionally not merely behaving. Labor for Locke, then, is action that is free and intentional, aimed or purposive (in the sense of intending to produce a result of use to self or others).”25 This “intellectual nature” is what, on Locke’s view, excludes animals from the possibility of owning property. It also rules out classes of actions that can sometimes be described as “labour.” Accidental labour, unconscious labour (like our tossings and turnings at night when we are asleep26), and, in general, purposeless labour, will not count as the labour that morally matters. It will matter that the labour is organized toward the pursuit of some goal or end.27

2.2.2. VALUE/PRODUCTIVITY

That the labour must “produce a result of some use to self or others” may be a separate requirement, a requirement on the *outcome* of labour. This might be the requirement of creating value. Stephen Buckle and Adam Mossoff both make this an explicit requirement. Writes Buckle, 

---


26 If we wrinkled the sheets while tossing at night, this wrinkling would not ground an ownership claim to the sheets.

27 Lawrence Becker writes that, “Labor is first distinguished from mere intent, declaration, or occupation. It is next distinguished from play and accidental improvement. One then simply calls attention to the fact that labor is purposive.” Becker, “The Labor Theory of Property Acquisition,” at p. 654. J. Baillie treats labour similarly when he writes, “…a labourer labours for some end beyond his actual physical toil, whether the end be the satisfaction of the end of the artist or the attainment of the means of comfort and subsistence for other members of society.” J. B. Baillie (1911). “The Moral and Legal Aspects of Labour,” *The Philosophical Review*, vol. 20, pp. 249-264, at p. 251.
“[t]he doctrine of the origin of property through labor will not be properly understood if it is not recognized that Locke thinks of labour as a rational (or purposeful), value-creating activity.”

Mossoff, citing Buckle approvingly, concludes that “the phrase 'mixing labor' is a term of art for Locke. It is his metaphor for productive activities.” (emphasis in original)

This may not add anything to the Lockean picture. If we believe that what creates value is labour, and if “productive” means an activity that creates value, then we have the analytic, and possibly hollow, implication that all labour is productive. It would not be an additional criterion, but merely a clarification of the meaning of labour for Locke. This appears to be precisely Mossoff's point, explaining the title of his article “Locke's labor lost” (what is lost to us is the original meaning of “labour” for Locke).

This new understanding of labour as a productive activity makes all labour labour-of-the-right-sort, and this is difficult to believe. It is difficult to believe that there do not exist instances of activities that count as labour, but that fail to be productive. Surely, it can turn out that our labour was unproductive or counterproductive, even in cases where we predicted or sincerely believed that it would be productive. Alchemists laboured mightily, but in vain, attempting to make gold from various metals. Surely, at least some of the labour in pursuit of making gold was unproductive.


30 There is value in knowing that alchemy is impossible, but this does not make all of the separate and expensive experiments valuable. Merely the set of experiments sufficient to establish this as a fact.
Perhaps the argument to be made is this. What matters, to justify original appropriation, is the creation of value through some individual physical activity. And perhaps the individual physical activity called “labour” is “activity that produces value,” while “schmabour” is the individual physical activity that fails at producing value. What we will need, then, is a criterion for distinguishing labour from schmabour; productive, value-creating activity, from non- or counter-productive activity that fails at creating value.

Distinguishing these two different types of physical activity is important for normative purposes. Failing to create value with an object, or, worse, making an object less or non-valuable makes it difficult to support original appropriation in the context of scarcity. After all, if goods are scarce, why should Patricia have a claim to x, when her plans are to make some scarce object or thing less or non-valuable? If x is a type of vegetable good for eating, and Patricia's plan is to soak it in bleach repeatedly making it good for nothing, why should we think that this physical activity grounds a claim to x? All Patricia has done is made the vegetable worthless, and it is hard to believe that the rest of us have a duty to abstain from interfering with Patricia's plan to make this thing worthless, especially if there is some use that we could put the vegetable to.

The particular example does not matter. It may be controversial that soaking a vegetable in bleach makes it worthless. Perhaps there is some aesthetic or other value in doing this. What matters is that the activity cannot be worthless, and cannot lead to a worthless outcome. If soaking a vegetable in bleach does not count as a worthless activity with a worthless outcome,
imagine a different possible activity that has these two features. Making something worthless does not ground a claim.\textsuperscript{31}

The outcome requirement and the formal requirement can be two aspects of what we mean by “purposive.” To engage in purposive labour is to perform an action that is about owning, and to organize it toward the pursuit of a productive goal or end. What is meant by “productive,” specifically, can be left for a separate inquiry. We can say, however, that productive will include, as part of its meaning, value. That the activity either aim toward something valuable, or that the activity is, itself, valuable.

The labour must not only meet certain \textit{formal} requirements, like being purposeful, nor merely certain \textit{outcome} requirements, like being productive, it must also meet certain \textit{content} requirements. If P lifts a rock and hauls it to some other place for the sake of exercise, her labour does not result in the transference of her S into the rock. If, however, she performs the same physical act with the intention of, say, having the rock be the first stone in the wall she is building, then this labour is the labour-of-the-right-sort for ownership. The content of the purpose must include something like a reference to the desire to come to own the thing laboured upon. It must be the case that P \textit{means} for her S to go into the x. This is Stephen Munzer’s claim. He writes, “The restated projection theory\textsuperscript{32} stresses that the person’s intention

\begin{flushright}
\footnotesize
\begin{itemize}
  \item \textsuperscript{31} This manner of speaking makes it sound as though I am committed to the view that some things either are or are not worthless, independent of the judgment of the relevant people involved. Although I believe this, it is irrelevant here. Suppose that the vegetables are seen as worthless even for Patricia, who sees dipping them in bleach as a way to make them worthless.
  \item \textsuperscript{32} By “projection theory,” Munzer means a theory like the labour view we have here. We come to own things by projecting ourselves into objects. Munzer contrasts projection theories with the “incorporation theories.” Samuel C. Wheeler III, for instance, holds an incorporation theory of property. He argues that we own things by incorporating them into us, including by analogy (like a house sometimes is ‘part of us’ like a turtle’s shell is a part of it). Samuel C. Wheeler III (1980). “Natural Property Rights as Body Rights,” \textit{Nous}, vol. 14, 1980, pp. 171-193.
\end{itemize}
\end{flushright}
in interacting with the world is to gain property rights rather than to expend effort to some other purpose or to no purpose at all. If Alexei inscribes ‘Alexei + Anna’ inside a heart that he has gouged into a tree, he would rarely be claiming property rights in the tree or even in his drawing. Typically he would be proclaiming his love for or attachment to Anna.”

2.2.3. PROJECTS

Along with the animal and robot objection, a reason to alter the shallow labour view is because labour unconnected to purposes appears to be morally inert. The deep labour view insists on purpose. On Simmons’ reconstruction of Locke’s view, it is a purpose featuring within certain kinds of plans or projects that morally matter. Purpose, as a necessary prerequisite for having a plan or project, is morally significant for this reason. Appealing to moral transitivity, we can make the following argument. Plans or projects have moral status; purposes, as necessary requirements of plans or projects have moral status; and at least those instances of labour that are intended or aimed at the furtherance of a life plan or project have moral status.

The projects view is a claim not only about what has moral status, but also about what P ought to care about. This claim tells us that, whatever else we care about, we ought to care about our projects, and that, whatever else may be of moral significance, projects are. This is both because the having of a project seems to entail at least some amount of caring (otherwise, why have the project?), and because some set of these projects are a constitutive part of the identity that morally matters.

33 Munzer, “Property, Incorporation, and Projection,” at p. 301. One deep worry might be raised against this suggestion. For P to intend to have a property right in some object means that P is at least aware of the possibility of property, and so is already situated in a context with the institution of property. If Locke’s view is to be understood as a pre-institutional justification of property, however, this account would merely beg the question. A possible way around this worry is to suppose that we have some proto-concept of property, call it q-property, that is the pre-institutional equivalent or basis of property in Honore’s sense.
What sorts of projects matter? Many writers insist on life projects. Loren Lomasky, for instance, defines projects as those plans that look very far into the future, and are significantly constitutive of who we are.

Those ends which reach indefinitely into the future, play a central role within the various endeavors of the person, and which provide structural stability to his life I call projects…. An important genus of projects includes those directed at becoming and remaining a certain kind of person: being a man of one’s word, a lover of beauty, a compassionless executioner.\(^{34}\)

John T. Sanders takes issue with Lomasky not on the grounds that a life project is what is required to ground moral claims, but in the depth or “richness” of the life project required. Our life projects need not be so grand. They need not “reach indefinitely into the future,” but can be temporally more local. These less-significant life projects are still powerful because they make a difference to the people who have them.\(^{35}\) In requiring a life plan, however, neither writer would be justifying the same scope of property claims as Locke does. It is difficult, after all, to describe picking acorns or taking a draught from the river as life projects, even if we can describe them with greater plausibility as projects. For our purposes, we need not dwell on this issue. We need to reject the life projects view if we want to retain the same justificatory scope. Let us agree, then, that mere projects or plans are all that are necessary to ground a property claim.

Quincy the author may wish to write a novel as a life plan of his. While toiling away, he finds that this particular paragraph that he just wrote is not really good. He removes the paper from his binder, and places it atop a big pile of other scribblings he was not happy with. Does


Quincy have a property claim in those scribblings that he does not care about? Quincy’s
*intention* is to write a novel consistent with some element in his (life) project. This is why Quincy is writing. But not all of the pieces of paper on his desk are going to be used for this purpose. This is why Quincy does not care about *these* pieces of paper.

The deep labour view would be implausible if the proper response was that Quincy’s S was in the scribblings, and so he ought to care about the scribblings. But it need not have this implausible character. Consider Locke’s example of hunting a rabbit (II. §30). Locke claims that, when P forms the intention to hunt a rabbit and laboriously organizes herself to accomplish this task, she owns the rabbit even prior to catching it. This means that her S is in the rabbit, even though she has not yet touched it. But suppose the day turns to night, without a rabbit in P’s clutches. P abandons her intentions. On one version of the deep labour view, P’s intentions plus labour at t₁ secure her property claim to the rabbit for as long as the rabbit lives, or as long as P lives, or forever. This is the *static* deep labour view. It is implausible because anything that takes my fancy, however momentarily, would have my S in it provided I intend to own it, and put forward at least some labour on behalf of my intention. On another version, P’s S is in x provided the purpose with respect to x remains. This is the *dynamic* deep labour view. When P gives up her intention to get this rabbit, her S leaves the rabbit -- it is no longer hers.

On the static view, the historical fact of purpose plus labour results in a permanent mixing of S into the x in question. The static view admits that purposes are only relevant for the *genesis* of a property relation, with alterations in subsequent purpose(s)-with-respect-to-x, including

---

36 By “not caring” I mean, literally, *indifference*. Someone might care about something they wrote, but plan to throw away, in the sense that they are ashamed of it and do not want the scribbling to see the light of day, or be read by anyone. This would not count as indifference.
abandonment, affecting no change in the S-in-x. The dynamic view claims that the S-in-x is
linked to the purposes of P, such that changes in P’s purpose(s) with respect to x affect the S-in-x.
Abandoning all purposes with respect to x either “releases” the S from the x, or causes the
ceasing to exist of S-in-x. For this reason, the dynamic view is symmetrical at both the “birth”
and “death” stages of S-in-x.

The case of Quincy’s scribblings can be described on the dynamic view as follows.
Quincy intends to write a novel, and this is the reason for his writing these pages in front of him.
Some of the pages contain, to Quincy, mere scribblings, while other pages contain writing
consonant with his overall project, writings that will form part of his novel. Quincy’s decision
that these scribblings will not be part of his novel removes his S from them. Provided Quincy has
no other purposes for the scribblings, he has no property claim to them. His position with respect
to the scribblings is analogous to P’s position with respect to the rabbit once she has abandoned
her intention to hunt the rabbit. Both return to the commons. And neither are criticizable for not
caring.

Labour organized in the pursuit of a (life) project is labour-of-the-right-sort for the
transference of P’s S into x. Labour apart from purpose does not transfer S into x. The
somnambulist cannot claim to own the objects he happened to bump into, or “labour” upon,
whilst asleep. There is reason to believe that the dynamic deep labour view is not a different
view from Locke’s view. To see this, consider one interpretation of the property relation between
an object x, and P’s servant’s labour on x (II. §28). It cannot merely be by way of P’s labour
alone, as a physical act, that a “something of P” enters into an object, because that would
preclude what P’s servant laboured upon from becoming hers. If we lean on purpose, we can say that it is precisely because P’s servant acts in accordance with P’s will, or in accordance with P’s purposes, that transfers “something of P” and not of the servant into the objects and things laboured upon. On a simple reading of Locke’s servant example, the servant is a slave. The servant’s labour would mix with the object, but P would have a claim to the object. On the dynamic view, it is P’s S that enters the object through the servant’s labour. Just like in the rabbit example, it is not necessary for P to physically touch the object for her S to enter it. On this reading, the servant acts as an agent for the principal, P, and does not count as a slave, provided the servant could choose to act in an agent capacity.

This can apply to animals as surely as it can to servants. Whenever some animal I own does something that I want it to, that may be something I have a claim to. On the dynamic view, it is P’s S that enters certain objects and things through an animal’s labour. Female pigs get excited by the scent of truffles because a chemical in the truffles is similar to the sex attracting chemical in swines. Some people take these pigs out to find truffles, and this is good reason to think the truffles are theirs. More obvious is the case of “truffle dogs” who are trained to smell out truffles (pigs cannot be relied on not to eat the truffles they find, while dogs don't have a taste for truffles). It is not difficult to believe that these truffles become the property of the people intending to find them by using the dogs for their purposes.

37 Whether or not non-human animals are “ownable” is a question that I address in the second part. They may not be the kinds of things that can be owned. However, it is plausible to say that a person can be in the privileged position of being the final arbiter over what is to be done with the animal, possibly within some moral constraints. That is sufficient for the purposes of this example.
2.2.4. TRANSFER

The dynamic view can also help us account for the consensual transfer of an object x from P to Q. Rapaczynski writes, “…if property rests on an actual and essentially irreversible embodiment of the owner’s individual personality, then the possibility of alienation and exchange of property seems to be precluded altogether.”\(^{38}\) The reason for this is because it would amount to slavery which, please recall, is always unacceptable for Locke, even by consent. When P consents to give x to Q, either her S is in x, or it is not. If it is in x, and remains in x while Q has it, P’s consenting to the transfer would amount to consenting to (partial) slavery. This would illustrate an unresolved tension within Locke’s view. If P’s S is not in x when Q has it, then this would avoid the slavery objection. We have said that when P’s purposes or intentions with respect to x are extinguished, so, too, does the S-in-x “extinguish.” Justified transfer on the basis of consent may be an instance of purpose-transformation that effects a change in S. When P genuinely consents to a transfer of x, it may be the case that she ceases to have purposes for x. This “releases” the S. This is another reason to insist on the dynamic deep labour view. It allows for Locke’s account to avoid the tag of justifying (partial) slavery.

There is precedent in the literature for talk of “releasing” or “withdrawing” one’s personality or will (S) through consent.\(^{39}\) This is so particularly for Hegel’s idiosyncratic


\(^{39}\) Rapaczynski (Ibid., at p. 313) writes: “But, what other writers on property tried to do was to show that one’s entering into a contractual exchange agreement involved “releasing” the object owned, in the sense of ‘removing’ one’s personality from it and freeing it for someone else’s.”
justification of property.\textsuperscript{40} We need not explore Hegel’s theory here, only mention it to make plain that this feature of our view is not unprecedented.

S being purpose-bound thus amounts to three claims. For one, S is bounded by purpose in the sense that labour must meet the \textit{formal requirement} of being purposeful; for two, S is bounded by purpose in the sense that it meets the \textit{content requirement} of being “about” coming to own what is laboured upon (and not about exercise, or expressing love, and so on); and, for three, S is bounded by purpose in the sense that it meets the \textit{persistence requirement} of S persisting in x only on the condition that a purpose for x does.\textsuperscript{41} Insisting on S being purpose-bound helps us to formulate the projects-based “why should P care?” argument.

This argument runs as follows:

1. P ought always to care about her purposes

2. S is purpose-bound if and only if,

   a. S only enters x through purposeful labour (formal requirement)

   b. S only enters x when using it is part of the purpose (content requirement)

   c. S remains in x provided the purpose for x persists (persistence requirement)

\textsuperscript{40} For more on Hegel’s theory of property, see Knowles, “Hegel on property and Personality.” See also Margaret Jane Radin (1982). “Property and Personhood,” \textit{Stanford Law Review}, vol. 34, pp. 957-1015. Radin writes at pp. 973-974: “Hegel’s property theory is an occupancy theory; the owner’s will must be present in the object. Unlike Locke’s theory of appropriation from the state of nature, occupancy in Hegel’s view does not give rise to an initial entitlement which then has a permanent validity. Rather, continuous occupation is necessary to maintain a property relationship between a person and any particular external thing…” The claim here is that, if the S is purpose-bound, then, just like Hegel’s view, the Lockean view is not a “permanent view,” what is here called the static view, but dynamic in ways very similar to Hegel’s. See also C. J. Berry (1980). “Property & Possession: Two replies to Locke —Hume and Hegel,” in \textit{Nomos 22: Property}, ed. J. P. Roland and J. W. Chapman (New York: New York University Press), pp. 89-100. Berry writes at p. 97: “The final modification is by alienation… This entails the withdrawal of the property-defining will…”

\textsuperscript{41} The use of “a purpose” is importantly vague. It leaves unanswered whether or not it must be the original purpose, a relevantly similar purpose, a purpose that was not the original purpose but was foreseen, or could have been foreseen, or just any purpose whatsoever. This important question will need to be answered, but not here.
3. P has laboured on x in such a way that S is purpose-bound.

4. If P has laboured on x in such a way that S is purpose bound, then P’s S is in x

5. If P’s S is in x, then P ought to care about x.

It is hard to believe that I should care about something I have no purposes for, even if I have laboured on it. On the static view, I should care because of the metaphysical fact that my S is in some x and remains there, quite apart from whether or not I have any further intentions or purposes for x. The dynamic view says that the metaphysical facts are purpose-sensitive. And it is not difficult to believe that I ought to care about something I have purposes for.

We might wonder whether the identity-based “why should P care?” argument is different or the same as the projects-based “why should P care?” argument. It might not be different. This is because the projects view is itself partly a view about personal identity. It says that at least part of who we are is a function of the projects that we have. There may, however, be times when they come apart. To fully reconcile the two views we may need to make difficult choices. Recall that, on the identity view, we said that S is part of our “essential self,” and that this is the reason the “why should P care?” argument was plausible. S being purpose-bound would mean that, whenever my purposes for some object x change in a relevant way so, too, does something “essentially” about me change. This would amount to the view that very slight differences in my purposes make very big differences to who I am. But my decision to give you this acorn cannot plausibly be seen as amounting to an essential change in who I am. To avoid this, we can insist that S really only goes into those objects and things that are very intimately bound up with who we are. This claim would amount to saying that only life projects, and not merely projects, count as justifying property because life projects are this intimately bound up with who we are. We
would accept a farmer’s claim to his farm, but be forced to deny his claim to the painting he does as a hobby, or to surplus acorns he might pick that are not required for his survival. This is an implication we should want to avoid.

Alternatively, we can abandon the weaker identity claim in favour of the strong identity claim that says we ought care about whatever makes us us. We abandoned this claim earlier for good reason. Some things that make us us just are matters of non-criticizable indifference. We should thus accept the following. Life projects and the weaker identity claim are (always?) co-extensive and have greater weight in the “why should P care?” argument. P’s caring is overdetermined, because P has two good reasons for caring about an x fitting the description of being part of a life project, and being part of her essential self. In addition, we should agree that mere projects are sufficient to ground the claim that P ought care about x, although this reason has less weight. To capture this, we might distinguish “kinds” of S. When the farmer farms, his purposes are very intimately tied up with who he is. This is not so when he paints as a very rare hobby (let us stipulate that this is true from within the farmer’s own point of view). While farming, what gets mixed in is an S imbued with greater importance. Let us call this $S^1$. When painting, what gets mixed in is merely S. Because S is purpose-bound, however, if the farmer decides to abandon farming in favour of painting, this would change what was a mere S into $S^1$ in the relevant paintings and painting-associated objects and things, and vice versa in all the objects and things importantly associated with farming, including the land. It would be an essential change in who he is, and it would be an alteration not in mere projects but in a life project.
CHAPTER 3: FURTHER OBJECTIONS

Life projects have greater weight than mere projects. Because this is so, raising objections to the life projects view is objecting to the strongest version of this view. We can object to this view.

The argument from moral transitivity above is general. It says that, whatever else has moral status, life projects do and, when they do, that transfers moral status to the activities and labour performed on their behalf. But it is not true that everything that can be described as a life plan or project has the right valence. While all life projects might have moral status, not all life projects will have positive moral status. For to affirm that every life plan to have positive moral status requires a thoroughgoing subjectivism, and we may wonder just how subjective this account can be without straining our credulity. Suppose that Pauline wishes to count all of the blades of grass in her front yard as her life project. To this end, she acquires very many things that, she hopes, will help her complete the project within her lifetime. Counting blades of grass does not appear to be a life plan or project worthy of pursuit. If we conclude this, we may conclude that the particular life plan does not have positive moral status, and so the transitivity from this life plan, to purpose, to labour does not occur in her case. Pauline has no claim to own the things she has acquired for this purpose.

To be sure, we should be fairly liberal about life projects. After all, what gives one person’s life meaning and significance can differ, sometimes very much, from what gives someone else’s life meaning and significance. This is not a reason to be liberal about all life plans, all the time. This may be reason to give prima facie deference to the individual’s
subjective assessment of what sort of life is worth living. But it is hard to believe that this
deferece should be more than merely a prima facie deference, that it should be total deference.
Even if we do not know if life plans or projects are the sorts that matter, we may claim to know
that at least some instances are definitely of the right sort, and at least some instances are
definitely of the wrong sort.

We can offer a few cases that are as definite as any cases may be. The case of logical and
metaphysical impossibilities may be such definite cases. It is not possible to square a circle, or to
have our cake and eat it too. It may be Quentin’s life project to square circles. Because it is
impossible, it is difficult to believe that we should respect it. Whatever life plans or projects are
worthy of deference and maybe respect, attempting the logically impossible is not. Quentin
should know better, we might say. So, too, should Quincy, who is mixing celery and oregano in a
blender because he believes that this concoction will make him capable of flying under his own
powers. This impossibility is a contingent impossibility. It is impossible given the way things are.
The contingently impossible should also fall out of the category of life plans that morally matter
for grounding ownership claims.

The claim that the contingently impossible could not ground claims is controversial. It is
controversial because sometimes we do not know what is or is not impossible. Alchemists
believed that making gold from other metals was not impossible. It is hard to criticize people
who make conscientious errors, or who are not acting negligently in the pursuit of what will turn
out to be contingently impossible. Quincy should know better, but Quagmire, the alchemist in the
middle ages, would not be blameworthy for failing to know better. We do not need to settle this
more difficult issue. We can simply say that those plans that involve a criticizable ignorance about what is contingently impossible do not count from a moral point of view, while leaving open the question about non-criticizable ignorance in the pursuit of the contingently impossible.

In addition, some life plans may have negative valence, be immoral. David O. Brink gives us the example of Ludwig, who works at a Nazi camp. His plan is to kill as many Jews as possible. This is a plan that will not ground a property claim to the objects Ludwig labours upon. Lomasky is in agreement. “Just as I earlier acknowledged that not all projects are of equal worth, I now want to disavow that all projects should be taken as sacrosanct, untouchable. Hitler’s remarkably consistent commitment to genocidal havoc deserved to be squashed.”

Another (non-Nazi-related) example would be John Wilkes Booth’s plan to assassinate Abraham Lincoln. He may care very much about the revolver he has, let us say, constructed himself. Even so, we should be willing to take away the gun, and pay no mind to his property claims. It is not that we justifiably violate his existent property claims to the gun, it is that the life plan undermines his property claim in the first place.

The above cases are aimed at the content of life plans. The claim we are making is that the logically, metaphysically, and contingently impossible life plans are not worth having, and therefore do not ground ownership claims. In addition, immoral life plans are also not worth having and are not the sort of life plans that would ground ownership claims. We can also

---

42 Lomasky, “Personal Projects as the Foundation for Basic Rights,” at pp. 53-54.
criticize the method or procedure used to fulfill a life plan. Consider again Pauline the grass-blade-counter above. Her plan is neither immoral, nor impossible. But suppose Pauline counts blades of grass by growing corn. She believes that the number of corn stalks that grow will be directly proportional to the blades of grass in her front yard. She plans to count the corn stalks, multiply by a factor of six, and believes this will accurately determine the precise number of grass blades on her lawn. Even if we are open to the possibility that counting blades of grass is a worthwhile life project, surely it will matter that the person so engaged is instrumentally rational in her manner of accomplishing her ends.

3.1. ATTENDING TO Q

It is easier to be subjectivist about life plans and methods when our focus is on P. What P cares about is her business, and whatever methods she decides to pursue her plans should be no grist for our mill. It is harder to maintain subjectivism in the face of Q. A property relation is not merely a relation between P and some object x. It is a social relation. We can formulate this fact like this. P’s property in x implies a duty or obligation on the part of Q to abstain from interfering

---

43 There is good reason to believe that an additional requirement is necessary -- the minimal choice requirement. This requirement would require P to have actually chosen, counterfactually chosen if asked, or at least not have no (personal) reason to choose the project in question. This requirement would be a procedural requirement in determining what content a life project is to have. The reason we might be inclined to accept this requirement is because sometimes people just “fall into” a way of acting and behaving which, at least with respect to some subset of the actions, can be described as a life project. It is hard to believe that such ‘projects’ should be counted as having moral status because choosing it appears to be a necessary condition of its having moral significance. But this, I take it, is more controversial than my other three requirements, and we do not need to be exhaustive in our criticism to make the general criticism stick. For more on why this might be a requirement, see, for instance, Harry Frankfurt (2004). “Three Concepts of Free Action,” esp. at §III, and “Identification and Externality,” both in The Importance of What we Care About (Cambridge: Cambridge University Press).
with P’s possession and use of x. This is part of the Hohfeldian analysis of a right. Each right comes coupled with a duty. To have “property in” something is to have a right to something, and to have a right to something means others have a duty with respect to you and that something. Q may reasonably ask why he has this new duty, and why he should adhere to it. This question may have added urgency when Q could be better off by taking x for himself. What we need is a “why should Q care about what P cares about?” argument.

One way of addressing this objection is to secularize the labour view and to deny the common ownership thesis. The common ownership thesis is suggested by Locke’s claim that God gave the world to mankind in common. If we hold to the labour view but abandon the theology, none of us would have a property claim to anything we did not labour upon. To insist on common ownership in a case like this is to abandon the labour view. We could own things without doing anything (except, maybe, being born) making labour a non-necessary condition for ownership. If we abandon common ownership, Q’s request for an explanation would have less

---

44 Following an oft-cited analysis of “rights” by Hohfeld (1913, 1917), Daniel Cole and Peter Grossman write: “According to the predominant view, if one person holds a ‘right’ to something, at least one other person must have a corresponding duty not to interfere with her possession and use. If she claims a ‘right,’ but cannot point to a corresponding ‘duty’ that is enforceable against at least one other person, then what she possesses may not be a ‘right’ at all but some lesser entitlement such as a privilege, liberty, or mere use.” Daniel H. Cole and Peter Z. Grossman (2002). “The Meaning of Property Rights: Law Versus Economics?” Land Economics, vol. 78, pp. 317-330, at p. 318. Jeremy Bentham, in his polemic against the Declaration of Rights during the French Revolution, implied a similar view when he wrote, “To proprietary rights. Good: but in relation to what subject? for as to proprietary rights—without a subject to which they are referable—without a subject in or in relation to which they can be exercised—they will hardly be of much value, they will hardly be worth taking care of, with so much solemnity.” Jeremy Bentham in ed. Jeremy Waldron (1987). “Anarchical Fallacies,” in Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man (London: Methuen), at p. 57.

45 Q’s ‘caring’ is meant in the sense of ‘respecting.’ We can rephrase this as ‘why should Q respect what P cares about,’ but this has less aesthetic appeal.
urgency. After all, he would not be stripped of a right, because he did not have this right in the first place.  

Stripping Q of a right will not do as the reason that requires a justification for P’s claim to x. Generating a duty in Q to refrain, however, *does*. Prior to P’s appropriation, Q had the privilege or liberty of using x, just like everyone else. Now that P has a property in x, Q, and everyone else, has a duty to refrain from interfering. Why should Q be bound by this duty? An illustration might be useful to show that this justificatory burden has some urgency, even if it is not of the same weight as the justificatory burden for stripping someone of rights. Suppose Quincy walks through a forest to school each day. It is efficient, pleasant, and keeps him active. Along comes Patricia and stakes a title to that forest. She plans on putting a house there, and begins by building a fence. Quincy can no longer walk through the forest, and, because the walk around the forest is a long haul, takes his car to school instead. Whereas once he got all the benefits of the forest, he now has a duty not to cut through the fence and continue to use the forest path. Surely Quincy needs a story as to why this change of affairs is something he should have to live with.

If Patricia built the fence, not for the house, but to count all the leaves on the trees, Quincy may think that this gives him no reason to respect his new duty. “*That’s* why I can’t enjoy the forest?” he might ask, “because she wants to count the leaves? That’s the dumbest thing I’ve ever heard!” I suspect that most of us will agree with Quincy, and think that this is a dumb thing.

---

46 We might respond by saying that the right Q enjoyed was the right of *appropriating* this x, and not the right to *this* x. If we accept the Hohfeldian analysis of rights, however, this move may be inadmissible. This is because everyone’s claims to rights like these imply no enforceable duties on anyone else. Cole and Grossman make this clear. “…to claim a ‘freedom,’ ‘liberty,’ or ‘privilege’ with respect to some activity is not necessarily to argue that anyone or everyone else has some ‘duty’ to refrain from interference; indeed, everyone else may possess the same ‘freedom,’ ‘liberty’ or ‘privilege.’” Cole and Grossman, “The Meaning of Property Rights,” at p. 319.
to hear. But Patricia might respond like this. “You have projects, and I have projects. You agree
that your projects are important to you, and I am telling you that my projects are important to me.
If you were the least bit sympathetic, you would not thwart my projects, whatever they are, just
as I do not thwart your projects, whatever they are. This is why you should adhere to your new
duty, just as I adhere to the duties that your property claims impose on me.” Loren Lomasky
makes a similar point when he writes, “A has reason to acknowledge and respect B’s having I*
conditional upon B recognizing and respecting A’s special interest in I.”47 We can call this the
reciprocity claim.

3.1.1. THE RECIPROCITY CLAIM

The reciprocity claim may be true in general, which is Lomasky’s claim, but be false in particular
cases. When a project is uncontroversially unworthy, it gives us no reason, not even a pro tanto
reason, to respect property in objects for this unworthy aim. A better version of the reciprocity
claim is this. Given worthy projects (or at least not unworthy ones), Q has reason to adhere to
the duty of abstaining from P’s x conditional on P’s adhering to the duty of abstaining from Q’s
x*. This revised reciprocity claim is a claim about what will make things go better (or at least not
go worse) for Q. It tells Q that his refraining from P’s x is somehow dependent on P’s refraining
from Q’s x*.

3.1.2. THE EMPATHY CLAIM

This means we cannot be thoroughgoing subjectivists about projects. It also gives us one “why
should Q care about what P cares about?” argument. Q has a reason to care on the basis of the

revised reciprocity claim. There are two other reasons, which can be called the *empathy claim* and the *enforcement claim*.\(^{48}\) The empathy claim says this. When we consider what we ought not do, thwarting projects or aims looks to be something we have reason not to do. This is because we make people worse off when we thwart their aims, and we ought not make people worse off.\(^{49}\) This reason tells Q that he should refrain because it will make things go better (or at least not go worse) *for P*. It is hard to believe that thwarting an impossible project makes a person worse off. Projects like these are *futile* -- they are self-thwarting. Similarly, we do not make people worse off when we thwart their ends when their methods of *pursuing* their ends makes the end impossible to attain. These ways of pursuing an end make them futile and self-thwarting as well. It is more difficult to argue that we do not make people worse off when we thwart an aim that is possible, that is pursued in a way that is not instrumentally irrational, but is an end not worth having for other reasons. But we need not explore this here.

### 3.1.3. THE ENFORCEMENT CLAIM

The enforcement claim amounts to this. Q has reason not only to ensure that he does not violate his duty to abstain from P’s x, but to ensure that R does not either. We have reason to be enforcers of norms that we can see ourselves benefiting from if generally adhered to. This is a reason for Q that tells Q things will go better (or at least not worse) *for Q* if the norm prevails. This last reason is crucially contingent on it being the case that Q can expect to benefit from a

---

\(^{48}\) This account of reasons has much in common, and owes a great debt, to Loren Lomasky’s explanation of reasons to respect the projects of others. See Lomasky, “Personal Projects as the Foundation for Basic Rights”, esp. at pp. 47-50.

\(^{49}\) The truth of this claim, unlike the revised reciprocity claim above and the enforcement claim below does not necessarily hinge on Q’s having any non-moral motivation (or ‘external’ reason) to abstain from x on grounds of empathy. See Bernard Williams (1981). “Internal and External Reasons,” *Moral Luck* (Cambridge: Cambridge University Press), esp. at p. 101.
general norm of upholding duties of noninterference with property claims, and that, at least locally, it is rational for Q to think that his enforcement behaviour is at least not irrelevant to the norm. If Q has good reason to believe that he will not get any x for himself, then this motivation is non-existent. Similarly, if our interactions were anonymous or with very many people, it would rarely be the case that Q’s enforcement behaviour will have anything but the slimmest of influences on the general norm. Depending on how slim the odds are, Q can be irrational for enforcing the duty on himself and others.

The deep labour view is not deep enough. To deepen it further, we need to ensure that labour is labour-of-the-right-sort, within a (life-) project-of-the-right-sort. Thus it must be purposive labour aimed at a project of the sort that is worth having, or at least is not not worth having. We said that it is not implausible to suggest that S was purpose-bound. This is what saved the labour view against several objections, and what helped square Locke’s view with his allowing the transfer of ownership. It made purposes internal to the metaphysical picture. It does not look like we can do the same with worthy projects. What would it mean for S to be worthy-project-sensitive? How could it be the case that, for instance, while P fails to realize that her project is impossible, her S does? It cannot. This means that the criterion of a worthy project acts as a proviso, much like the waste, spoilage, and “enough and as good for others” provisos. If we do not accept this proviso, then the Lockean mixing view is implausible.

3.2. THE CARBON-COPY IMMEDIATE REPLACER

On the labour view, what matters is the precise object or thing we have laboured upon. If Q were to replace an object or thing P has acquired through labour, this would always be a moral
problem. Suppose someone had a carbon-copy immediate replacer (C-CIR). The C-CIR replaces whatever object is zapped with it with an exact molecule-by-molecule duplicate. It cannot be discerned from the original, it is identical in almost every way -- the only difference is that it is made of different bits of matter, it is numerically distinct. Should it concern us if the C-CIR is used on some objects?\footnote{This example is more abstract than perhaps it needs to be. G. A. Cohen, for instance, asks us to imagine that his rolling pin rolls down a hill and through Robert Nozick's open kitchen door landing in a pile of his rolling pins. Supposing Cohen comes and asks for his rolling pin back, does Nozick need to give him back the exact rolling pin? On the Lockean labour view, that looks to be required. G. A. Cohen (1995). \textit{Self-Ownership, Freedom, and Equality} (Cambridge: Cambridge University Press).}

The object so replaced is just as good as the original. This is one reason to think that the use of a C-CIR should make no difference to anyone. There are reasons to think that use of the C-CIR sometimes yields objects which are not “just as good as” the original. In the case of persons, we would not think that a carbon-copy (or clone) replacement of our daughter (with the same thoughts, apparent memories, habits, feelings, and so on) would be “just as good as” our daughter. What we want is not someone who is just like our daughter, but our daughter.\footnote{Harry Frankfurt insists that, if you were to replace his daughter with an exact duplicate, that would matter to him. What he wants is not someone who is just as good as his daughter, he wants his daughter, the particular individual. See H. Frankfurt, “On caring,” in Frankfurt, \textit{The Importance of What We Care About}, pp. 150-188.}

This objection to some instances of duplication is a good objection because, for some things, originality matters. We care that our daughter is the same daughter, and not an exact duplicate. The same can be said for at least some objects. I care, for instance, that the journal I wrote my thoughts in is the journal, and not a duplicate. Similarly, we care that a painting of the Mona Lisa is the Mona Lisa, the original, and not a masterly duplicate. We would think this even if the duplicate were not merely a really good approximation, but an exact duplicate.
This would be a satisfactory rebuttal to the carbon-copy objection if all objects and things were the sorts of objects and things for which originality matters. Not all objects and things are like this. Many objects and things are instrumentally useful in such a way that an exact carbon-copy duplicate would make no difference of any kind. Ordinary toilet paper is like this. So is carpet. One way to see this would be to consider the regular use of a C-CIR. Suppose the C-CIR was more generally available, and it was common for people to use it. Let us now say that we can, at some cost, assess whether or not the carbon bits that make up some object are the original bits of carbon, and not exact duplicates. For the labour view to be true, it should always matter, and we should be willing to expend at least some resources to determine the originality of all objects and things that we have a property in from fingernail files to toilet paper to Rembrandts. This view is false. We should not be willing to expend any resources at all to determine the originality of certain objects and things. This is true in the case of ordinary toilet paper and ordinary carpet. This is reason to abandon the labour view in the case of objects whose originality does not matter. I suggest that this is the case for the vast majority of objects.

CHAPTER 4: CONCLUSION

The metaphysical picture includes the existence of “S.” S is deeply mysterious and undetectable. We might think S is useful. This is reason to believe in S. But if we can account for all the facts without appeal to an S, we probably should. We should not multiply the number of things in our universe without good reason. We do not have good enough reasons to believe in S.

---

52 If the toilet paper was, for instance, hand-made by Ghandi, then it would not be “ordinary” toilet paper. It would be “special” toilet paper for which originality may matter.
One reason to believe in S is because it explains our identification with objects. We said that we ought care about our S because S is part of our “essential self.” We said that it can go “in” to objects, and we may think that this explains our identification with certain objects. This explanation is doubly defective. For one, an explanation seeks to explain what we do not know by appeal to something we do know. If a dictionary defined what to us is a mysterious word by appeal to what to us was another mysterious word, we would not think that we have at least understood the first mysterious word. We have understood neither. Because S is mysterious, it does not explain the mysteriousness of the sense of identification we have with some objects. In addition, there is no pressing need to explain psychological identification by turning to the metaphysical fact of S. All we need is a story about the connections that form between our memories, our emotional centres, and other mental states in the presence of an object we feel this identification with. Again, S is unnecessary for this purpose.

Above, we made the claim that S being purpose-bound strengthens the projects-based “why should P care?” argument. The trouble with this claim is that it looks as though our caring about S is parasitic on our caring about our purposes. Consider this. We care about the weather. A thermometre is “weather-bound.” When it is cold outside, the thermometre tells us this, and when it is hot outside, it tells us this too. But we do not care about the thermometre when we care about the weather. What we care about is just the weather. If we care about the thermometre, it is for other reasons (like epistemological reasons, for instance). The same claim can be made on behalf of purposes. Thus, we don’t need a purpose-bound S to explain our caring about certain objects. Purposes alone will do.
S does not need to feature in a projects-based story of property, and neither is it necessary to account for the weaker identity claim. It appears as though the only good reason for S is for the aesthetic reason that it allows us to move from something we do own (S), to something we do not (x), by appeal to the fact that what we own is in what we do not (S-in-x). To see that this is not a good reason, we need merely recall that, as of yet and to my knowledge, there is no good rejoinder to Robert Nozick’s tomato juice example. Nozick’s example is as follows.

Why isn’t mixing what I own with what I don’t own a way of losing what I own rather than a way of gaining what I don’t? If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?\(^{53}\)

Notice that responding to this example by appeal to the waste and spoilage provisos won’t do. To be sure, the tomato juice examples appear to be cases of waste, but that is decidedly beside the point.\(^{54}\) The point is not found in the details of the argument, but in the general claim that we do not know why mixing one thing we own with something we do not results in our owning what we do not, rather than in losing what we do own.

4.1. WHAT'S LEFT OF THE LABOUR VIEW?

As we have seen, there do not appear to be good reasons to believe in S. Does this make the labour view false? Not necessarily. What it makes false is Locke’s particular version of the labour view, which appeals to the metaphysical fact of mixing. But there are other ways of \[\ldots\]


\(^{54}\) If someone insists that it is *not* beside the point, we can appeal to Locke’s insistence that determining what is and is not useful is entirely up to the labourer. Writes Waldron: “But what counts as use and what counts as useless destruction is for the owner to decide: briefly, anything he takes to be useful to himself counts as a use of the object however wasteful it may seem to someone else.” Waldron, *The Right to Private Property*, at p. 161. Thus, we can change the example by stipulating that the labourer thinks the sea with the tomato juice is more useful, at least to him.
capturing what is, surely, highly intuitive and attractive about Locke’s labour view. If we work on something in a way that is not instrumentally irrational, with some purpose in mind that features in a life-project-of-the-right-sort, surely that is a reason to let us have the object worked upon. In addition, if, through labouring on something, we come to identify with some object such that our possession of it would make us better off, then that is also a reason to let us have the object.

Finally, it is difficult to avoid the intuitive response to someone who claims to own something. “What did you do to get it?” Many of us think that doing something (labouring) on an object is a necessary requirement of having a just claim to owning it. This means that we cannot cavalierly dismiss possible variations of a labour view from consideration on the grounds that Locke’s version of the labour view is false.
PART 2
OWNERSHIP, GUARDIANSHIP, STEWARDSHIP

CHAPTER 5: RES NULLA

According to Roman law, there are five categories of property:

- *Res publicae* (“public things”—an object or thing held by the public and administered by the government),
- *res communa* (“communal things”—something held in common by all of us or some of us),
- *res privitae* (“private things”—something held by an individual),
- *res religio* (“religious things”—something sacred or divine that is administered by the clergy or religious leaders), and
- *res divini juris* (“divine jurisdiction things”—something owned by the gods).

Each category of *res* determines the appropriate stance we ought to take towards that object or thing, as well as our duties and obligations. For instance, categorizing something as a *res publicae* tells us that the government is responsible for stewarding it for the sake of the public. While a *res privitae* tells us that the owner may choose to use it for any sake she pleases, including her own. For Romans, these categories exhausted everything in the world, and outside of it. The category of unowned things, *res nullius*, is reserved for things that are as-yet unowned but in principle could be.

One possibility that the Romans did not consider is this. It may be true that some objects or things do not count as *res* at all. If something is not *res*, then it cannot be property, at a conceptual level. *Res* may be analogous to "commodity." Some claim that creating property rights in novel situations (like intellectual property rights, or carbon credits) is "commodifying" what was once not a commodity. The reverse is true when we remove something from the sphere of property. This is sometimes called decommodification.
On some views, "commodification" implies a negative assessment. There are many different ways to understand this negative assessment. It might be an aesthetic objection (to think of some object x as property or as a commodity is to make it less important or significant). It might be a framing objection (framing some object x as property or as a commodity may lead to our failing to treat it “properly” or respectfully). It might also be an ethical objection. Finally, it might simply be a conceptual objection. To say that x is a commodity is to make a category mistake. X, whatever it is, is not a commodity, or a res. These objects or things might be called res nulla, “not a thing” or “not things.”

In most cases, we should be unsympathetic to the claim that viewing x as a commodity is a (morally or aesthetically) bad thing. There is no necessary connection between the mere fact of ownership over an object, and our treatment of that object. Some people who own objects treat them very well, preserving them, cherishing them, improving them, like some do with comic books and others do with plants or flowers. The fact that they own these objects and are aware of their ownership does not lead these people to tear out the pages of the comic books, or pour bleach on their cherished plants.

Perhaps the objection here, then, is that in principle whatever counts as a commodity is an object that could, in a moral sense of “could”, be treated in just whatever way the owner pleases. It turns out that many people cherish and preserve what they own. But this is contingent on the owner’s preferences or desires. If they had different desires, then they would act differently. The commodification objection suggests that some objects are such that they ought not be open to this contingency, and are therefore wrongly categorized as “commodities” or as objects fit for an ownership relation. There are some objects towards which or with respect to
which we have duties and obligations that are independent of the “owner’s” preferences or desires. When that is so, I will argue, it is wrong to describe the privileged position of being the final arbiter with respect to these objects as “ownership.”

Below, I will argue that not everything is open to the “ownership” relation. In particular, I suggest that persons (including the self and children), as well as cultural artifacts may not be open or fit for the ownership relation. Instead, the former are fit for either sovereignty, or a guardianship relation, while the latter are fit for a stewardship relation. The particular exemplar or paradigm instances of the categories should not sidetrack the reader. The point is not the particular instances, but the categories, and the formal criteria that need to be met in order for something to properly be fit for these alternative categories. I am not committed, for example, to the view that cultural artifacts cannot be owned and must be the objects of a stewardship relation. Whether or not that’s true depends on whether or not cultural artifacts in fact meet the criteria, and whether or not we are justified in thinking this.

5.1. THE PUZZLE

There’s an interesting puzzle if we compare the views of contemporary Lockeans who secularize Locke’s view, and Immanuel Kant. Locke (II. §27) writes: “...every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his.” Meanwhile, Kant (MM, 6:270)\textsuperscript{55} writes: “…someone can be his own master but cannot be the owner of himself (cannot dispose of himself as he pleases)--still less can he dispose of others as he pleases--since he is accountable to the humanity

\textsuperscript{55} References are to Immanuel Kant (1797), trans. Mary Gregor (1996), Metaphysics of Morals (Cambridge: Cambridge University Press).
in his own person.” As Robert S. Taylor says, “The notion of “being one’s own master,” especially when combined with the emphasis on noninterference with the freedom of others, seems tantalizingly close to the concept of self-ownership…” But Kant insists that we are not self-owners.

What’s puzzling about these two positions is that both Kant and Locke appear to accept identical duties and obligations that we have with respect to ourselves. We cannot commit suicide but must preserve ourselves; we cannot sell ourselves into slavery, and we have an obligation to improve our talents.

Locke thought these duties were perfectly consistent with the concept of ownership, so he didn’t think there was anything the matter in insisting that we had a property in ourselves. Contemporary Lockeans think self-ownership is a felicitous way of describing Locke’s view, meaning that they think we can own what we cannot smash, sell, or spoil.

Not so for Kant. Kant thought that duties like these ruled ownership out conceptually. We cannot be self-owners because we cannot have duties like these with respect to owned objects. For Kant, you cannot own what you can't smash, sell, or spoil.

5.2. MISSION & METHOD


57 For Locke on self-preservation and slavery, see II, iv, § 22: “This freedom from absolute, arbitrary power is so necessary to, and closely joined with, a man's preservation, that he cannot part with it but by what forfeits his preservation and life together. For a man, not having the power of his own life, cannot by compact or his own consent enslave himself to any one, nor put himself under the absolute, arbitrary power of another to take away his life when he pleases.”

58 To be clear, Kant thought that ownership, specifically, was inapplicable. It would be all right to say that P is a master over, or had authority to determine what was to be done with, this-or-that or so-and-so. It would be all right, maybe, to say that someone had a property in x, whatever x is, even if it would be wrong, on Kant’s view, to say that someone owned x.
In this chapter, I want to adjudicate between the Kantian and the contemporary Lockeian conceptions of “ownership.” I will argue that Kant’s conception is a better conception, all things considered, than the contemporary Lockeian or Honorean conception.

Below, I will, first, remind the reader of the Honorean bundle of rights conception of ownership, and show how it can be squared with Locke’s caveats on self-ownership. In Chapter 1, I try to argue in favour of what I take to be Kant’s conception of ownership. There, I try to preserve a no-new-reasons or a duty-free conception of ownership (a morally thin concept) by arguing against the most plausible duty that comes with ownership, the duty to inspect and make safe. In Chapter 2, I try to suggest that self-ownership is a category error, and that we should abandon talk of self-ownership entirely in favour of talk about sovereignty or self-mastery. Chapter 3 is devoted to highlighting what I take to be the four key features of the common or folk conception of ownership that disturbs us when we think about the parent-child relation being cast in terms of ownership. Those four key features that are in the orbit of the ordinary conception of ownership are grounded in one particular duty that we think we owe children, the duty to benefit or act “in the interest of” the child. Chapter 4 further explores this and suggests that we should talk in terms of “guardianship” rather than ownership to describe the parent-child relationship. Chapter 5 then exhausts the logical space of possible duties that stem from ownership-like relations by introducing stewardship. I call all three of these relations by the umbrella term “tenure.” One can have “tenure” (or be in the privileged position of being the final arbiter with respect to what is to be done with an object) either in the form of ownership (no new reasons) guardianship (new duties owed to the tenured object), or stewardship (new duties owed to relevant third parties with respect to the tenured object). The stewardship relation is analyzed
by looking at cultural artifacts as possible exemplar objects fit for a stewardship, but not an
ownership, relation.

To adjudicate between these conceptions, I employ the following method. I try to do
justice to ordinary language, and to ordinary, common sense linguistic intuitions. Across a
variety of cases, I take on board our ordinary convictions about what concepts are appropriate or
fitting and, by way of reflective equilibrium, try to clarify and make uniform our conceptual
resources. Once we have clearer and more uniform conceptual resources, it is my hope that these
resources will be more illuminating of the normative territory, and will better help us get the
right normative conclusions. What matters, after all, is not the mapping of symbols to meanings,
but the normative truth. Clearer and more uniform conceptual resources will help us avoid
confusion and equivocation, as well as normative questions or puzzles that are tangential to what
really matters.

Ownership is clearly a normatively relevant concept; a lot of work in moral and political
theory centers around it. Since this is so, it behooves us to get the concept "right." Often, when
we are trying to get a concept "right" we just try to figure out how people use the word for that
concept. But when it comes to normatively significant concepts, it might sometimes be better for
us to consider the role the concept plays in our normative judgements in trying to "get it right."

Ownership as one species of tenure (along with guardianship and stewardship) fits the
bill. It is an attempt to illuminate not how we use the word "ownership," but how that (edited)
concept (along with guardianship and stewardship) can be used to make better sense of our
normative practices. My analysis is, therefore, not normative in the sense that I am suggesting
that this is what ownership is. Rather, it has normative implications insofar as one accepts that
ownership-practices, as we have them, should play a role in determining how we carve up the world with our concepts.

5.3. HONORE’S ACCOUNT AS BUNDLE

The dispute between Locke and Kant can be better understood by analyzing the standard conception of ownership, provided by A.M. Honore. By way of reminder from Chapter 1, section 1 of my dissertation, on Honore’s account property is a “bundle of rights” with more particular “sticks” or “incidents.” There are 12 of them:

- **Rights** to: 1. possess, 2. use, 3. manage, 4. and receive income
- **Power** to: 5. transfer, 6. waive, 7. exclude and 8. abandon
- 9. **Liberty** to consume or destroy
- 10. immunity from expropriation
- 11. the duty not to use property harmfully
- 12. liability for execution to satisfy a court ordered judgment

Each stick in the bundle is property. If you have the power to exclude someone from use of this pen, then you have a property in this pen, even if you don't have any of the other sticks in the bundle. You own the pen only if you have a sufficient number of sticks in the bundle of rights.

This Honorean conception of ownership allows the contemporary Lockean to say that, while you can’t smash, sell, or let spoil yourself, you have all of the other sticks in the bundle of rights. And then they can insist that the remainder of the bundle is sufficient to count as an

---


60 Jeremy Waldron makes this idea clearer: “Ownership… expresses the very abstract idea of an object being correlated with the name of some individual, in relation to a rule which says that society will uphold that individual’s decision as final when there is any dispute about what is to be done with the object. The owner of an object is the person who has been put in that privileged position.” Jeremy Waldron, “What is Private Property?”, at p. 333.
owner. The self-ownership theorist can then say that, given this conception, Locke really counts as a self-ownership theorist, once we get clear on what it means to be an “owner.”

This Honorean conception of ownership can account for Locke’s particular convictions, but it’s clunky. It requires us to add the caveat that we cannot smash, sell, or let spoil ourselves. This clunkiness would be fine if we didn’t have alternative concepts that were as clear and illuminating of the moral territory as self-ownership. But we do have alternatives that are co-extensive with the desirable moral implications of self-ownership, while being dis-extensive with the undesirable moral implications of self-ownership. Kant would have us use self-mastery, but (individual) sovereignty would do the trick as well.

Not only is it clunky, it appears to conflict with Kant’s conception of ownership. According to Honore, none of the sticks are essential for ownership. For Kant, however, at least the power to transfer and the liberty to destroy are, in fact, essential.61 Restricting the power to transfer and the liberty to destroy is inconsistent with the moral freedom to “dispose of [owned objects] as [one] pleases.”

---

61 Kant is far from alone in thinking this. For example, G. A. Cohen writes, “If I am to pursue any project at all, I must pursue the project of keeping myself alive. To pursue that project, I must eat, and, therefore, I must have a right to eat. But this does not mean that I must have a right to private property in food. A monastery might hold a stock of food communally, but endow each monk with a right to absolutely uninterruptible eating of particular portions of food. Such a monk would have no right to destroy, or sell, or give away his portion: he would therefore have no private property in any portion of food, yet he would nevertheless manage to fulfil his project of staying alive.” (Emphasis mine) G.A. Cohen (1998). “Once More into the Breach of Self-Ownership: Reply to Narveson and Brenkart,” The Journal of Ethics, vol. 2/1, pp. 57-96 at p. 61.
Noting Kant’s objection to consensual and self-regarding acts that are inconsistent with respect for the humanity-in-oneself, Robert S. Taylor claims that, for Kant, “Self-ownership apparently licenses such acts, which is why Kant rejects it.”

Taylor thinks we can make a Hohfeldian distinction between being at liberty to $\Phi$ and having a right to $\Phi$. Self-owners may have a right to commit suicide, for instance, but they are not at liberty to commit suicide because of an unenforceable moral prohibition against suicide. Writes Taylor:

The key to such a reconciliation is Kant’s use of the phrase “dispose of oneself as one pleases.” To use Hohfeldian terminology, Kant is claiming that owning oneself implies a liberty to “dispose of oneself as one pleases,” that is, an absence of self-regarding duties. Strictly speaking, however, self-ownership implies no such thing. …[T]he incidents (claim rights) that constitute self-ownership impose perfect duties of physical noninterference upon others—that is all. Such rights are completely consistent with self-regarding (albeit unenforceable) duties the self-owner may be under, such as a duty to respect humanity-in-oneself. More generally, a right does not imply a corresponding liberty, or absence of duties, regarding the protected action. For example, there is nothing contradictory about the following pair of claims:

I have a right to commit suicide (that is, you have a perfect duty not to interfere), but I am not at liberty to do so (that is, I have a perfect though unenforceable self-regarding duty to continue living).

There is, however, a problem with Taylor’s attempted reconciliation. It looks like Taylor equivocates on "liberty." For Hohfeld, a "liberty" would be inconsistent with duties of any sort,

---

62 “Throughout his writings, Kant maintains that any number of consensual or even self-regarding acts are inconsistent with respect for humanity-in-oneself, including suicide, voluntary servitude, organ sales and self-mutilation, prostitution, premarital sex, and even the failure to develop one’s talents. Self-ownership apparently licenses such acts, which is why Kant rejects it.” Robert S. Taylor, “A Kantian Defense of Self-Ownership,” at p. 66.

63 Ibid., at p. 66.

64 Ibid., at p. 66-67.
including "unenforceable self-regarding duties." Discussing the Hohfeldian distinction between a claim-right and a liberty-right, Jean Hampton writes that "'Right,' in this sense, is the opposite of a duty. If I have a liberty to use land in a certain way, I may do so or not, as I desire; in no way am I morally required to do so."\textsuperscript{65} If there is no way in which I am "morally required" to use something in particular ways if I have a liberty or privilege, then that excludes duties of all sorts, including of the self-regarding variety.

Strictly speaking, then, a Hohfeldian reconciliation is not possible. However, we might leave room for a different way of reading Taylor. It is perfectly consistent to insist that there is a moral duty on each of us to $\Phi$, without that duty being enforceable by others. For example, I may have a duty to think well of my parents, even if that duty is not enforceable in any of the standard ways that might count as "enforcement."

But this, too, will not do. This is because our notion of "enforcement" would need to be curtailed radically to include all and only legal forms of enforcement. Most moral obligations, however, are not enforced in this way. Enforcement of strictly moral obligations and duties is left to ostracism, frowns, gossip, and the fear of reputation effects. In this sense, even these sorts of obligations are enforceable. If we really are under a moral obligation or posses a moral duty to respect the humanity-in-ourselves, then that duty is enforceable by means of ostracism, frowns, gossip, and the fear of reputation effects. At any rate, it's difficult to see why Kant would endorse self-regarding duties without thinking that the rest of us have the liberty to enforce that moral duty by way of these kinds of enforcement procedures and methods.

Kant’s conception of ownership can be better understood by seeing that, for him, ownership involves what can be called a “no-new-reasons” condition. For anyone to count as an owner, it must be the case that ownership (the position of privileged authority to be the final arbiter with respect to an object) does not generate any new reasons for the owner.66

Honore's analysis of property and ownership is widely accepted. Like others, Waldron accepts Honore's account in general, but objects specifically to inclusion of the 11th incident in the analysis of property on the grounds that it has no essential connection with property or ownership. Instead, the duty not to use property harmfully is part of what he calls "general background constraints" on action. Writes Waldron: "...these prohibitions are better regarded as general background constraints on action than as specific rules of property (let alone as specific incidents of private property)."67

When it comes to whether or not you can shove a knife between someone's shoulder blades, it is irrelevant whether you have property in, or are the owner of, that knife. We cannot put knives in peoples' shoulder blades whether or not the knife in question is ours. Including such a duty in the conception of ownership is redundant. Of course, one might argue that the duty (though redundant) is nevertheless part of what it is to own something. But such a move is unmotivated. After all, what is it that led us to include this duty other than our recognition that the duty is had by all owners? If we can explain this duty by referencing background constraints, then there remains no reason to include it in the ownership concept itself.

---

66 To be clear, ownership generates reasons -- if I own this pen, then everyone else has to ask my leave to use it -- but those reasons are reasons for non-owners.

One option for us here might be to follow Waldron's example. That is, we might argue that moral responsibility for harms caused by one's property is simply an instance of a moral demand made on all agents -- owners and non-owners alike. It takes little thought, however, to realize that our strategy cannot mirror Waldron's exactly, for it is clear that owners are held responsible for their property's harms more than non-owners. If my tree falls on your car, I am responsible. Joe, our neighbour, is not. So it is clear that the moral responsibility in question is connected somehow to ownership in a way that the duty to not stab is not.

It does not follow, however, that Waldron's move is closed to us entirely. For it is possible that ownership generates moral responsibility not because it is part of ownership, but because ownership causes one to meet the criteria for some conditional moral demand. Consider an analogy: Biological parents are frequently taken to have special duties of care with respect to their children. One explanation for this might be that these duties are part of what it is to be a biological parent. But it takes little thought to see that this is implausible. After all, if I put my child up for adoption, I may no longer have these duties. But I am still the child's biological parent. This would be impossible if these duties were constitutive of being a biological parent. A more plausible claim is that biological parenthood seems by default to entail another relation -- that of guardianship. And it is constitutive of being a guardian that one has certain duties of care with respect to one's wards. Thus, certain duties follow from biological parenthood by default though they are not part and parcel of being a biological parent.

Something similar holds for ownership. Being morally responsible for the harms caused by one's property is not constitutive of being an owner. Rather, being an owner by default causes one to meet the conditions from which this responsibility does follow in cases where externalities
are not fully internalized. By way of preview, the argument is that taking ownership of certain objects increases risk to others, and that there are general background moral demands associated with such increases in risk. In the next section, I defend this background demand by offering cases that do not involve ownership. I then turn to a defense of the claim that ownership leads one to increase risk to others. As in Waldron's case above, it seems that if this explanation is right, it would be redundant to include this demand in the concept of ownership. Finally, we can further bolster this case by demonstrating that it accords with our judgements in cases like Bodine v. Enterprise High School.

6.1. LIABILITY & THE DUTY OF CARE

Alternatively, we may see the objection as narrowly addressing only this particular stick or incident -- the duty not to use property harmfully -- rather than as an objection to normative demands on owners being part of the meaning or conception of ownership generally. One plausible suggestion is that Honore merely misidentified the 11th incident. It is not that legal systems insist that property not be used harmfully, but that ownership comes with liability: Owners have a duty to ensure that property does not bring about harm to others, a duty of care.

There is clearly a difference between using an object harmfully and harm's being "brought about" in connection with that object. It is possible, say, for an object to be the cause of harm to another without that harm's being mediated by the owner's agency. For example, a branch may fall from a tree because the tree is old and the weather is windy. If that branch falls on top of someone's foot, a harm connected with the branch has clearly been brought about. Yet it would be inappropriate to say that the branch had been used harmfully.
In many legal systems, P's coming to own x generates new liability for P. The fact that P owns a piece of property -- land, for example -- means that should someone harm themselves on that land, P can be held liable just because she is the land's owner. If we accept a normative conception of ownership, then this reason may be generated by the ownership itself: one incident of ownership is a condition of liability; the duty of care. The duty of care is the correlative of the right of non-owners against owners taking reasonable steps to ensure that their property is not in a state that can bring about harm to non-owners.

Is it plausible to suggest that ownership alone generates liability for damages or harms caused by one's property? Consider a fanciful example: Suppose there are two rocks at the top of a cliff. One of the rocks is on Patricia's property -- it is Patricia's rock -- the other one is on public property. Patricia is equidistant from both rocks. Now suppose that both rocks are teetering, and each will shortly roll down the cliff. Unfortunately, there are two persons, identical in all relevant respects (same age, same level of innocence, engaged in the same activity -- collecting flowers for their respective mothers) located in the respective paths of the rocks. Each of the rocks will crush one of the two persons. Patricia has only enough time to stop one of the two rocks. We may ask: Does Patricia have additional reason to stop her rock, the rock on her property? If we think that Patricia has such additional reason to prevent her rock from crushing the person below, then it appears that ownership either generates or augments reasons. If we think, instead, that Patricia has no basis for deciding which of the two rocks to stop, then ownership does not augment or generate reasons, at least in an example like this.

Everything said so far regarding Patricia is compatible with the idea that she has reason to stop at least one of the rocks. The question is not whether Patricia has such reason -- most
would agree that she does -- it is whether ownership provides an *additional* reason. Such an additional reason *does* exist: When the rock is her rock, our attitudes ought to be suffused with more blame if that rock brings about harm. Patricia really is more blameworthy if the rock is her property.

If we are agreed, then there are a number of possible responses. The first is to insist that ownership generates no new, special, or additional reasons but, rather, *adds weight to* background reasons that apply to all of us. Ownership is a matter of *weight*, not a matter of novelty, we might say. Alternatively, we might focus on the *kind* of reasons or obligations that are generated by ownership, rather than on the existence of reasons. A difference in *kind*, not of degree, or weight, we might say.

It is plausible to suggest that ownership adds *weight* to background reasons that apply to all of us. In Patricia's case, regardless of whether or not she owns the rock, she has reason to prevent it from rolling down the hill. The reasons that apply to Patricia apply to all of us, were we in her shoes, or in her circumstances. Whenever, that is, we have the means, the opportunity, and the ability to prevent a great harm at little cost to us, we ought to prevent the great harm. We would blame Patricia for being indifferent, regardless of whether or not the rock was hers. But the fact that one of the two rocks is Patricia's rock might add weight to this background reason (or background reasons) that is not exclusive to her. Thus we might believe that Patricia is blameworthy if she has an attitude of indifference, or does nothing, whether or not the rock is hers, but we might also believe that she has weightier reasons to prevent *her* rock from causing great harm, just because she is more blameworthy for great harm caused by her property than by any old rock that is not hers.
In other cases, however, it does appear as though there really are new reasons. It seems plausible to suggest that all of us have reason to ensure that our property does not bring about harm to others. Take Patricia's rock, for example. She has weightier reasons to stop it from crushing a child in that path, as compared with the reasons that she has to stop just any rock from crushing anyone in its path. The weightier reason, however, may stem from the fact that Patricia ought to have ensured that her rock was not in a position to cause harm in the first place. And this duty requires more than merely recognizing a potential harm and doing something about it, or being careful with any objects that we happen to be using or interacting with. It requires owners to take steps to discover potential harms, and taking steps to reduce or eliminate the potential hazard. Owners have an obligation to inspect and make safe. Non-owners, however, do not, or not always. This is because it would be too burdensome to suggest that we have a generalized duty to inspect and make safe all objects in the world (or even in some smaller geographical area).

The obligation or requirement to inspect and make safe is not identical to Honore's 11th incident, the incident we abandoned due to Waldron's objection. The 11th incident was the requirement not to use property harmfully. The requirement to ensure that our property will not bring about harm captures both our using owned objects to harm others, and those objects bringing about harm to others in ways that are not mediated by our agency.

To make this clearer, take the example of Quincy purchasing a gun for hunting. Quincy may use the gun harmfully by intentionally shooting someone. But Quincy may also fail to take proper precautions against, for example, the gun being accidentally discharged (when it falls from the shelf, say, or when his two-year-old daughter picks it up to play with it) resulting in
harm to someone. The requirement not to use property harmfully would merely capture the first case. And the first case is irrelevant to ownership, since it is not a requirement exclusive to owners. But the requirement to ensure that your property does not bring about harm (through negligence, or insufficient precautionary measures) is a requirement specific to owners.

Our analysis does not require precision here. We need not settle on the precise contours of this duty of care, or what counts as meeting this duty. We also need not settle when someone is to be held liable and if, for example, a harm being unforeseeable by a reasonable person mitigates or eliminates liability. We need only point out that owners have this duty, and are under the duty in virtue of ownership.

This is a normative claim. The argument tells us that the requirement to ensure that owned objects do not bring about harm, a duty of care for owners, ought to be included in any political-legal conception of ownership. Without this requirement, we have less reason to endorse a system that permits ownership. Patricia really does have weightier reason to prevent her rock from tumbling down the hill, and she would be more criticizable if she were indifferent. Similarly, Quincy has reason to take precautions when storing his gun. We all have extra reason to take precautionary steps to ensure our property does not bring about harm. This moral claim, the purported substitute for Honore's 11th incident, is reflected in current legal systems. Many legal systems insist that owners have a "duty of care" to third parties with respect to their property.

6.2. RISK

Why might owners be under a duty of care, such that they can be held liable? The above analysis provides intuitive support for a general conviction that owners are under a duty of care. In
Patricia and the two rocks, we insisted that it is intuitively plausible to suggest that Patricia has weightier reason to prevent her rock from teetering off the precipice; in the indifferent Patricia case, it was plausible to suggest that Patricia is more blameworthy when it is her rock; and it just seems right to insist that Quincy has a duty of care with respect to his gun. These intuitive responses all point to a duty of care on owners.

One possible explanation for this is that a duty of care generates the least cost or burdens in a system that permits ownership. It may be that such a system is most efficient. If we just hold owners legally liable they will take additional steps to ensure against harms, and everyone will be better off. While this might be an explanation for why we ought to hold owners legally responsible, it fails as an explanation or account of our moral intuitions. What we were investigating is blameworthiness, and whether or not someone was more or less blameworthy. The explanation here on offer makes blameworthiness irrelevant -- whether or not we think someone is morally liable for some harm, it will be more efficient if we just hold owners legally liable. We can do better.

Ownership might be conceived of as a force-field, preventing others from interacting with the owned object unless the owner permits them by turning off the force-field. If P's ownership of x generates non-interference reasons in Q, then only if P releases Q from those non-interference reasons can Q permissibly use, possess, or otherwise interact with, x. Sometimes, x may be the sort of thing that might cause harm to others. If the rest of us are not to interfere, then it seems plausible to suggest that P has a responsibility to ensure that her x does not do us harm. Q will put up with the force-field around x just in case P accepts a new reason or obligation, *viz.* to ensure that x will not bring about harm.
If this view is accepted, it may make private ownership of the external world less objectionable. Some have criticized private ownership on the grounds that we shouldn’t be able to generate duties and burdens on others without compensation. Private ownership appears to be the sort of thing that generates benefits for the owner, and burdens on all non-owners. That does not appear fair. If, however, owners must accept a duty of care as a burden for taking ownership, the balance of burdens is less unfairly tilted. We have reason to permit ownership practices since these practices help make the world safer for us non-owners, or gives us the added comfort of knowing that we can hold liable owners if harm comes to us at the hands of owned objects.

Above, we discovered that the duty not to use objects harmfully is not a part of the concept of ownership but is, rather, a background constraint that affects all agents, and therefore all owners. We may ask, appropriately, whether the same is true in the case of liability. Can owners be held liable merely in virtue of being owners or does liability stem from some other duty owners have qua agents, rather than qua owners?

We can see immediately that the case of liability is not precisely like the case of harm. While it is clear that everyone has a duty not to harm, it is equally clear that owners are liable in ways that non-owners are not. There is a connection between ownership and liability.

It would be too hasty, however, to conclude that liability is a part of the right conception of ownership. Consider, again, the duty not to harm. One has this duty (assuming it exists at all) in virtue of one's agency. But it would be a mistake to think that this somehow indicates that having this duty is a part of what it means to be an agent. The duty not to harm is not part of a conception of agency. Similarly, it may turn out that ownership generates duties that are not a part of the conception of ownership.
As with the case of ownership and harm, we can attempt to motivate the idea that liability is not constitutive of ownership by suggesting that such a view would be redundant: We can explain why owners are liable without that liability's being a part of the meaning of ownership. To anticipate: We argue that P has a duty of care with respect to x at t₂ just in case:

(a) x poses a greater risk to Q at t₂ than at t₁, and
(b) P is responsible for this increase in risk.

The argument will be that taking ownership of x in some cases causes x to pose a greater threat to non-owners of x. Just as a duty not to harm results from agency, but is not part of the conception of agency, so the duty of care results from ownership, but is not part of the conception itself.

6.3. INCREASING RISK

Patrice is a biomedical researcher. She is studying the possible medicinal uses of a particular algae, an algae found only in a particular lake in a particular state forest. Unfortunately, Patrice discovers too late that her research methods have contaminated the lake; it is no longer safe to drink from, as it had been before. Does Patrice have an obligation to warn others about the dangers of drinking from the lake?

Quentin is a hiker. Being a careful and experienced hiker, Quentin always tests the water in a lake before drinking from it. Quentin tests the water in the lake Patrice was working on and discovers it is unsafe to drink. Does Quentin have an obligation to warn others about the dangers of drinking from the lake?

It looks like both Patrice and Quentin have such an obligation. But it seems clear that these obligations (to the extent they are had at all) are not of equal weight. Patrice has a stronger
obligation than Quentin. It is possible that many will assign an obligation to Patrice, but none to
Quentin, or at least see Patrice as having an obligation whereas Quentin's warning others would
be supererogatory.

What explains this difference? The explanation seems to lie in the connection (or lack
thereof) between Patrice and Quentin and the danger at hand. Patrice has, through her actions,
made the situation in the forest more dangerous. Quentin has merely discovered a danger.

Patrice's obligation does not seem special to this case. It is plausible to think that all of us
have a general obligation regarding the prevention of harm to others from dangers we bring
about in the world. This obligation would take the general form discussed above -- it is a duty of
care.

Ownership similarly involves duties of care -- duties associated with liability, especially
the duty to inspect and make safe. We now have two pertinent questions: First, are the duties of
care associated with ownership explained in the same way as those suggested by the case of
Patrice? That is, does ownership of x involve increasing x's risk-potential? Second, assuming the
answer to this question is yes, we must ask whether all liability associated with ownership can be
accounted for by such duties of care.

Does ownership of x involve increasing x's risk-potential? Consider again the conception
of ownership as a force-field. When P comes to own x, there is an imagined force-field around x;
others may not interact with x without P's permission. If x is potentially dangerous, then P's
ownership of x prevents others from insuring that x does not harm them. Suppose, for instance,
that P owns a factory. The factory releases harmful pollutants into the atmosphere. Because P
owns the factory, others are not permitted to, say, introduce filters into the factory's systems that
would render the pollutants harmless. It is not unreasonable to claim, then, that P's ownership of the factory increases the risk the factory poses to others. Of course, this is not true as it was in Patrice's case: the factory is not inherently more dangerous. But the factory does pose a greater threat to those who don't own it, because they lose some ability to prevent the factory from harming them.

The immediate (and convenient) position to take would be that ownership always results in increased risk, which in turn always generates duties of care, which in turn explain all liability. This immediate position is false.

It is clear that actual legal liability extends beyond the duties of care we might naturally ascribe. Consider, for example, cases like Bodine v. Enterprise High School. Rick Bodine, while trying to steal a floodlight from the roof of Enterprise High School, fell through a skylight on March 1, 1982 and was seriously injured (he became a quadriplegic). He sued the school in 1984 for $8 million, settling for $260,000 plus $1,200 per month for life. The result of this legal case appears to conflict with our moral intuitions. It is hard to believe that the school ought to have been held liable. It is hard to believe that owners of property have a duty to ensure that trespassers are not injured.

Bodine failed to respect the ownership-related duties that applied to him. If he had adhered to them, he would not have been hurt. Other cases are similar. If there is a hard-to-see hole in the ground that I take ownership over, and if everyone adhered to ownership-related duties, then ownership in this case would make the world safer for non-owners. They would stay away from a potentially harmful pitfall. In cases like this, ownership reduces risk for those of us who respect the duties that come from ownership. Reducing risk through ownership could not
plausibly generate duties of care. We do not have a duty to inspect and make safe what we own when the only danger our property poses is to people who disregard or ignore ownership duties, to trespassers. Thus, not all instances of ownership result in an increase in risk to non-owners, and thus not all instances of ownership come with a duty of care.68

Owners must internalize potential negative externalities69, and we hold owners morally responsible when they fail to internalize their property’s negative externalities. Some negative externalities are internalized merely by ownership itself. The owned hole in the ground cannot pose a danger to anyone who adheres to ownership-related duties. So, too, with the owned, poisoned lake. Other negative externalities require inspection and activity on the part of owners in order to make them safe, or in order for them to be internalized.

Some people may claim that this is what people will do. They may point to the lessons of the Tragedy of the Commons. They may cite Aristotle, who wrote, “What is common to the greatest number gets the least amount of care. Men pay most attention to what is their own; they care less for what is common; or at any rate they care for it only to the extent to which each is individually concerned. Even when there is no other cause for inattention, men are more prone to neglect their duty when they think that another is attending to it.”70 Ownership does not increase risk, they may say, in fact it decreases it. People take care of what they own in general, not of what they do not own. Unowned objects are more likely to pose a risk to us than owned objects. If this is intended as an objection to the view being presented, then it mistakes contingency for

68 There may very well be mixed cases, where ownership over some complex object both reduces some risks, while increasing others. The owner would then have a duty of care with respect to those risks that ownership increases.

69 An externality is a cost or benefit, not transmitted through prices, on a third party who did not agree to the action that caused the cost or benefit.

necessity. That people do take better care of owned objects is not relevant to whether or not they have a duty to do this. The claim here is about duties and obligations, not about how people are likely to behave, given their psychology and what they happen to care about, in relation to objects that are owned by them.

Ownership does not add weight to background reasons that everyone has. The apparent additional weight is, in fact, generated entirely by the duty of care owners have with respect to those objects that they own and that could generate harmful externalities. This is true of Patricia’s rock. She has additional reason to prevent her rock from coming down the hill because she had an antecedent duty -- as an owner of something that could cause harm to third parties -- to inspect it and make it safe. Her antecedent duty explains the difference in our intuitions in her case.

Meanwhile, owners are not required to use their objects to benefit something or other, but merely to ensure that no harm comes to others because of their property. Since it will be helpful when we introduce guardianship and stewardship, we can call this criterion on ownership the no-benefit-condition of ownership.

This may be the best overall conception of ownership. The criteria for being an owner are these:

P is an owner of x just in case
(1) P has authority over x
(2) That authority necessarily includes the liberty to transfer x and the right to destroy x
(3) Ownership generates generic reasons to ensure that property does not cause harm
(4) Ownership precludes the requirement to benefit either x itself, or others by means of x

Kant does not reject the authority condition of ownership with respect to ourselves. He accepts this when he says that we are masters over ourselves. What Kant objects to is the thought
that those of us in a privileged position to determine what is to be done with us have no duties in virtue of being in this position. This is what he thinks follows from the concept of self-ownership. Kant would also object to the conception of ownership that adjusts Honore's 11th incident to reflect the requirement to ensure that property not bring about harm. This is because this conception would still leave us in principle at liberty to commit suicide, to fail to improve our talents, and to "dispose of ourselves as we please."

Suppose we agree that ownership is duty-free. Suppose we accept the Kantian no-new reasons conception of ownership over the adjusted Honorean conception. Must we then abandon the self-ownership thesis? We would, only if we believed that we are under a duty to improve our talents, to not commit suicide, and not to sell ourselves into slavery. But many self-ownership theorists can respond by simply agreeing with the Kantian conception of ownership, while denying that our privileged position of authority over ourselves somehow entails any self-regarding duties at all.

Kant’s thesis is substantive, after all. It is not a conceptual truth that Kant was suggesting when he claimed that we have duties to improve our talents, not commit suicide, and not sell ourselves into slavery. These duties are, for him, entailed by the kinds of creatures that we are -- creatures with a dignity, not a price, creatures who are morally obligated to respect and mind the humanity-in-us. The self-ownership theorist can deny the substantive thesis, while agreeing with the conceptual thesis about the meaning of “ownership.” For Locke and Kant, self-ownership would be false if we accepted the no-new reasons conception of ownership, but contemporary Lockeans and self-ownership theorists are not required to endorse the substantive thesis. So the
strategy of articulating a better or clearer conception of ownership will not do as an argument against self-ownership. We can do better.

CHAPTER 7: SELF-OWNERSHIP

"Who owns Patricia?" is a disturbing question. At least part of what makes the question disturbing is that it is wrapped up with a set of other questions that we should like an answer to. When we ask about ownership, we are asking about responsibility and the right to make certain decisions with respect to the thing owned. Asking “who owns Patricia,” is partly asking, “who gets to decide what Patricia will do in life (her career, for instance)?”, and, “who will take responsibility for her successes and failures?” Since the best answer to these questions is that Patricia should have the right to determine her own course in life, and Patricia should take responsibility for her own successes and failures, we have a circuitous route to get at the self-ownership thesis:

1. The owner of x gets to decide what happens to and with x
2. The owner of x is responsible for x
3. Patricia gets to decide what happens to and with Patricia
4. Patricia is responsible for Patricia
5. Therefore, Patricia owns Patricia

Put more formally:

1. Oxy → Dxy
2. Oxy → Rxy
3. Dpp
4. Rpp

71 I want to thank Terrence Watson for conversations that lead to this “disturbing question.”
Thus, there are at least two reasons to affirm the self-ownership thesis. The first is, as Locke put it, that it is “self-evident,” while the second reason is by way of what is implied by the P owns P relation. Namely, P gets to decide what happens to and with P; she gets to have full rights of self-determination, or agency.

The first reason I will address in a moment. The argument from implication for self-ownership may be persuasive, but we can raise a few problems. For one, the first two premises give us a sufficient condition for having self-determination (or agency), and responsibility, but not a necessary condition. It is a conditional, not a biconditional. To conclude from the substantive thesis that we ought to have self-determination (or agency) and responsibility, to self-ownership would be to commit the fallacy of affirming the consequent.

Some might object to my putting the first two premises in that way. They might say that I ought to make it a biconditional, thereby making it the case that all and only owners of x get to determine what gets to be done to and with x, and who has responsibility for x. Put differently, we have to believe that, for all persons (x), x gets to make decisions about what happens to and with y, and x is responsible for y, if and only if x owns y. Put formally, \( (x)(y)(D_{xy} \& R_{xy} \leftrightarrow O_{xy}) \). To warrant believing this, we need good reasons. I don't believe that we have good reasons to accept this stronger claim. We can say instead, for example, that persons have agency rights, and that these rights include rights of self-determination and self-responsibility. We can also say instead, again for example, that persons are sovereign, and that sovereignty includes rights of self-determination and self-responsibility. We can then deny the claim that agency rights or sovereignty are, in fact, identical to ownership. Or we can take Kant at his word, and say that we
are masters over ourselves, but not owners. Kant clearly believed that self-mastery came with rights of self-determination and self-responsibility, but did not think that self-mastery was identical to self-ownership.

We might think that this is a matter of indifference. Whether we speak of agency rights, sovereignty, self-mastery or a peculiar form of property rights (self-ownership, where the object owned and the subject who owns are one and the same) amounts to the same thing in practice. There are other problems with the self-ownership thesis that help make the conceptual error more obvious.

### 7.1. THE CIRCULARITY PROBLEM

The self-ownership thesis requires that we think of property rights as being morally primary. We accept agency rights, not because agency rights are morally primary, but because persons own themselves, and we have a moral obligation to respect property rights. Agency, on this view, is of derivative moral importance. This gets things exactly backwards, and possibly saddles the self-ownership theorist with the charge of begging the question.

There is no reason to believe that property rights should be held in higher moral esteem than agency considerations. In fact, property rights should defer to agency considerations, and should only be upheld when they are consistent with, or necessary for, agency. This is the strategy of defending property rights taken by A. John Simmons and Loren Lomasky discussed in the first part of my dissertation. For Simmons, we uphold property rights because of the importance of purposeful labour. For Lomasky, we uphold property rights for a similar reason—viz. the importance of our plans and projects. It is because our agency, captured by plans, projects, and purposeful labour, is so important that we have reason to institute and formalize
private property rights institutions. It is because property, and necessarily private property, is a precondition for successfully pursuing certain plans and projects, that we are justified in having private property in the first place.

Self-ownership advocates appear to make agency both the justification of private property rights, and the result of private property rights. The self-ownership thesis, therefore, is dangerously close to circular. We cannot say “we ought respect P's decisions as an agent because P owns herself,” and “P gets to own things because we ought respect P's decisions as an agent.” One way out is to insist that, in the second instance, what we are justifying is ownership of things other than P herself. And the justification in the first instance is that it is self-evident and just obvious to anyone who thinks about it long enough. But why shouldn't we think, instead, that it is obvious that we ought respect the decisions and plans of agents because agents merit respect? Indeed, if we have to choose between P owning P as self-evident, or the claim that P ought to have agency rights because agents merit respect, I think the latter has a better claim on being self-evident than the former.

Thus it is also obvious that denying self-ownership does not amount to affirming that other persons own me. Only if we think that, for all things in the world, either I own it or somebody else does, will we have reason to think this to be true. But there is no reason to think that everything is open to the property relationship, or that it somehow must be. It is not strange to believe that there are some things that are res nullius, or not open to the ownership relation.

7.2. CLEARER CONCEPTUAL CONFUSIONS
We might ask the self-ownership advocate what she means by the “self” that is owned. I see three possibilities for the “objects” of ownership. Put crudely, we can call these life, limbs, and labour. Of the three, only limbs appears to avoid a fairly clear conceptual error.

By “labour” I mean to include all actions, and not merely those actions that count as “labouring” activities, people can engage in. When we advance the self-ownership thesis, I think we mean to include all of the activities that a person can engage in as being “owned” by the person in question. This includes running, jumping, pushing, playing, and so on. It should be fairly clear that none of these things can be “owned” in the right sense for the self-ownership thesis to be true. While all of these things can be “owned up” to, in the sense necessary for ascribing responsibility for past actions for, none of them can be “owned” in the sense of property ownership.

Recall what was said in the first section of my dissertation about this:

“It is not, and cannot be, literally true that I own an activity or an action. I could not own my throwing, or my running. J.P. Day elaborates on this objection when he writes, “For labour, or labouring, is an activity, and although activities can be engaged in, performed or done, they cannot be owned.” If it is responded that what we own is not the labour but the capacity to labour, Day has the following to say: “…it is no more significant to talk of owning a capacity for work than it is to talk of owning work. Powers are used or disused; they are not owned or unowned.” He summarizes the two senses of property as follows: “It is necessary to distinguish X is the property of A, meaning X appertains to A, from X is a property of A, meaning X characterizes A.” (Internal footnotes omitted)

Thus, “labour” in the broad sense is seen to involve a category error.

By “life” I mean to include decisions, plans and projects. To say “I own my life” is to say that I get to decide, based on my own preferences, ideals and hopes, what to do with my life. I get to make those decisions, and I get to pursue whatever projects I would like, in ways that I
would like. Again, however, it looks like “owning” decisions involves an error of the same sort as “owning” activities. We can make decisions, and act on them, but we cannot own them. Decisions are not the sorts of things open to the property relationship in the sense necessary for self-ownership. This appears to involve an equivocation between “ownership” in the sense of property, and “ownership” in the sense of responsibility.

The third possibility is limb-ownership. By “limbs” is meant physical body parts that constitute a person. I see no category error here. But even if we grant the self-ownership theorist that our bodies can be owned in the right sense necessary for the self-ownership relation to be true, it is a pyrrhic victory. What we wanted from self-ownership is not the hollow and uninteresting claim that we own our body parts, but that we get to decide what happens to and with us, and we get to decide what path our lives will take. Thus the most significant reasons for clinging to self-ownership turn out to be clear cases of a category error.

The Kantian conception of ownership as a no-new reasons conception makes it impossible for Locke and Kant to count as self-ownership theorists. That is only a reason to abandon self-ownership if we think that we have self-regarding duties in virtue of being in a privileged position of authority over ourselves. Contemporary Lockeans and self-ownership

---

72 Carole Pateman canvasses what many scholars have found persuasive about self-ownership as follows, “The concept [self-ownership] is typically interpreted in a general, weak sense as a way of talking about (a certain view of) individual autonomy. Gorr, for example, offers a ‘moderate self-ownership principle,’ equivalent to the ‘fundamental’ right of a person ‘to have a significantly stronger say than anyone else in ow she chooses to live her life and in what may be done to her.’ Kymlicka writes that self-ownership ‘protects our ability to pursue our own goals,’ and people’s ‘ability to act on their conception of themselves.’ Ingram states that self-ownership is very attractive if interpreted as the view that each individual should be free from interference by others, ith a right to the fruits of the exercise of her capacities. Cohen, too, argues that the attractiveness of self-ownership lies in its perceived connection to autonomy, to ‘the range of choice you have in leading your life.’” Carole Pateman (2002). “Self-ownership and Property in Person: Democratization and a Tale of Two Concepts,” The Journal of Political Philosophy, vol. 10/1, pp. 20-53 at 23.
theorists need not believe this, so the no-new reasons conception of ownership would not be reason for them to abandon self-ownership.

Self-ownership, however, may simply be a category error. I have tried to argue that self-ownership can conceptually only apply to the ownership of limbs, which is hollow and uninteresting. The self-ownership thesis is supposed to be substantive and interesting. But it appears to be dangerously close to being circular, it gives us the wrong answer to the disturbing question, and there is no reason whatsoever to believe that denying self-ownership somehow entails the ownership of the self by someone or something else. There is no good argument for the claim that literally everything in the world must be or could be owned by agents. It is possible that some things are *res nullius*.

Suppose that the above is still unpersuasive to the self-ownership theorist. We can shift ground a bit, and provide an argument against self-ownership on the grounds that it is much less illuminating of the normative territory and is more likely to lead us into tangential debates and arguments. Use of an alternative concept -- sovereignty -- is both more illuminating of what self-ownership theorists want the concept to do, and avoids the kinds of arguments that are only the result of confusion about the meaning of the concept.

### 7.3. SOVEREIGNTY

Of the three duties that Kant and Locke pick out, I take the duty not to sell ourselves into slavery as the most significant and least controversial possible objection to self-ownership. It’s controversial whether or not we have a duty not to commit suicide, and it is implausible that we have a duty to improve our talents.
The trouble with self-ownership is that the concept immediately brings to mind market-alienability. Put differently, market-alienability is in the orbit of the concept “ownership”. This is either because the concept “ownership” entails market-alienability conceptually, or because we associate the two, in spite of their being conceptually distinct. Either way, the folk conception of ownership comes bundled with the idea of buying and selling things on the market. And we can see this by looking at the literature on self-ownership -- just about every theorist addresses the question of whether or not we can sell ourselves into slavery when discussing self-ownership.

While self-ownership immediately raises a question about market-alienability, individual sovereignty does not. It borders on conceptual incoherence to talk about “selling our sovereignty.” Since sovereignty is often associated with states and monarchs, we are much less likely to wonder about whether or not sovereignty is the kind of thing that can be sold on the market.

Similarly, sovereignty is a concept that applies to actions, unlike ownership. You cannot own your actions, but, as sovereign, you are in control over them in a way that does not invoke or imply ownership of actions in the relevant sense of “property.” What we really care about, it appears, is autonomy, and self-ownership is merely one way, sovereignty a better way, of saying that we are to be treated with a certain kind of respect.73

Self-ownership theorists can, however, still insist on the concept by suggesting that we are “merely allergic” to the use of “ownership.” Once we understand the details of their conception, we will see, they’ll tell us, that there really is nothing the matter with calling each of us self-owners.

73 Carole Pateman writes, “The consensus among most participants in the debate is that self-ownership is merely a way of talking about autonomy...” Carole Pateman, “Self-ownership and Property in Person: Democratization and a Tale of Two Concepts,” at p. 20.
CHAPTER 8: GUARDIANSHIP

While it’s plausible for the self-ownership theorist to insist that objections to “self-ownership” are a mere aversion to the concept “ownership,” it is less plausible for her to insist the same given our objections to calling parents the owners of their children. The thought that parents own their children is disturbing. It disturbs us in the same way that the question “Who owns Patricia?” disturbs us.

So strong is our aversion to using ownership in this context that philosophers like Susan Moller Okin think it’s a *reductio*. If your conception of ownership leads to the conclusion that parents own their children, then your view is false. The Honorean sufficient number of sticks plus no necessary or essential sticks conception of ownership permits this implication and for that reason should be abandoned.

It will be worth our while to pause for a moment and reflect on Locke’s views about parents and children since he also wanted to disavow the implication that parents own their children. That implication appears to follow from his claim that we own whatever we labour upon, especially objects that we create from other objects that we antecedently have claims over. When two people decide to have a child, it appears to follow, given our premises, that the parents own the child, since they have created or made her with things that they antecedently had claims over.

While this is a clear implication, Locke offered two arguments to distance himself from the disturbing conclusion. That suggests that Locke was also uncomfortable with the idea that parents might own their children. Perhaps he, too, thought that this view is disturbing.

His first argument does not succeed. He argues that we cannot own something that is the result of processes we do not control nor fully understand (I, §§52-54). This argument fails because many of us do not control nor fully understand the process whereby as simple an item as an ordinary HB #2 pencil is made. A modern pencil requires wood that is cut down from forests using modern tree-cutting techniques and machinery. I do not know how to construct a chainsaw, nor do I understand the modern automobile engine that is used in the transport of that wood. And yet it would be unreasonable to suggest that I could not own an ordinary HB #2 pencil, and Locke would not want this to be the implication of his view. For this reason, this argument should be abandoned.

Locke’s second argument goes as follows: “Even the power which God himself exerciseth over mankind is by right of fatherhood, yet this fatherhood is such a one as utterly excludes all pretense of title in earthly parents; for he is King because he is indeed maker of us all, which no parents can pretend to be of their children.” (I, §54) I am not sure what Locke is arguing here. Perhaps he is suggesting that God is actually the maker of all of us, and that precludes further ownership of persons by earthly parents. Because we would come into the world already owned by God, we would not have a previously unowned thing with which we could mix our labour. This would explain why we cannot own children, and, additionally, why we have duties towards children -- we would owe those duties to God, on whose behalf we rear what are, ultimately, his children.

Those duties parents owe children are similar, and possibly identical, to the duties Locke claims each of us have towards ourselves. Namely, parents are required to improve, through

---

education primarily, the talents of their children\textsuperscript{76}, they cannot murder their children, and they cannot sell\textsuperscript{77} or transfer them either: “But to supply the Defects of this imperfect State, till the Improvement of Growth and Age hath removed them, Adam and Eve, and after them all Parents were, by the Law of Nature, under an obligation to preserve, nourish, and educate the Children, they had begotten.” (II, §56)

But if the argument for grounding these duties and precluding child-ownership is based on God’s ultimate ownership over children, then it proves too much. Not only is God, on Locke’s view, the maker of all of us, he is also maker of all things in the universe. If his having made children precludes earthly ownership over children then, surely, his having made trees, rocks, and the Earth itself should also preclude earthly ownership by each of us of anything at all.

Locke is also not claiming, unlike Kant, that there is something intrinsic about persons, about the kinds of things that persons, including children, are, that precludes ownership. Robert Nozick makes this and the above point, and then offers up the following options for Locke:

Since Locke does not hold that (1) something intrinsic to persons bars those who make them from owning them -- to avoid the conclusion that parents own their children, he must argue either that (2) some condition within the theory of how property rights arise in productive processes excludes the process whereby parents make their children as yielding ownership, or (3) something about parents bar them from standing in the, or a particular, ownership relation, or (4) parents do not, really, make their children.\textsuperscript{78}

\textsuperscript{76} "...he, therefore, that is about children should well study their natures and aptitudes and see, by often trials, what turn they easily take and what becomes them, observe what their native stock is, how it may be improved, and what it is fit for." John Locke (1996). \textit{Some Thoughts Concerning Education and Of the Conduct of the Understanding}. Eds. Ruth W. Grant and Nathan Tarcov (Indianapolis: Hackett Publishing Co., Inc.) at p. 41.

\textsuperscript{77} A particularly fierce rebuke to the practice of selling children is given by Locke when he writes (I, §56), “They who allege the Practice of Mankind, for exposing or selling their Children, as a Proof of their Power over them, are with Sir Rob. happy Arguers, and cannot but recommend their Opinion by founding it on the most shameful Action, and most unnatural Murder, humane Nature is capable of.”

\textsuperscript{78} Robert Nozick, “Anarchy, State and Utopia,” at p. 289.
With Nozick, we can say that options (2), (3), and (4) are bad options, given Locke’s views, and the arguments marshalled against each above. That leaves option (1), which Locke did not defend. Locke should have defended (1). Locke should have distinguished between objects that are ownable and those that are not on the basis of, for instance, intrinsic facts or features about certain objects that make them ineligible for the ownership relation. He did not, but we will.

In what follows, I will argue that it is our common sense conception of ownership that causes or contributes to our deeply-felt aversion to calling parents owners of their children. This common sense conception conflicts with what we think is owed to the child. Our duties to children, meanwhile, are derived from intrinsic features that persons, including children, share. Our common sense conception includes the following associated ideas in its orbit, each of which, individually, are objectionable in the case of children and which, collectively, should have us searching for some other concept to describe the tenure someone can have over a child:

1) Our common sense conception of ownership implies that we really can let the things that we own go to waste, or spoil. Again, when it comes to self-ownership, it’s implausible to suggest that we have a duty or obligation to improve our talents. But it is not implausible, in fact, it’s very plausible, that parents have an obligation to educate their children, to improve their talents, and so on. (Because parents have this positive duty, they are not owners of their children).

2) Just as in the self-ownership case, we immediately think of ownership as the sort of thing that licenses or permits market-alienability. To own something is to be able to sell it on the
market. (Because parents ought not sell their children on the market, therefore parents should not be called owners).

3) Our common sense conception of ownership suggests that what matters principally or primarily is how an owned object affects the owner -- that owners matter more than the objects that they own, and that what they own is of *instrumental* value. (Because this is not true of children, so we should not describe parents as owners over their children).

4) Our common sense conception of ownership suggests that owners can destroy the thing that they own. While it’s controversial in the case of self-ownership whether or not suicide is permissible, it is not controversial that parents cannot murder their children. To own something, we think, is to be able to smash it. (Because parents are not at liberty to destroy children, they should not be called owners).

Honore’s conception of ownership can account for our intuitions by making exceptions of the smash, sell, spoil sticks, and adding the caveat that, in the case of children, we are under a duty to act “in the interest of” the child that we own. Insisting on ownership here, however, is not merely clunky, it’s thoroughly unilluminating, and pushes us into directions and explanations that are unnecessary. It is unnecessary because we have a perfectly good alternative concept that captures all of the desirable things about using “ownership” as the description for the parent-child relationship, without any of the moral implications that come as baggage and need to be explained away. That concept is “guardianship”.

**8.1. THE PARENT-CHILD RELATIONSHIP**

If we do a mere Honore-style analysis of ownership, we may come to the conclusion that children can be owned, or are, in fact, owned by their parents. Parents meet the power or
authority condition of ownership -- parents are in the privileged position of being the final arbiters with respect to their children. In addition, that power or authority includes at least some of the incidents in the bundle of rights constituting property. Parents have, in a sense, the right to (1) "possess," (2) "use," and (3) "manage" their children, and several other incidents besides. On many views, these are "parental rights" which ground the duty to obey your parents in children, and the duty, on the part of the rest of us not in that relationship, to respect the relationship by permitting parents to make decisions for their children without our interference.

The scope of parental rights is remarkably similar, then, to the scope of authority on the bundle of rights view of property. And if we believe that there are no necessary conditions for ownership, and that all we need is a "sufficient" number of incidents, then parents may very well turn out to be owners, and children may very well turn out to be the kinds of objects that can be owned. In short, the standard Honoreian conception does not rule out the possibility that children can be owned.

Whether or not parents own their children will depend not on conceptual analysis, but on a comprehensive normative theory about the scope and nature of the authority a parent has over her child. We should note some facts. For one, the parent-child relation has been cast in terms of ownership. In Roman law, for example, the doctrine of patria potestas just was a doctrine of ownership. Patria potestas was the legal principle of the male head of the household having complete authority over his children, including the right to transfer (by sale or otherwise) them into slavery, and the liberty to destroy (kill) them. Sir Robert Filmer defended the doctrine of patria potestas in Patriarcha79 which was what motivated to Locke to object so strongly. It is

also true that many cultures still view children as property, as "ownables." Not only did we once view the parent-child relation as an ownership relation, there are still some who plump for this way of analyzing the parent-child relation nowadays.

8.1.1. TENURE OVER CHILDREN COMES WITH DUTIES

The best normative theory about the parent-child relation will abandon any suggestion that the position of power or authority a parent has over a child comes with no new, special, or additional reasons. Unlike ownership, having tenure over a child comes packaged with the obligation to benefit that child (in particular), a new reason that non-parents do not have. The source of those reasons is the kind of object that a child is, coupled with the tenure has over that object.

For our purposes, we can say a few concrete things about the general kind of reasons generated by the parent-child relation, without exhaustively covering the question of what the nature, scope and extent of the duties are in cases like these. Generally, having tenure over a child provides the person in that position with an obligation to act "in the interest of" the child. Some (possibly not all) of the reasons provided by the kind of object a child is plus the position of authority over that child are derived from, or are more particular instances of discharging, this obligation. We can call this criterion on the best normative theory about the parent-child relation the criterion of acting-in-the-interests-of. Whatever turns out to be the best normative theory will have to take into account the new, additional, and/or special reasons that are provided by the position of authority someone has over a child (some of which are derived from the obligation to act "in the interest of" the child, and possibly other reasons over and above, and analytically independent of, this obligation).
Acting "in the interest of" a child may not be precise enough. This is because an appeal to interests is itself ambiguous, and may turn out to be the wrong way of rendering what our obligations to our children in fact are. We surely do not want the occurrent interests of the child to be normative on a parent. A child may have an interest in eating a whole chocolate cake, but it would be inconsistent with a parent's obligations to give them the object of their interest in a case like this. We might idealize the interests and claim that what the obligations of a parent actually are to act on behalf of what the child's interests would be if the child were sufficiently (or fully) rational and briefed of all the relevant facts. This view might be called the parents-as-informed-advocates view. On this view, parents advocate on behalf of their child and serve a function very much like lawyers do in the court system. Lawyers do not judge the interests of their clients; they merely advocate, from a position of superior legal knowledge and following patterns of legal reasoning, on behalf of the interests of their clients.

This is a bad criterion, since nothing about the idealization procedure guarantees that the child's interests would be consistent with what is good for the child. Someone who is depressed is, typically, someone who thinks that she doesn’t deserve what is good for her, that she deserves, in fact, what is bad for her. The depressed have a sense of worthlessness, and worthless things ought not to receive what is good for them. Surely, parents should not advocate on behalf of depressed-child's idealized interests. Perhaps we should avoid talk of interests in general, and prefer an account that focuses on welfare or well-being. On this view, parents ought to act consistent with, or in a way that promotes, the well-being of their child (or what is good for the

child). We can call this the parents-as-carers view.\textsuperscript{81} But this too seems to be a bad criterion. This is because sometimes parents ought to respect a child, rather than care for it. Sometimes, that is, parents ought to permit their child to make mistakes that harm their well-being to some extent, not for the sake of their well-being (either current or future well-being), but out of regard for the burgeoning autonomy of their child.

When we wonder just what the obligations a parent has to their child are, we are left with independently plausible views that are not fully consistent with one another, and can be in tension. We might opt for the ambiguous view that parents ought to act consistent with, and sometimes promote, what is best for the child, where best is neutral between the autonomy-based parents-as-advocates view, and the welfare-based parents-as-carers view. Different circumstances may obligate a parent to act in accordance with one view rather than the other, since it may very well be, all things considered, best for the child. But our formal project here does not require a resolution of this issue. Instead, we can speak in terms of the criterion of benefit, leaving it to other theorists to work out the details of just what those parental obligations in fact are. For the purposes of simplicity, I will continue to speak as though the obligation is to act "in the interest of" the child, where "in the interest of" refers to whatever will turn out to be the precise obligations that a parent is under when it comes to their child. This is, at least, the right neighbourhood, even if it may turn out to be the wrong house.

The Kantian conception of ownership excludes the possibility of the parent-child relation being cast in terms of ownership. This is because the power or authority a parent has over a

child, coupled with the kind of object that a child is, provides the purported "owner" reasons to benefit the object he or she did not have before, reasons that the rest of us not in that position of authority do not have. These new and special reasons automatically preclude "ownership" as the right relation between a parent and a child. The standard Honoreian conception does not include a no-new-reasons condition, and should therefore be seen as a worse candidate for the best conception of ownership.

8.1.1.1. "OWNING” CHILDREN IS DISTURBING

The question “Who owns Patricia?” is, I have said, disturbing. I have suggested that the self-ownership theorist may find herself undisturbed once we answer “Patricia owns Patricia.” It is difficult to believe that the self-ownership theorist would be comfortable with any substitution for the first subject in the equation. To say “Quentin owns Patricia” will disturb the self-ownership theorist, as well as the rest of us. This is so even when Quentin turns out to be Patricia’s father. The thought might be disturbing just because of the no-benefit-reasons condition of ownership. To think of parents as owning their children is to think that parents have no new and special reasons as a result of their authority over children. Our reasons for being disturbed are overdetermined. We have reason to be disturbed not merely because of the no-benefit-reasons condition of ownership, but also because of two particular incidents that are especially disturbing. Amongst the incidents in the bundle of rights that constitute the Honoreian ownership relation is the power to transfer and the liberty to destroy. These two incidents, when applied to children, are alarming, or disturbing. We also have reason to be disturbed because ownership appears to conceptually permit “self-seekingness” on the part of the owner with respect to the owned object.
8.1.2. MARKET-ALIENABILITY

The power to transfer is disturbing when understood as a power to sell or otherwise transfer a child for consideration of some sort. This is part of what underpins objections to paid gestational surrogates. If the mothers are actually being paid for a child, then, some argue, we have reason to object to the practice of gestational surrogacy. Defenders of payment for gestational surrogacy argue that the surrogates are not paid for the child, which they agree would be objectionable, but for the time, medical expense, and effort involved in having a baby. It appears as though the idea of buying and selling children is commonly viewed as objectionable, and disturbing.

On a Kantian analysis, we ought to object to the practice of buying and selling children because a practice like this undermines the inherent dignity of persons. Kant marks a distinction between something's having a dignity and its having a price. Objects with a price are objects that can be exchanged according to our interests, and in exchange for items that satisfy our interests. Objects with a dignity, however, are "beyond" price, because they are "beyond" interests. A price (or interest) analysis of persons is false (and disturbing) for the following reason. In order for any interest to count in the first place, it must be the case that the thing that has an interest is the sort of thing whose interests matter. If the object does not matter, then whatever interests it happens to have do not matter. What makes your interests matter cannot be interests themselves (either the capacity for interests, or higher-order interests, or interests of some special sort or another), since this would merely beg the question. Insisting on "dignity," or some related non-interest fact or feature intrinsic to persons is what makes our interests matter, if they do, but it also means that objects with a dignity cannot be bargained for by appeal to interests -- it is the wrong currency.82

---

Margaret Jane Radin makes further helpful distinctions. The power to transfer can be understood as the power to alienate by sale, gift, through a lottery, by means of bureaucratic allocation, and so on. Objects that are not saleable are "market-inalienable." Those objects may be alienable in other ways, but they cannot be bought and sold. An object that is bought and sold on a market is a commodity. To say that an object is market-inalienable, then, is to say that it is not to be treated as a commodity. On Kant's analysis, children are not to be treated as commodities. On Kant's view, this is because of a metaphysical fact about children -- the fact that they have a dignity, rather than a price. Kant (GMM, Ak 4:434) writes, “...everything has either a price or a dignity. What has a price is such that something else can also be put in its place as its equivalent; by contrast, that which is elevated above all price, and admits of no equivalent, has a dignity.”

Some object to the selling of children for reasons similar to, but not identical to, Kant's reasons. We may believe that treating children as commodities is objectionable because commodification of children is wrong. Commodification may undermine the moral status of an object, whether that status is analyzed in terms of "dignity" or something else is a separate question. To make things clear, however, we need only believe that there is something about the nature of a child, something intrinsic to children, that bars the ownership relation. That intrinsic feature or fact may be a “dignity,” but it may, instead, be a well-being that matters independently.

85 Kant continues: "That which refers to universal human inclinations and needs has a market price; that which, even without presupposing any need, is in accord with a certain taste, i.e., a satisfaction in the mere purposeless play of the powers of our mind, an affective price; but that which constitutes the condition under which alone something can be an end in itself does not have merely a relative worth, i.e., a price, but rather an inner worth, i.e., dignity." (Ak 4:434-435)
and non-instrumentally. Any creature with a well-being that matters in this way will not be open to the ownership relation.

While children are market-inalienable, it is not the case that they are inalienable. We can adopt children, for example. In Canada and the United States, adoptions are not allocated through the market mechanism. Instead, we use a bureaucratic method of allocation. In Canada, the Child Welfare Act provides the rules for the legal regime of adoption. Section 67 of the Act states that "no person, whether before or after the birth of a child, shall make, give or receive or agree to make, give or receive a payment or reward for or in consideration of or in relation to, an adoption or proposed adoption."86

We may endorse these laws because we fear certain consequences of permitting a market in babies. If we permit a market in babies, some people will become baby-makers as a profession. Having babies for these reasons is having babies for the wrong reasons. And those who have babies for these wrong reasons, who are, perhaps, unsuccessful in selling them, may mistreat them or “dispose” of them since they do not see them as objects with intrinsic value. This is not a necessary truth somehow inherent to markets. There is a possible world in which there is a market in babies and no child is mistreated or disposed of. This possible world may also be better for children than our actual world. This is a logical possibility. This logical possibility may be overlooked simply because some people may see a price tag as equivalent to the assertion that an object with a price tag is merely instrumentally valuable.

There is a difference, however, between financial or economic value, and moral value. We can see this when people file wrongful death suits in courts of law. The sums that are

awarded in successful cases are not reductions of a person to that sum. Similarly with life insurance for children. In the late 19th century in the U.S., many people were offended and disturbed by the existence of children’s life insurance. Many believed that such insurance reduced the value of a child, of a person, to a financial sum that could be had should the child die.  

This insurance and wrongful death suits, to my knowledge, disturb us less now than these did earlier.

While talk of markets in babies is deeply disturbing or “repulsive,” some claim that such a market, in its essentials, already exists. Richard Posner and Elisabeth Landes have argued this, and have suggested legal changes that would improve it. In the paper, they appear to suggest that their legal changes would encourage more babies thereby helping to eliminate the “shortage in babies.” Kimberly Krawiec also suggests that there already exists a market in babies, with intermediaries gaining financial returns for assisting in adoptions, while biological parents are expected to derive utility primarily from altruistic donation in exchange for their reproductive labour. Everyone is paid, except payment to the biological mother is described not as payment for the baby but as payment for medical costs, costs associated with carrying the baby to term, and so on.

We would not be so disturbed, I maintain, if we saw the possibility (plausibility) of a market in babies being consistent with or better for the well-being of the child. We would be


disturbed less if we were persuaded that a market in babies was, in fact, “in the interest of” the child. It is the association of a market with merely instrumental value that is the source of our feeling disturbed. We believe that we are morally prohibited from ignoring the moral status of children, from treating them in a way that fails to recognize and accord with their intrinsic, non-instrumental value. We can leave open the possibility that a market in babies can be had without undermining the intrinsic, non-instrumental value of children, although I recognize that this may be difficult for many to believe.

**8.1.3. SELF-SEEKINGNESS**

Another way of understanding what Kant means by something’s having a “price” is as follows. If something has a price, it can be treated instrumentally. It can be exchanged to serve the owner’s (or master’s) purpose. But a person does not have a “price” or instrumental value, persons have intrinsic, non-instrumental value, a dignity. Ownership, however, has instrumental value “built-in” to the concept. The owner of an object can use that object in the pursuit of the owner’s ends. This is objectionable in the case of objects that have intrinsic, non-instrumental value, like persons.

That ownership comes bundled with this instrumentalist idea can be seen in the writings of conceptually careful philosophers. Eric Mack writes that a property right is a right “…in the disposition of ... acquired objects as one sees fit in the service of one’s ends.”[^90] John Harris, discussing the three ways in which ownership is united (he calls it the “ownership spectrum”) writes, “…they authorize self-seekingness on the part of the individual or group to whom they...

This self-seekingness is morally unacceptable in the case of children. We morally criticize parents who treat children (merely) instrumentally in the pursuit of their own goals or plans. We expect parents to limit their self-seekingness with respect to their children, to act “in the interest of” their children even when doing so means forfeiting a preference higher up on a parent’s hierarchy of preferences.

8.1.4. THE LIBERTY TO DESTROY

Similarly, the liberty to destroy, or to kill, a child is disturbing. It is hardly worth defending the view that parents ought not have the liberty to kill their child. This was partly what John Locke was objecting to when he objected to Sir Robert Filmer’s view that fathers owned their children. The thought that, sometimes, ending a child's life is consistent with the normative obligation to act "in the interest of" the child may be true, but it does not save the incident. This is because the parents still do not have a liberty to destroy the child, since it requires justification by considerations about what is, all-in, the best thing to do for this child, for the child's sake. No liberty has this justificatory burden.

In conclusion, we are disturbed by four aspects or ideas that come either bundled with the common sense conception of ownership, or are in the orbit of the concept. Ownership brings to mind the power to transfer via a market, the liberty to destroy, and self-seekingness. Upon further analysis, it seems to me that what unifies all of these objections to ownership in the case of

---

91 John Harris (1996). “Who Owns My Body?” Oxford Journal of Legal Studies, vol. 16/1, pp. 55-84, at p. 60. The full quote is: “The items on the ownership spectrum are united in three respects only. First, they all involve a juridical relation between a person (or group) and a resource. Secondly, the privileges and powers which they comprise are open-ended-that is, they cannot be concretely listed. Thirdly, they authorize self-seekingness on the part of the individual or group to whom they belong.”
children is, in fact, the existence of the duty to act “in the interest of” objects with a well-being that matters intrinsically and non-instrumentally, when a person has tenure over the object.

The Kantian conception of ownership specifically insists on the power to transfer and the liberty to destroy as necessary incidents in his conception of ownership. In addition, Kant maintains a no-new-reasons criterion of ownership, and a no-benefit-reasons criterion. Both of these features necessarily, in principle, exclude ownership as the right relation in the case of parents and children. This is consistent with our intuitions about children not being open to the ownership relation. The standard Honoreian conception of ownership, meanwhile, does not exclude the possibility of a parent literally "owning" her child. It also does not have the same resources as the Kantian conception for explaining why it is disturbing to think of parents as owners of their children. For these reasons, the Kantian conception of ownership is superior to the Honoreian conceptions.

8.2. GUARDIANSHIP

Instead of appealing to "ownership" as the relation between a parent and a child, we should, instead, speak in terms of "guardianship." The concept of guardianship is this. To count as a "guardian," a person must be in a specific position of authority over some object: Namely, the privileged position of being the final arbiter (or arbiters) with respect to what is to be done with the object. The scope of the authority consists in more particular incidents, which may turn out to be rights, powers, privileges, and/or liberties. In the case of parents and children, the incidents are sometimes referred to as "parental rights." There are different views about what these rights are. It is commonly agreed, however, that parents have the right to determine the geographical location of their children, to take their child to the dentist (even if the child doesn't want to go),
to determine what sort of education the child is to receive, to determine what religious
instruction, if any, the child will receive, and so on. Finally, the scope of authority is constrained
by and conditional upon acting in accordance with the obligation to act "in the interest of" the
child, constrained, that is, by an obligation to benefit the child.

Put formally, P is a guardian over Q just in case:

1. P has authority over Q (the authority condition)
2. The authority is constituted by some set of rights, powers, privileges, and/or liberties (the
scope of authority)
3. P is under an obligation to act "in the interest of" Q (criterion of new-benefit-reasons)

This third requirement tells us that the target of the obligations is the object itself. Parents
have an obligation to the child. All instances of guardianship are like this. Nothing can be an
object of guardianship unless we can have moral obligations toward that object. We can call this
criterion for guardianship, the direct obligations condition. Altering our original formula, we can
substitute 3(a) for 3:

3(a). P is under an obligation to act "in the interest of" Q, for Q's sake (criterion of new-benefit-
reasons: direct obligations condition).

Guardianship is a rival concept to ownership. That is, someone can be a guardian over
some object, or an owner over some object, but not both. The relations operate at the same level
of analysis. It makes no sense to speak of someone as being an "owner-guardian" or "guardian-
owner." It makes no sense to speak of someone as being an "owner qua guardian," either. This is
because the criterion of new-benefit-reasons conflicts with the no-benefit-reasons condition
(owner). The former criterion necessarily precludes an analysis of a relation in terms of
ownership, and the latter criterion necessarily precludes an analysis of a relation in terms of guardianship.

This is another reason to prefer the Kantian conception of ownership -- it marks a sharper divide between the related concepts of ownership and guardianship. In marking out ownership as a morally thin concept, and highlighting the moral duties in the concept of guardianship, the moral territory is put in sharper relief. It is illuminating in a way that a thick concept of ownership is not.

We are now in a position to draw this conclusion. Some objects are simply not fit for ownership. These objects are objects that provide the person or persons in a position of authority over them with new benefit reasons that others do not have. Children are an example of objects that are fit not for an ownership relation, but a guardianship one. A similar analysis may be done for other objects as well. For example, some elderly persons will fall into this category, as will some persons with neurodegenerative diseases. Similarly, it is possible that some non-human animals -- like dogs, cats, dolphins, apes, chimpanzees, etc. -- are not fit for an ownership, but a guardianship relation.92

8.3. OBJECTION: GENERAL BACKGROUND DUTIES

In defending a no-new-reasons conception of ownership above, I argued that the duties that appear to come bundled with ownership are actually not part of the concept of ownership, although they often result from the fact of ownership. We might now wonder whether the duties

92 Some animal rights groups have endorsed what is called “The Guardianship Project.” This project is an effort to persuade people to stop describing their relationship with their pets as an ownership relation, and start to describe their role in terms of a guardianship relation. They would like people to call themselves “guardians” of their pets, rather than “owners.”
owed to children are also general background duties, rather than special duties that come bundled with the kind of thing that guardianship is.

Pushing it into a general background constraint would simply convert guardianship into ownership. We would have no new or special duties merely in virtue of tenure. Instead we would merely, for example, be in a better position to realize the duties that everyone has with respect to this child. Thus guardianship would be duty-free, just as ownership is duty-free. The concept would not be a different concept, it would be reducible to the conception of ownership I gave an analysis of above.

Everyone, it might be said, has duties to educate this child, to provide her with nourishment, to improve her talents, and so on. Those with tenure over a child, however, can exclude others from doing those things, and have additional knowledge about what really is in the interest of this child, and what sorts of talents and tastes she happens to possess. It’s not in virtue of tenure that we have these duties, we all have them. It is just that not all of us have sufficient knowledge about what, in fact, would be good for this child, and not all of us are around this child sufficiently to realize the duties that we all share.

One response might be this. We may say that the claim that we all have identical duties with respect to all children is false. We may believe that we do not have positive duties to others, that all duties are negative in character. We have duties not to harm others, but we do not have positive duties to benefit anyone. Including children. Duties do not befall us, we agree to them, or perform some action that generates them.

This response, as an effort to preserve this conception of guardianship, will not do. On this no-positive-duties view, the explanation for our duties with respect to our children does not
make contact with the claim that the duties are due in virtue of our having tenure over this child, coupled with the relevant intrinsic features of a child. We have duties to our children exclusively, we may believe, because of the role we played in bringing the child into existence, or because of the agreement we made when we adopted the child. It is causal responsibility for a life or agreement that grounds the duties, not the position of tenure coupled with intrinsic facts about the kind of object that a child is.

The view that we have no positive duties, however, appears to me to be deeply implausible. It is too difficult to believe that we do not, for example, have an obligation to pull a face-down infant out of a puddle of water at the price of wet feet. It is too difficult to believe, that is, that someone who did not possess or meet some contingent prerequisite (like a relevant desire, or preference to pull babies out of puddles or be held in high regard by one’s peers), and who did not pull the baby out is not morally criticizable for his failure to do so. This is because it does not depend on any contingent fact, but is a positive duty that we owe objects in virtue of certain of their intrinsic features, like the possession of a well-being that matters independently and non-instrumentally.

Let us take for granted the existence of these general background duties. We can still respond that guardians have especially weighty duties that they owe to their wards. It is not in virtue of some general background duty, or such a duty coupled with special knowledge that

---


94 This explanation of pulling the child out of the water may be used in explaining the case of the last water hole in the desert. We may believe that there is a proviso on ownership, especially to what I purport to be the no-benefit-criterion, that we make available what we own to others under certain lifeboat scenarios. If this is in fact a proviso, it does not fall out of ownership but is, instead, similar to the duty that I am now defending to pull a baby out of a puddle. Namely, and as Peter Singer says, the principle that appears to underly both cases is this: When we can do great good at little cost to us, we ought to. So we ought to pull the child out of the puddle, and we ought to allow others to take a draught from our water hole.
guardians possess in virtue of being around this child more frequently, that generates the requirement to *privilege* the interests or well-being of their child over the interests or well-being of other children. We can amend Bernard Williams’ “one-thought-too-many” objection to utilitarianism to give intuitive support to this claim.95 According to Williams, if we could save a loved one drowning in the ocean, or we could save more than one strangers, but not both, we would do wrong if we even gave the second option thought. It would be, as he says, “one thought too many.” The right reaction, on his view, is this. There is someone I love drowning in the ocean. I can save her. And then I save her. Similarly, if we can benefit our child or a stranger’s child, and we have sufficient knowledge about what would, in fact, be good for both, and all other things are equal, it would be one thought too many to even consider the option of benefiting a stranger’s child in place of our own. Our obligations include a special obligation to *privilege* our children over other children.

On this response, it is in virtue of being in the privileged position of being the final arbiter with respect to this child, or guardianship, that generates this duty. And the duty to privilege this child means to have the related duties of minding the well-being of the child, improving it where we can, educating it, protecting it, and so on. While all of us may share in the same duties with respect to your child, your position of tenure over it makes those duties weightier.

There is one final response that I can muster, in case none of the above is persuasive. In our analysis of ownership, we said that the folk or ordinary conception of ownership had, within its orbit, certain other associated ideas. Those ideas included market-alienability, liberty to

---

destroy, instrumentalism of the owned object for the owner’s ends, and moral permission to let the owned object go to waste or spoil. The attempt to thicken the concept by including a duty not to use the owned object harmfully was seen as redundant. The more plausible duty of care, the duty to inspect and make safe, could not only be explained by appealing to general background duties having to do with risk, but it also made better sense of our intuitions in cases like Bodine v. Enterprise High School where the law and our moral intuitions come apart. And preserving a thick conception for purposes of defending self-ownership is unnecessary, since sovereignty is co-extensive with the desirable implications of self-ownership, while being dis-extensive with the tangential or false implications of self-ownership. Defending a conception of ownership that is morally thin, that includes no new reasons or duties, is well motivated.

It is not well motivated in the case of guardianship. There is no moral puzzle that a thin conception of guardianship -- one that reduces guardianship to Kantian ownership -- would resolve. If guardianship were morally thin, it would be utterly useless in highlighting or clarifying the moral territory or neighbourhood. And it is primarily because of the usefulness of this concept, a concept that competent English speakers already grasp, in highlighting what is morally most important about being in a privileged position of authority over a child, that we want to preserve its moral thickness. So even if my effort to avoid making certain duties count as general background duties that all agents have is unpersuasive, we should still continue to wield guardianship as a morally thick concept that includes certain duties. Perhaps it is not in virtue of having tenure over a child that a guardian has these duties, but it is part of what guardianship means.
This last argument is an effort to persuade those who disagree with the description of one of the sources of these duties, the position of tenure. This is to motivate someone who disagrees to still prefer use of guardianship in certain contexts, the context of tenure over objects which have a well-being that matters independently and non-instrumentally. I will, however, ignore this in what I say below. I will assume that you are persuaded that tenure generates duties when the object tenured is of the right sort.

CHAPTER 9: STEWARDSHIP

A third species of tenure appears to be the stewardship relation. A steward is in a position of authority over some object. A steward is in the privileged position of having the final say with respect to some object. But the steward cannot do whatever she'd like with the object that she is a steward over, she is under a moral obligation to treat the object in certain ways, and not others.

Put formally, P is a steward over x just in case:

1. P has authority over x (the authority condition)
2. The authority is constituted by some set of rights, powers, privileges, and/or liberties (the scope of authority)
3. P is under an obligation to act "in the interest of" R with respect to x (criterion of reasons-provision)

This third criterion tells us that the target of the obligations is not the object itself, but some relevant third party, R. This is also the source of the obligations. It is some fact or feature of R, and not x, that obligates P. This is what distinguishes stewardship from guardianship, while the mere existence of duties distinguishes this concept from ownership. We can call this criterion for stewardship the indirect obligations condition. We can now substitute 3(a) for 3:
3(a). P is under an obligation to act "in the interest of" R with respect to x, for R's sake (criterion of reasons-provision, indirect obligations condition)

On this analysis, stewardship is a rival concept to both ownership and guardianship. All three operate at the same level of analysis. Someone can only stand in one of these three relations, they can be either a guardian, or a steward, or an owner of some object. Either there are no new, special, or additional reasons when someone has authority over some object, or there are. If there are not, then they are an owner (no new reasons condition of ownership). If there are, then they are not an owner (because it violates the no-new-reasons condition of ownership), but either a steward or a guardian. If the source of the new reasons is the object itself, then they are a guardian (meeting the direct obligations condition of guardianship). If the source of the reasons is not the object itself, but some relevant third party, then they are a steward (in keeping with the indirect obligations condition of stewardship).

A comprehensive theory of stewardship will answer three questions:

1) What objects are fit for stewardship?
2) Who ought to be the steward?
3) Whose sake is normative on the steward?

The first question will set out criteria for what gets to count as an object fit for stewardship, rather than ownership or guardianship. It is possible that the answer will not depend on facts or features of an object independent of the target of the normative obligations. That is, which objects are fit for stewardship may depend on those for whom the object is stewarded.

The second question will seek to answer what criteria someone or some institution will have to meet in order to be justified in having authority over an object answering to the first question. Here, the theory will seek to answer a question analogous to the question of original
appropriation or initial acquisition -- who or what gets to have authority over an object of this sort and for what reason?

The third question seeks to discover the sakes that are most relevant to determine what is to be done with an object answering the first question. The answer to this question will provide moral guidance to the person or institution answering to the second question. An answer to this question will presumably also be an answer to the question of what ought to be done with an object of this sort, or how ought we to treat or interact with an object of this sort.

9.1. CULTURAL ARTIFACTS

As with the case of parents and children, cultural artifacts may turn out to be exemplar objects for testing the ownership relation. It should be made clear, up front, that artifacts, like paintings or arrowheads, do not generate reasons all on their own. There is nothing that can go better or worse for these things. Nothing can be done for their sake, because they do not have a "sake." A painting is not made worse off when it fades, or better off when it is placed behind glass, or preserved. This is why the source and target of the obligations, if we have any, cannot be the object itself. The task here is to present reasons that might make us partial to thinking of some cultural artifacts as warranting, in particular, preservation and public display not as supererogatory on those who have possession of them, but as morally obligatory. The second task will be to specify what is meant by "warranting," since these artifacts do not, of themselves, warrant anything.
Consider the following thought experiment. Suppose Jones is in possession of an original Rembrandt. Jones thinks it would be fun to play darts with this Rembrandt. Playing darts with this Rembrandt would ruin this Rembrandt. It would be impossible for anyone to fix this later on, and the Rembrandt would be left in pieces. If we think of Jones as an owner of this Rembrandt, the best criticism we could level at Jones is that he was mean or insufficiently nice to those of us who think that Rembrandts matter a great deal. Jones would fail at performing what would be a supererogatory action, that of preserving the Rembrandt. We might think that this criticism is too weak. We might believe that Jones acted immorally, that he has an obligation to, minimally, preserve this Rembrandt. And to preserve it for the sake of those of us who think Rembrandts matter a great deal.

This is Joseph Sax’ view. Sax argues that ownership fails to recognize the obligation that those in a position of authority over some cultural artifact have towards the relevant cultural community. Sax wants to make a legal argument, to raise doubts about the American institution of private ownership over cultural artifacts. This is a heavier burden than the burden that we are faced with here. The burden here is the burden of demonstrating that whoever is in a position of authority over some cultural artifact may, in fact, have moral obligations that are owed to the relevant cultural community. Sax's burden is this burden, plus the added burden of building a

---


97 One interesting story is the case of Dina Gottliebova Babbitt. A painter, she agreed to paint for a Nazi doctor in exchange for saving her life and the life of her mother. She made a dozen paintings of gypsies and Jews that were sent to their deaths in concentration camps. Many years later, someone compared her signature with the signature of those paintings which were on display at the holocaust museum in Auschwitz. She was informed of the paintings, and traveled to Poland expecting to have the paintings returned. The museum did not return her paintings, and a dispute between them continues. See Steve Friess “History Claims Her Artwork, but She Wants It Back,” *New York Times*, August 30, 2006.
bridge over the ought/state gap -- a bridge that requires either an empirical premise (for example, that all and only the government is able to discharge this obligation effectively, or that the government is the most likely institution to be able to discharge this obligation while non-governmental institutions will not, and so on) or a strange analytic premise (that, for example, the only way to discharge this obligation is for the government to do it, because of a feature of government institutions that non-governmental institutions do not have -- that feature being, again for example, the legitimate, and exclusive, role of representing the relevant community -- because of the particular nature of the obligation requires this representative feature).

Sax thinks that “some objects... are constituent of a community, and that ordinary private dominion over them insufficiently accounts for the community’s rightful stake in them.”

"Ordinary" private dominion just is the conception of ownership proposed here -- the conception that requires a no-new-reasons condition. If it is true that relevant third parties do, in fact, have a stake in, for example, a Rembrandt, then this provides the person in a position of authority over that Rembrandt with reasons which do not depend on the purported owner's attitudes, concerns, desires, or interests. These reasons are, that is, categorical and not hypothetical. They would be hypothetical if they were contingent on some attitude or desire or interest on the part of the person in a position of authority over the object. The claim is that even if the person in authority did not have a desire to, for example, be viewed as kind and nice and sophisticated and so on by others, it would not matter. She would still owe the relevant cultural community something with respect to the object in question.

---

The source of the obligations is still mysterious. Sax claims it is because these objects are "constituent of a community," but it is unclear what this means. Peter Hirtle, who shares Sax's convictions about the status of some cultural artifacts, claims that the source of these obligations is the preservation of justice. Hirtle says "We make the historical record available to society to maintain... a just society, to protect the rights of citizens, to serve as a check on tyrannical government, and to ensure to us -- individually and collectively -- the ownership of our history." I do not know how cultural artifacts, a part of the "historical record," manage to preserve justice. One possibility is that they serve as reminders of past struggles for justice. Nothing reminds us of the importance of justice quite like a set of handcuffs actually used by slaveowners, say, or the actual ship that carried African blacks from their homes to the U.S. to be slaves. If this possibility is the reason and source of the obligations, then it is contingent on an empirical assumption about human psychology as it currently is. The claim is that our psychology is such that actual cultural artifacts serve as better reminders, and are more vivid reminders, than replicas, images, or written accounts.

The second part of his argument is that no individual member can own these objects because, in some sense, all of us, or some specific subset of us, own it -- it is common property. No one can play darts with a Rembrandt because Rembrandts are ours, and anyone who happens to possess what is ours must, minimally, preserve it and display it for the sake of those of us who are the actual owners. If all of us were to decide that playing darts with a Rembrandt were fine, only then could any one of us actually play darts with it, or use it as a footstool, or whatever. This second argument reminds us of a very ordinary kind of stewardship. When you leave your

---

house in the care of a friend, acquaintance, or someone you hire, they are called a steward. Their role is to do whatever is consistent with your interests with respect to the house. If you permit the steward to throw a party at your house, then the steward can do so, it being your house and not the steward’s. The relation between you two will be conventional and grounded in promise or contract. It may be explicitly written up, or it may be, if it is your friend, implicit. The steward, in the former case, has to follow the rules because that was the condition of stewardship, and respecting the rules is respecting the owner. The steward, in the latter case, is to do with the house only what you would permit or expect. Since you are friends, you hope that your friend knows you well enough not to use your car tools, since he knows, and you know that he knows, and he knows that you know that he knows, that you want to use those tools to fix up the car in your garage. This is understood between the two of you, and an explicit contract is not necessary although it is implied. This is conventional stewardship. It is analogous to our case of stewardship. It is analogous but possibly not identical, since our case is not based on any implicit or explicit promissory or contractual obligation. We are to steward some objects because that is what they are fit for, independent of any agreements, but possibly not independent of our attitudes.

If your friend were to use the tools, or accidentally knock them over and ruin some of them, he would have to replace them. Your project of fixing the car would be slowed if you did not have access to those tools in good working condition. But you should not be upset if your friend replaced the tools. You both know that what matters is the fixing of the car, and you attach no sentimental or other value to those tools. You merely want them only for the purposes of fixing up the car. This is not how we feel about original works of art. We care that the Rembrandt
is the original. We seem to think that originals matter. This is, I take it, almost universally true: We want to preserve some cultural artifacts in their original state, and we care very much that they be the originals, and not masterful duplicates.

### 9.2. WHY CARE ABOUT ORIGINALS?

Recall the carbon-copy immediate replacer (C-CIR) from the first chapter. It was an objection to Locke's labour view. The criticism was that on Locke's view, it *always* matters that the item is the original item, and not a perfect, molecule-by-molecule duplicate. I argued that this was implausible, that there are at least some objects (ordinary toilet paper and ordinary carpet, for example) such that their originality really does not matter, and that a molecule-by-molecule duplicate would be, in every morally relevant respect, just as good as the original. But I conceded there that some objects are not like this. Persons, like our daughters, are such that a molecule-by-molecule duplicate would not be just as good as the original. I also claimed that we do, in fact, care that the Mona Lisa is *the* Mona Lisa, and not a perfect, molecule-by-molecule duplicate. We do care about original paintings, but this may be a bug, rather than a feature, of our psychology. It is hard to see why we are justified in caring that this art object is an original rather than a molecule-by-molecule duplicate.

Here is an original Rembrandt, why does it matter? It matters, says the art community, because it revolutionized this-or-that in the art world, or was a masterful, paradigm instance of this-or-that school of art. None of these kinds of reasons would be lost were we to replace the original with a perfect, molecule-by-molecule duplicate. What would be lost? The paint would not be *the same* paint as was used by Rembrandt. Neither would the canvas be *the same* canvas. But why should that matter? This duplicate painting was not the painting that the actual,
historical Rembrandt touched with his actual paintbrush. Does this actual touching matter? What
property is given the painting in virtue of it having been touched by Rembrandt that warrants our
caring about it? The property of "having-been-touched-by-Rembrandt"? It is difficult to see why
this touching by the actual painter, what we can call the Midas Touch\textsuperscript{100}, matters. It is difficult to
see, that is, what of value is preserved when we preserve the original artifact that cannot be
preserved through an exact, molecule-by-molecule duplicate.

The property of having-been-touched-by-Rembrandt is exclusive to the original. There
are other exclusive properties of the original, not possessed by any duplicate, however masterful.
The painting may matter, says the Dutch historical society, because it featured in a specific part
of the history of the Netherlands, and played a particular role in that history. The duplicate does
not have this property. We may think that this property is a valuable property. This quill may be
the quill that the signers of the Declaration of Independence used to mark their respective John
Hancocks. It is true of this quill, but of no other quills, that it featured in an important part of the
history of the United States. This baseball may be the baseball that Babe Ruth hit as his first or
last homerun. It is not true of any other baseball that it has the property of being-the-first-
homerun-by-Babe-Ruth. While these properties are exclusive to the originals, I cannot see why
they would justify our attitudes.

We may be able to explain our intuitions as follows. Even though our ontology no longer
includes, or ought not include, "spirits" and "souls," many may still believe in something
resembling that view. In the first part, I proposed “S” as a substitute for labour as the thing that
gets mixed in with an object. I left “S” neutral between “spirit,” “will,” “personality,” “spiritual

\textsuperscript{100} My student, Shane Juntila, came up with this way of describing the apparent ability that some historically
important personages have to confer value on objects by interacting with them.
ego,” and so on. If we believed in “S,” we would have a good explanation for caring about originals. The artist’s “S” is in this object, and not in the duplicate. Provided we have reason to care about this artist, we have reason to care about the paintings that contain her “S.” It is possible that, without deeper consideration, we believe that the artist’s “S” is in an object. Upon deeper consideration, however, we should abandon this belief, and the view that originals matter, if this belief underpins or explains why we do, in fact, care about originals.

Some of us avoid walking under ladders, and sometimes throw salt over our shoulders. Some of us are superstitious. We do not have reason to be superstitious, superstition is unwarranted. Nevertheless, many of us who know this still walk around ladders. Perhaps many of us who do not believe in “spirits” still hold views that follow from a belief in spirits, and a belief in our being able to imbue external objects with our spirit. We may not think critically about this because the thought that originals matter is so widely shared. But if we abandoned our belief in spirits and their externalization, as we should, we would perhaps abandon the view that originals matter.

Instead of a belief in spirits, perhaps preserving originals is a way of honouring certain people who deserve to be honoured. One way of honouring someone is to preserve their works. We should see fairly quickly that this is contingent, and not necessary. Another way of honouring an artist is to make duplicates of their work. There is no normative reason to connect preservation of art with honouring those who deserve being honoured. So this explanation would merely explain our current practices, but it would not justify them. Preserving originals would only be required if we accepted the convention that preserving an artist’s originals is a way of honouring them, and we believed that we had independent reason to honour this artist.
We may preserve originals because we believe that they are a clue to the mind of someone who is very brilliant. People who transcend their cultural and historical “zeitgeist” or milieu. The work of art offers us a clue, a hint, to the mind of a brilliant man or woman, and we want to use those clues to perhaps discover what made them “tick” so as to improve things now. This blueprint theory would still obtain if we had molecule-by-molecule duplicates. It does not matter whether we have Plato’s original *Republic* or a copy if all we care about is the insight that Plato (or Socrates) had that we can apply now. It would justify our wanting a copy of the *Republic*, but it would not justify our wanting any particular copy, including the original.

Perhaps we preserve originals because we do not believe that sufficiently-good duplication is possible. Consider the fact that no one appears to care very much about the particular bits and bytes that constitute the very first digital version of some song or work of digital visual art or computer-written book. We do not care about those originals. We email them to one another, and any copy is as good as the original version. Maybe we believe that duplication here preserves everything that matters. We trust this method of duplication. Our lack of trust must be overcome if we are trying to discover whether originals matter in principle. If we were persuaded, that is, that a duplicate of the Mona Lisa was a molecule-by-molecule duplicate, perhaps we would no longer line up to see the original at the Louvre (when the original is on display. It is rotated with copies every so often. People still line up to see the duplicate, which is a curious fact).

Above, I’ve treated all art objects in a similar fashion. This may be a mistake, and a mistake that is relevant to the question of whether or not we should be originalists about art.
Nelson Goodman\textsuperscript{101} has distinguished between the “autographic” and “allographic” arts. According to this distinction, the importance of preserving the original as a way of preserving something that matters to art as art belongs to the former category, not the latter. This is because the allographic arts have a “notation” or a “spelling.” Every performance of Shakespeare’s Hamlet is an authentic performance, it is not forged, or a duplicate. The same is true of architecture and dance. Paintings and sculpture, for example, are instances of autographic arts. Here, only the original is authentic, whereas all copies and duplicates are inauthentic. This difference in authenticity is relevant to art as art in the following way: Knowing that some object is the original changes, and ought to change, how we are to look at this object when confronted with it and a duplicate. This alters our aesthetic experience, and so matters to art as art.

We are still in need of an analysis of authenticity. As it stands, Goodman’s view does two things. It collapses aesthetic properties into cognitive properties, makes the aesthetic a component of the cognitive, and it appears to beg the question if it is supposed to justify our caring about original paintings. We will appreciate the original differently from the duplicate only if we are already convinced that there is a way to look at originals that makes us aesthetically appreciate them more. Michael Wreen does not think this view has much going for it. He asks us to imagine a pair of jeans with a price tag of $1,000 and a pair of duplicate jeans with a price tag of $10.\textsuperscript{102} We may train ourselves to appreciate the former more than the latter, but why should we? Our knowledge that something has a different price tag should affect our


aesthetic appreciation as much as our knowledge that something issued from a particular painter, school of painting, or period. Which is to say, not at all.

We may try to defend Goodman’s views by getting clearer on what might be meant by “authenticity.” I see three possibilities. The first is the thought that authenticity has something to do with “firstness” -- the first instantiation of an important and art-relevant type or kind, like a method or a technique; the second having to do with recognizing an important art-relevant discovery or idea -- the first instance of a particular style or subject matter; the third is the fact of influence -- this painting influenced subsequent art, perhaps because of firstness in the first or second sense, but perhaps for other reasons. Authenticity as firstness, authenticity as novel idea, and authenticity as influence.

9.2.1. FIRSTNESS: CITY OF ATLANTIS

Authenticity may be understood as firstness. Consider City of Atlantis:

City of Atlantis: Scientists have discovered a long-lost city, it is the City of Atlantis. Amongst the ruins, excavators have discovered what appears to them to be da Vinci’s Mona Lisa, the painting that hangs in the Louvre. In fact, it is visually-indistinguishable from Mona Lisa. This is amazing, since carbon-dating has placed the origin of this work of art at 900 BC, while da Vinci painted in the 16th century.

It might be worthwhile to motivate City of Atlantis as a possibility. Consider simultaneous inventions. Spinoza and Newton both independently invented calculus. Newton gets the credit, Spinoza the notations. Alexander Graham Bell and some other guy simultaneously invented the telephone. Bell became famous, the other guy is relegated to the status of being called “some other guy” in classrooms across the country. This happens often. The radio, the television, the car, the microchip, calculus, the theory of evolution, and so on and
so forth, each had multiple inventors, more or less simultaneously. While it may be hard to believe that a Mona Lisa could be simultaneously invented (or, as in City of Atlantis, invented at two different times, but independently), it is not so hard to believe that very many instances of modern, abstract art had simultaneous artists. It is not so hard to believe that Mark Rothko had precursors.

What would we do with the Mona Lisa hanging in the Louvre? I believe we would not do anything at all with it. We would value it all the same. If firstness means firstness in historical time, then this sense of firstness is not relevant to our aesthetic evaluation of a work of art, as City of Atlantis demonstrates.

Firstness may instead be indexed to either our culture or our art history. Two cultures, one on Neptune and one on Earth, may have the same co-incident art history -- the same paintings, sculptures, and so on -- in the same order. Now imagine that Neptune’s civilization predates ours by 10,000 years. Neptune’s Leonardo da Vinci painted 10,000 years before our da Vinci did, Neptune’s Monet 10,000 years before our Monet, Neptune’s Parthenon frieze was built 10,000 years before ours, and so on. We would be surprised, but we would continue to value our firsts just as much as before. We can analyze this in two ways, I believe. The first way is by noting that we appear to value independent discoveries, even if that “discovery” was discovered earlier. We applaud creativity, originality, and innovation when they are genuinely independent. Secondly, we may value the influence that certain independent discoveries have in our art history or our culture.

### 9.2.2. INDEPENDENT DISCOVERY: OBSCURE ARTIST

Let’s take the first possibility and consider Obscure Artist:
Obscure artist: Sally paints mediocre paintings. But she has invented a new technique, that she calls the florid technique. None of her paintings are prized by anyone, unfortunately. However, Jimmy sees the technique at a local art show. He uses the technique, original with Sally, to paint masterpieces the art community revels in. They are all in agreement that part of what makes Jimmy’s paintings so special is precisely the florid technique.

It would not be right for us to ignore Sally when we discuss Jimmy. Still, we do not prize Sally’s work enough to preserve her originals, but we do prize Jimmy’s paintings and house his work in our museums. We think, however, that we have respected or appreciated Sally’s invention sufficiently when we say, via a description, that Jimmy’s work was inspired, or influenced by this technique originated by Sally.

We prize Monet’s Water Lilies more than we do his first paintings in the Impressionist style, a style that Monet did not invent. We also value paintings by subsequent artists who are very good, or exceptional, at making use of certain techniques that they themselves did not originate. So not all objects that are instantiations or expressions of discoveries or inventions in painting and the arts more broadly are prized. Sometimes it is not the invention of it, but the use of an invention in some particularly aesthetically pleasing way, or its perfection in a paradigmatic instance of it, that we prize. Not all prototypes are museum-worthy, and sometimes we are happy to display a more perfect prototype over its forebears.

If this is right, then Obscure Artist shows that we do not actually prize all instances of “firsts” in any sense. Sometimes, we will not preserve a first of a kind, method, style, technique, and so on, but a paradigmatic or more perfected version of the relevant discovery. Perhaps what firsts we do end up prizing will depend on what happens after its discovery. If a particular discovery goes on to influence artwork that we value very much, then perhaps we will wish to
preserve the first instance of the relevant discovery. I will now move on to the third sense of “authenticity” the objection to which will also function as an objection to this claim as well.

9.2.3. INFLUENCE: MIRRORVERMEER

Can a duplicate influence art history? Consider mirrorVermeer:

mirrorVermeer: “Teach me to paint,” said Vermeer’s brother, mirrorVermeer, and Vermeer agreed. “Just copy what I’m doing,” said Vermeer, and mirrorVermeer did, exactly and precisely, brush stroke for brush stroke, weight for weight, pigment for pigment. One day, a gust of wind blew over the two paintings. Vermeer and mirrorVermeer could not tell whose was whose. They flipped a coin to determine who was to keep which one. The coin, alas, did not land on the truth. Vermeer actually picked up mirrorVermeer’s painting. The artworld took it as Vermeer’s, as an original Vermeer, and it influenced subsequent work.¹⁰³

We can object to this example. The Vermeers, the originals, are indispensible to the mirrorVermeers, without a Vermeer, there are no mirrorVermeers. The mirrorVermeers are influenced by Vermeers, and so the mirrorVermeers are merely the first instance of something influenced by the original. Any mirrorVermeer functions as a proxy for the original Vermeer.

Jack W. Meiland made this same point about copies possibly having the property of influencing subsequent art, and also raises the same objection. Here is how he dealt with that objection, I believe decisively:

It may be objected that these consequences which add value are consequences of the original work acting through the medium of the copy. If we wish to talk that way, however, we must -- in order to make that way of talking plausible -- talk about the consequences being consequences of the work of art itself [the abstract object that is the work of art] rather than of the original or the copy. After all, only people act through intermediaries; physical paintings do not act through intermediaries. We must say that the work of art, as manifested by the copy, influenced later painters. But to talk in this way is

¹⁰³ The point could be put more easily by noting that, in fact, not all artists travel to museums to see the originals that influence them. Sometimes, they are influenced by mere replicas, like flipping through a magazine with photographs of the works of art. I’m grateful to Jacob Sparks for this point.
to admit that the work of art is present in the exact copy to the same extent that it is present in the original. And it follows from this that if what is aesthetically valuable is the work of art, then the copy is as valuable as the original.\(^{104}\)

Here, then, is what I take to be the most significant objection to the originalists: The work of art, the abstract entity that influences subsequent art, is something that is present in both the original as well as the duplicate to the same extent. We can say the same of the above senses of “authenticity-as-firstness”. The discovery will be present to the same extent in a molecule-by-molecule duplicate as it is in the original. All we need is a description that gives the historical context, and we will have preserved whatever may be of art-relevant value.

There simply is no art-relevant feature that all originals have in common, that make every original better than a duplicate, a copy. Our hunt for a valuable property relevant to art as art that would distinguish all originals from their copies appears to have ended with no real success on the part of the originalists. The reason for this should not have been surprising. As our discussion of influence and meaning should make plain, the abstract entity that is the work of art is present to the same extent in the original as any visually-indistinguishable duplicate. We appear to agree that this is the case when we’re discussing the allographic arts like music, theatre, dance and so on, but it is just as true of the autographic arts. Its being present in the duplicate means that it will retain all of its art-relevant properties and features.

This should not have been much of a surprise anyways. What we consult when comparing two works of art are their aesthetic properties and their influence on the artworld. All of those features are present in visually-indistinguishable duplicates, since the work of art is present in them. Its being original is a sideshow, not relevant to the value of art as art.

Nevertheless, the intuition appears to be widely held that some objects do warrant a stewardship relation, rather than an ownership one. It is possible that the warrant for stewardship rather than ownership is not to be found in some property in the object but, rather, in the permissible attitudes or sentiments that people happen to have with respect to it. Even if the attitudes or sentiments are not the sort of attitudes or sentiments that we all have reason to have, or even that some specific group of us (say, members of the relevant cultural community) ought to have, provided that the attitudes or sentiments are not the sort that ought to be revised, they may still be sufficient to generate good reasons in those who are in a position of authority over an object like this. It may turn out, for example, that people have a false belief about this baseball. They may believe that this baseball is the first baseball that Babe Ruth hit for a homerun, but it turns out that it is not. Sentiments and attitudes based on these kinds of false beliefs do not generate reasons. Thus it is not the mere fact of having this sentiment or attitude that generates reasons, but the existence of sentiments or attitudes that are not the sort that ought to be revised (because, in this case, based on false beliefs).

Sentiments or attitudes are criticizable in other respects as well. Some may have a sentimental attachment to a statue of Josef Stalin, because they admire him. Stalin, however, is not a fit object of admiration. Stalin is a fit object of derision and contempt. This sentiment is not based on false non-normative beliefs, but based on false normative beliefs. Sentiments and attitudes based on these kinds of false normative beliefs also do not generate reasons. A comprehensive normative theory with respect to objects that warrant a stewardship relation will offer an explanation of the right kinds of sentiments and attitudes that generate reasons. We need not tackle this task here. We need only recognize that there are sentiments and attitudes which
people might have towards cultural artifacts that are not the sort that ought to be revised, that generate reasons.

What the nature of these reasons is is also a topic that we need not develop fully here. We can, however, point to two possible reasons that seem plausible. These are reasons to preserve, and reasons to display (or make publicly available), objects that relevant third parties have the right kind of sentiments or attitudes about.\textsuperscript{105} These two reasons may conflict. For example, we may simply be unable to display a particular artifact without destroying whatever it is about the artifact that matters. How we weigh the reasons is also a matter for a separate inquiry.

We have given a formal analysis of the third question, 3) Whose sake is normative on the steward? We have said that it is, in the case of cultural artifacts, the “relevant” cultural community. We have also offered one possible object that is fit for stewardship -- cultural artifacts -- answering to the first question, 1) What objects are fit for stewardship? We have not offered other possibilities to answer 1), nor have we offered a story about the second question 2) Who ought to be the steward? We only require formal answers because what we care about are the features that objects will have to have in order to be fit for stewardship.

\textbf{9.3. CONCLUSION}

If we have duties to relevant third parties with respect to some object, then this relation is not an ownership relation, but a stewardship relation. I have suggested that cultural artifacts are possible exemplar objects for this relation. I also suggested that this may be premised on a mistake, on the belief that originals matter, which perhaps they do not. An alternative object may be the

“environment,” or some smaller slice of the environment. We would be obligated, perhaps, to preserve the environment for future generations, who would count as the relevant third party.

Whether there are any such objects that are fit for stewardship will depend on a further theory about whether or not there are any objects that we have reason to preserve, display, or treat in certain ways. It is possible that this is a null set. At least from the point of view of the universe. The category of stewardship would not be an empty set, since people can create stewardship relations by agreement or contract. This is not the same as saying that this or that object is fit for stewardship non-conventionally or, if you will, “naturally.” This is to say that someone who has the right claim on some object can ask someone else to take care of it for their sake, thereby constructing a stewardship relation. This is an ordinary case.

The guardianship relation is not a null category. There is little doubt that we owe something to children, especially if we are the parents, biological or adoptive, of the children. Some non-human animals may also be fit for a guardianship and not an ownership relation.

All of this hinges on avoiding the thickening of ownership. Ownership, on my view, is a morally thin concept. It does not come with any new or special duties or reasons that apply to the owner merely in virtue of being the owner. This thin conception of ownership can better account for many of our intuitions when it comes to children, to persons (including the self), and to our divergent intuitions about when someone ought to be held liable for injuries brought about by what one owns.

Some things just are not open to the ownership relation. Some things are res nullius. It is strange that we didn’t always think this. We always should have.
PART 3:
THE PROBLEM OF THE CONTINUITY OF CLAIMS

CHAPTER 10: OWNERSHIP OVER TIME

Not everything is open to the ownership relation. Some things are fit, instead, for a guardianship or stewardship relation. I have argued for this position by framing it as a dispute between Immanuel Kant and John Locke about the nature and meaning of “ownership.” I suggested that Kant’s conception of ownership is the better of the two, and that all of us should prefer to reserve ownership talk only for cases where we have moral permission, or are at liberty, to do with an owned object whatever we’d like, constrained only by general background duties that apply to all of us. This view restricts the scope of ownership across objects. The number of objects in the world that are open to the ownership relation are fewer than we may have originally believed.

In the first Part, I argued that Locke’s labour theory of original acquisition is deeply troubled. The metaphysics of the view are flawed in many ways. However, I suggested that while it is flawed, it leaves a moral remainder. That remainder is the difficult-to-shake intuition that, in order to have an ownership claim to something, we have to perform some action to get it. The nature and kind of action that actually generates a claim, however, requires meeting more criteria than we may have originally believed. This view restricts the range of actions that count as bona fide claim-generating actions. This view tells us that it is more difficult to come to own objects than Lockeans may think.

Ownership is more restricted in the range of actions that count as genuine claim-generating actions, and it is restricted in the scope of objects open to the ownership relation. Here, I want to suggest that the scope of ownership may also be restricted across time. Consider
this question: P may have initially acquired a claim to x through labour, but what, if anything, justifies P's continued claim to x against Q?

In what follows, I will broaden the formulation of the problem to avoid settling on any particular action-kind as the justification for initial acquisition, and use this broad formula to tackle what I call The Problem of the Continuity of Property Claims. I will motivate the problem by demonstrating its necessary relation to moral responsibility, present a list of possible alternatives, demonstrate the kinship this problem has with the problem of adhering to wills, and then attempt to settle on an answer.

10.1. THE BROADEST POSSIBLE FORMULA

Jeremy Waldron applies H.L.A. Hart's distinction between "special rights" and "general rights"106 to the case of generating a private property claim against others. A right is "special" just in case it arises because of the occurrence of a "contingent event," an event that did not have to occur. Waldron writes, "...a special right is a right which a person is conceived to have by virtue of the occurrence of a contingent event or transaction." (Waldron, 1991, p. 112) A general right, by contrast, is a right that everyone has ab initio, in virtue of being a certain sort of thing. General rights do not depend on the occurrence of contingent events, like promises, certain actions, and so on.

In the Locke-Nozick tradition, or the natural rights tradition more generally, P has a claim to some claim-less object, x, when P performs some action, A, on it. That action, A, is the contingent event that generates a special right, a property right, in x for P, and generates corresponding duties on every other person.

We might wonder what happens to the claim over time. In particular, we might wonder whether a claim to \( x \) by \( P \) continues diachronically, or not, and why or why not. What we are wondering about is whether some historical fact -- the performance of the claim-generating \( A \) action at \( t_1 \) -- is sufficient to ground a claim to \( x \) by \( P \) now \( (t_2) \), much later \( (t_3) \), for the remainder of \( P \)'s life, or even for some time after \( P \)'s death.

The Special Rights View for initial acquisition is intuitively appealing. Many think that, in order to get a special right to some object, \( x \), a person must *do* something to get it. "Doing something" might include using it, making it, or labouring on it -- performing some physical action that generates a claim.\(^{107}\) While a focus on physical actions is typical\(^{108}\), it might not be *physical* actions at all that ground claims. For example, \( P \) might generate a claim to \( x \) just in case \( P \) has *sentiment* or *attitude* \( S \) towards \( x \). Or it might be sufficient for \( P \) to *identify* with \( x \) in the right way to generate a claim. What matters for formal purposes is not whether the correct view about initial acquisition is that \( P \) must perform an action token or a token action of a certain type (or have the right sentiment or attitude, or etc.), but, rather, that \( P \) meets the right condition, whatever it is, to generate a claim to \( x \). Thus it is possible to broaden the scope of the Special Right "generator" by using a variable as the right relation between \( P \) and \( x \) for the generation of a Special Rights claim:

**Most Broad Formal Claim:** \( P \) generates a Special Rights claim to \( x \) just in case \( P \) [stands in the right relation] to \( x \). Or: \( P \) generates a claim to \( x \) just in case \( P \Phi x \), where \( \Phi \) is "the right

\(^{107}\) Russell W. Belk writes, "Anthropologists generally agree that the maker of an object, the user of land, and the cultivator of a plant are regarded as being entitled to the product of their labor." Russell W. Belk (1988). “Possessions and the Extended Self,” *Journal of Consumer Research*, vol. 15/2, pp. 139-168, at p. 144.

\(^{108}\) A. John Simmons, for example, writes about the appealing intuitions that theories of original appropriation bring together including, in his list, "that such ownership must have a point of origin, but that such ownership cannot arise from nothing, requiring instead a morally interesting human act (or sets of acts) as cause." A. John Simmons, *The Lockean Theory of Rights*, at p. 65.
relation" and can be anything from an action-type to a mental state, a sentiment or an attitude, identification etc. or some combination of them, depending on what we settle on as the "right relation". We can call this requirement on the Special Rights view the *Special Rights Claim Generator*.

Our commitment to what is, in fact, the "right relation" is irrelevant to what follows. I will, however, restrict myself to the view that some action generates a claim. Mental state claim-generators will yield different conclusions, although I think most will see that these, too, will require a comparable resolution to the problem of the continuity of claims.

### 10.2. MOTIVATING THE PROBLEM

According to Robert Nozick, a comprehensive theory of property will yield three, and only three, principles: It will settle the justification for Initial Acquisition (the Acquisition principle); it will settle justice in transfer (the Transfer principle); and it will settle the issue of how we rectify violations of the first two principles (the Rectification principle). These, according to Nozick, exhaust our property-relevant principles of justice.

Nozick seems to be wrong. We may require a fourth principle for a comprehensive theory of property: A principle to cover the continuation of a property claim (the Continuity principle). The Continuity principle will tell us on what grounds someone continues to own some object. On the Special Rights view of property, the Continuity principle will answer this rephrased question:

*The Continuity question:* \( P \Phi x \text{ at } t_1 \). On what grounds should \( Q \) at \( t_2 \) have a claim to \( x \) from \( P \)'s having \( \Phi x \) at \( t_1 \)?

---

109 For simplicity’s sake, I am assuming that \( x \) remains identical over time. Questions about cases where \( x \) at \( t_1 \) differs from \( x \) at \( t_2 \) (for example, planting a seed and then harvesting the corn) are important, but I do not want to address those kinds of questions in what follows.
A necessary (but not sufficient) part of the right answer may be obvious: "On the condition that Q at $t_2$ is identical to P at $t_1$, Q at $t_2$ continues her claim." This necessary condition may be formally true, but a lot hinges on what is meant by "identical." In fact, what we mean by "identical" is where all the action is, as I hope to show.

10.2.1. RESPONSIBILITY

Implicit in the above view is a theory of responsibility. It is clear that at least part of what motivates Nozick and Locke to link the person performing a labouring action and the previously unowned object that is laboured upon is a view that insists that the person labouring is responsible for the labour. If Q were to labour on x, a spatially-distinct P would not thereby have a claim. There must be a link between the individual, the willful or intentional action that generates an ownership claim, and the object that is laboured upon. That link is provided by responsibility.

If P were not responsible for an action, then it is unlikely that this action would generate an ownership claim. If P, for example, were a somnambulist, and performed labour on some object while she was asleep, her claim would either be less weighty, or have no weight at all,

---

110 Other possible conditions may include productive use, a use that generates value, use according to some life plan or project, and so on.

111 The sense of responsibility here is responsibility-as-attributability. For an action to be attributable to someone, in this sense, is for the action to be, in principle, open to assessments of praise and blame. There is no requirement for the action to be praised or blamed, merely to be open to this possibility. I remain silent on whether or not the relevant action that generates a claim is the sort of action that must be, for example, praiseworthy. That will depend on the particular version of the view under scrutiny.

112 An employer is, in this sense, responsible for the specific actions of her employees. The employees do not get a claim to the objects that they labour upon, they have a claim to compensation for the labour. For arguments against this view, see David P. Ellerman (1992). Property and Contract in Economics (Cambridge: Basil Blackwell). See also Theodore A. Burczak (2006). Socialism after Hayek (Ann Arbor: University of Michigan Press). At p. 113, Burczak writes: "...the capitalist wage-for-labor-time contract denies the joint responsibility of wage labor by denying labor's right to participate in the appropriation of the entire product. Most notably, the wage-for-labor-time contract makes someone other than the worker the last owner, or appropriator, of the worker's time."
because she would not be responsible for actions taken in her sleep.\textsuperscript{113} To take a science fiction example, if an evil scientist planted a chip in P's motor cortex, such that the scientist could make P perform certain actions by activating the chip, P's claim to the objects that she laboured upon would have no weight.\textsuperscript{114} If a spatially-distinct Q performed some action on x, and P was totally unrelated to Q (they have never spoken to one another, live in different countries, etc.), P would not have a claim to x. This is because P is in no way responsible for the labouring actions in that case.

We can see the connection between responsibility and the generation of an ownership claim when we consider Lockean-inspired objections to world-ownership claims. Left-libertarians, for example, attempt to break the three-way link between self-ownership, some activity (labour), and world-ownership by insisting that while the person labouring may own herself, and may be responsible for her labour, she is not responsible for the existence of raw, unlaboured-upon, natural resources. Since she is not responsible for the existence of the natural resources, she cannot have a claim to the whole product that is the result of her labouring activities and the natural resources through unilateral action. The details of these objections are irrelevant here.\textsuperscript{115} What is relevant is the fact that, on the special rights view of acquisition or appropriation, the agent must be responsible for, at a minimum, the claim-generating action. Call this \textit{the Requirement of Responsibility}:

\footnotesize
\textsuperscript{113} She may be partially responsible for actions taken while asleep, which is why her claim may have less, rather than no, weight. One reason to think this is if someone is aware of her somnambulism, and has some idea of what she will do while in her sleep. I leave these considerations for another time.

\textsuperscript{114} She may be owed compensation, and we may think that that compensation is best met by giving her the object or thing that she laboured upon, but this is different from her generating a non-compensation based claim to the object.

\textsuperscript{115} One relevant detail is this. Left-libertarians maintain that we own ourselves in spite of not being "responsible" for being born, or being responsible for our existence. Self-ownership is not justified by a principle of initial acquisition.
The Requirement of Responsibility: In order for P's Φ-ing to generate a claim to x, P must be responsible for the claim-generating action, Φ.\(^{116}\)

This must be true over time. That is, it must be the case that P-now is responsible for the claim-generating action, whether the claim-generating action occurs now, or at some point in the past, or the distant past. We can put this as follows:

The Temporal Requirement of Responsibility: In order for P's Φ-ing to generate a claim at \(t_1\) to x, P must be responsible at \(t_1\) for the claim-generating action, Φ.

We hold people responsible for actions that they are now responsible for, whether the actions occur now, or occurred in the past. The Requirement of Responsibility is therefore not merely a historical requirement. It must be the case that P is now properly held responsible for the claim-generating action, and not merely that, at one point in the past, P was responsible for the action (but is not responsible for it now).

The Requirement of Responsibility is therefore one necessary condition for answering the Continuity question, on a natural rights view of property. We can call the formal principle that addresses the Continuity question the Continuity Principle. Our initial candidate for the Continuity Principle can be put like this:

Initial Continuity Principle: Q has an ownership claim to x at \(t_1\) and at \(t_2\) just in case:
(a) \(P\ Φ\ x\) at \(t_1\), and
(b) \(P\) is responsible for \(Φ\) at \(t_1\), and
(c) \(Q\) is responsible for \(Φ\) at \(t_2\).

\(^{116}\) The requirement of responsibility for ownership claims may not also require causal responsibility. Often, it is thought that causal responsibility is a prerequisite for moral responsibility. There are, however, cases where they come apart, where someone is morally responsible for something, even though she is not causally responsible. For my purposes, we need not settle this issue. What matters is that someone be legitimately held morally responsible, whether or not they are also causally responsible.
Put differently, the Initial Continuity Principle tells us that someone has a claim to some object just in case they meet the conditions of the Special Rights view of property (the Ownership Claim Generator), and the condition of the Requirement of Responsibility (both at the time of the action, and after).

There is reason to believe that responsibility fades, weakens, or is, in some cases, eliminated over time. We do not always hold someone responsible for some action that they performed in the (distant) past. Sometimes, we say, "Yes, Patricia performed that action, but Patricia is sufficiently different now. It would be wrong for us to punish or benefit Patricia for what she did so long ago." Sometimes, "Patricia is sufficiently different now" is translated into the more radical claim that Patricia is no longer the same person or Patricia is no longer the same self. Justifying judgments of being "sufficiently different" or being a "different person" or a "different self" require an account or theory of personal identity. A theory of personal identity will tell us under what conditions someone remains the same morally relevant "metaphysical unit" for purposes of holding responsible, or proper attributability.

10.3. THE OPTIONS

10.3.1. MORALLY RELEVANT METAPHYSICAL UNITS

Theories of personal identity attempt to offer criteria for what makes a person the same person over time. Theories of personal identity are a subset of the broader identity of the metaphysics of identity of objects over time. Personal identity theories attempt to answer the Identity Question with respect to "objects" like you and I, with respect to "persons":
The Identity Question: What makes P at t1 identical to Q at t2?

Just as we have assumed, but not defended, the Special Rights View of Property, we will here assume that Reductionism\(^{117}\) about personal identity is true.\(^{118}\) Quoting Derek Parfit, David Shoemaker describes reductionism like this: Reductionism means "that the facts of personal identity over time simply consist 'in the holding of more particular facts' [Parfit, 1984, p. 210] about brains, bodies, and interrelated physical and mental events."\(^{119}\)

According to David Shoemaker, there are four options for what counts as the morally significant metaphysical unit: living human beings, persons, person-stages, or momentary experiencers.

(1) *Living human beings* are "animal organisms picked out by the Biological Criterion\(^{120}\) and unified over time via biological continuity. These entities would endure from (roughly) early-stage fetuses until organismic death."

\(^{117}\) Reductionism is contrasted with Non-Reductionism. Non-Reductionism insists that there is some "further fact" when it comes to personal identity over time. Two possible "further facts" include the Cartesian Ego and the soul. Non-reductionism about personal identity may be the truth, but this is implausible.


(2) **Persons** are "entities picked out by the Psychological Criterion" and unified over time by psychological continuity (overlapping chains of strong psychological connectedness). These entities would endure likely from late infancy (or the time at which the various psychological connections could be established) to brain death or dementia."

(3) **Selves** are "entities unified by strong psychological connectedness. Such units would have significant duration, but they would not be likely to endure for as long as persons — insofar as memories typically fade, beliefs and desires are lost or revised over time, and so forth — and they certainly wouldn't endure as long as the life of the human being of which they were a part."

(4) **Momentary experiences** are "'units' defined and delimited by the duration of an experience. It could be, after all, that if the deep fact of identity is missing, there just are no other relations of significance that could warrantedly be put in its stead, so all that remains would be merely the basic atomic moments of people's lives."
In an earlier paper, Shoemaker ignores the first option, and spells out the other three in this way: "(a) persons (where psychological continuity is the relation that matters for moral purposes), (b) selves (where psychological connectedness is the relation that matters for moral purposes), or (c) momentary experiencers (where neither continuity nor connectedness matter for moral purposes)." Shoemaker calls option (a) Conservative Reductionism, option (b) Moderate Reductionism, and option (c) Extreme Reductionism, and defends (b).

The relevance of the morally-relevant metaphysical unit to our ethical concerns (our attributions of responsibility in particular) is this. It is taken as a platitude in most of the literature that someone is eligible to be held responsible for an action only if she is identical to whoever performed the action. This platitude is sometimes put like this: "I can be responsible for my own actions, and I cannot be responsible for anyone else's actions."

Moral responsibility, it is thought, presupposes personal identity. Following Shoemaker, we can call this claim The Platitude. In particular, responsibility presupposes one of the morally relevant metaphysical units. We will not hold responsible, for example, one "person" for the actions of another "person," whether they are spatially-distinct, or only temporally-distinct parts of the same living

---


126 David Shoemaker summarizes the position like this in David Shoemaker, “Personal Identity and Ethics,” accessed Nov. 8, 2011. Marya Schechtman puts the point in two different, but similar, ways: "We believe, first of all, that facts about personal identity are crucial in determining facts about moral responsibility—a person can only be held responsible for her own actions." Marya Schechtman (1996). The Constitution of Selves (Ithaca: Cornell University Press), at p. 14. In the conclusion of a footnote, she writes "I think it is safe to say that in general it is part of our ordinary conception of both persons and moral responsibility that persons can be appropriately held responsible only for their own actions." Ibid. at p. 14, f. 15.
human being. We attribute responsibility *within*, but not across, the morally relevant
metaphysical unit categories.

This might give us reason to alter the Initial Continuity Principle like this:

**Altered Continuity Principle:** Q has an ownership claim to x at $t_1$ and at $t_2$ just in case:
(a) $P \Phi x$ at $t_1$, and
(b) $P$ is responsible for $\Phi$ at $t_1$, and
(c)* $Q$ at $t_2$ is the same morally relevant metaphysical unit as $P$ at $t_1$.

Requirement (c)* in the Altered Continuity Principle, and requirement (c) in the Initial
Continuity Principle are supposed to be taken as expressing *the very same thing*. Namely, the
platitude that responsibility presupposes identity, and, what we can call *the Commutative Claim*,
that responsibility is commutative on all *future* temporal parts of the same morally relevant
metaphysical unit. That is, if $P$ is responsible for $\Phi$ then $Q, R, S, T, U, \ldots$ etc. are responsible for
$\Phi$ just in case each are a temporally distinct future part of the same morally relevant
metaphysical unit.

(a) is the Ownership Claim Generator, (b) reflects the Requirement of Responsibility at a
time, (c) is the Requirement of Responsibility at any future time, and (c)* expresses the
Commutative Claim. Implicit in the Requirement of Responsibility is The Platitude.

The ownership-specific Continuity Principle will need to meet the Requirement of
Responsibility. The Requirement of Responsibility may hinge on a theory of personal identity
that picks out the morally relevant metaphysical unit for attributions of responsibility. In what
follows, I will canvas what I see as the plausible candidates for a Continuity Principle.

**10.4. IDENTITY-RELEVANT VIEWS (VIEWS TRACKING IDENTITY)**
Assuming the truth of the Altered Continuity Principle, we have four possible candidates corresponding to the four possible morally relevant metaphysical units:

1. Identity of living human being determines the continuity of claims.
2. Identity of person determines the continuity of claims.
3. Identity of self determines the continuity of claims.
4. Identity of momentary experiencer determines continuity of claims.

The fourth option, the "momentary experiencer" is not plausible,\textsuperscript{127} and, due to space considerations, I will not consider it here.

\subsection*{10.4.1. IDENTITY OF LIVING HUMAN BEING VIEW}

The first option will track the biological criterion of identity. It can be put formally like this:

(1) $P \Phi x \text{ at } t_1$. $Q_{t_2}$ has a claim to $x$, just in case $Q_{t_2}$ is \textit{the same living human being as } $P_{t_1}$.

As a \textit{sufficient} criterion for responsibility (and, thus, for an ownership claim over time), it will not do. We do not hold someone responsible for their actions when they were an infant, even if that infant is part of the history of the same living human being. We do not hold adults responsible for their actions when they were (very young) children in general. If identity of living human beings were sufficient for the continuity of responsibility, we would hold a senior

\footnotesize
\textsuperscript{127} It is not plausible because it is difficult to believe that a "momentary experience" (or atom, or time-slice) has interests, preferences, plans or projects in the first place. One requirement of an interest seems to be that it persist over time, and a momentary experiencer is not the kind of thing that persists.
citizen responsible for their actions when they were an infant, or a toddler. We are right not to do this.\footnote{128}

It is not the identity of living human beings that matters for attributions of responsibility, but the identity of agents. What matters for responsibility is that a moral agent at $t_2$ be identical to a moral agent at $t_1$. We do not think of (very) young children as moral agents. We do not hold children responsible for their actions at the time that they perform those actions. It must be the case that it is legitimate for us to hold $P$ responsible for their actions when they performed it for it to be sensible to hold a later $P$ responsible for that action. It would be strange to say that, while Patricia at $t_1$ was not responsible for some action, Patricia at $t_2$ is responsible for the action of Patricia at $t_1$. The more reasonable view, then, is this: Identity is sufficient for determining the continuity of responsibility only of moral agents.\footnote{129}

This view allows us to bypass some obvious absurdities. The biological criterion tells us that I was identical to a fetus, and may be identical to a human vegetable in the future, but neither are open to attributions of moral responsibility.\footnote{130} Only if it is reasonable to hold someone morally accountable for some action at the time of the performance of that action, could

\footnote{128} This assumes the truth of the merit-based view of responsibility. According to this view, "...praise or blame would be an appropriate reaction toward the candidate if and only if she merits — in the sense of ‘deserves’ — such a reaction..." The alternative view is the consequentialist view. On this view, "...praise or blame would be appropriate if and only if a reaction of this sort would likely lead to a desired change in the agent and/or her behavior." Andrew Eshleman (2009). “Moral Responsibility,” The Stanford Encyclopedia of Philosophy, www.plato.stanford.edu/entries/moral-responsibility, accessed Nov. 8, 2011. According to Eshleman, most work in moral responsibility has focused on the merit-based view, presumably because most philosophers agree with that view, over the consequentialist view. For defenses of the consequentialist view, see Richard Brandt (1969). “A Utilitarian Theory of Excuses,” The Philosophical Review, vol. 78, pp. 337-361. See also Chapter seven of Daniel Dennett (1984). Elbow Room: The Varieties of Free Will Worth Wanting (Cambridge: MIT Press).

\footnote{129} Defenders of the living human being or biological criterion of identity agree that this identity criterion does not ground or track our practical, moral concerns. For example, David DeGrazia writes, "The biological view is a theory of human identity, of our persistence conditions. As such, it is a metaphysical and conceptual theory. Strictly speaking, then, it is not responsible for tracking all of the concerns we tend to associate with identity." David DeGrazia, Human Identity and Bioethics, at p. 63.

we even consider it reasonable to continue to hold them accountable for that action in the future. 131

Defenders of the Special Rights view of property are sensitive to this requirement. A. John Simmons, for example, insists that the labour that morally matters for purposes of initial acquisition is *purposive* labour. 132 He references Locke: "It is our 'intellectual nature' that makes us 'capable of dominion'." (I, 30) The best rendering of this view is that we must be agents capable of more-or-less robust responsibility in order to engage in actions that might yield ownership claims. We may generate claims to possess certain objects while (very young) children, but our restricted agency would not, on this view, generate full-blown ownership claims.

Moral agents are what we mean by "persons", the second option for the morally-relevant metaphysical unit. John Locke insisted that the concept "person" is a "forensic concept."

Applications of responsibility are appropriate only when applied to the same *person*, not the same living human being (or the same immaterial substance), since the same man may or may not be a moral agent at the time of performing some action. A person is a creature that is open to attributions of praise and blame, who has "the capacity to understand, apply, and/or respond to

131 Our reactive attitudes may be a clue to the truth about the relevant identity relation. It would plainly be a mistake to feel pride or embarrassment at "my" actions while a fetus or while in a vegetative state. Pride and embarrassment are "fitting" reactive attitudes just in case *I* did something *warranting* pride or embarrassment. Nothing that "I" did while a fetus, and nothing that "I" might do while in a vegetative state warrants feelings of pride or embarrassment. Andrew Eshleman writes "...to be morally responsible for something, say an action, is to be worthy of a particular kind of reaction — praise, blame, or something akin to these — for having performed it." Andrew Eshleman, “Moral Responsibility,” accessed Nov. 8, 2011.

132 A. John Simmons, *The Lockean Theory of Rights*, at p. 271. Lawrence Becker writes that, “Labor is first distinguished from mere intent, declaration, or occupation. It is next distinguished from play and accidental improvement. One then simply calls attention to the fact that labor is purposive.” Lawrence Becker, “The Labor Theory of Property Acquisition,” at p. 654. J.B. Baillie treats labour similarly when he writes, “…a labourer labours for some end beyond his actual physical toil, whether the end be the satisfaction of the end of the artist or the attainment of the means of comfort and subsistence for other members of society.” J.B. Baillie, “The Moral and Legal Aspects of Labor,” at p. 251.
moral reasons." Notice that what matters for purposes of responsibility is not physical facts, like the biological criterion in our first option above, but psychological facts.

### 10.4.2. THE IDENTITY OF PERSONS VIEW

Since being a person depends on psychological facts, our identity criterion for moral purposes will not seek to answer the Identity Question. Instead, it will seek to answer a modified Identity Question, what we can call the *Identity of Agents Question*:

**The Identity of Agents Question:** What makes an agent P at t₁ identical to an agent Q at t₂?

A person remains the same person over time just in case they meet the conditions of a psychological, not physical or biological, criterion. This was John Locke’s view. According to Locke [1690], what morally matters is not our physical, biological ‘selves’ (or ‘substance’), but ‘consciousness’ or the ‘remembering self.’

Locke’s defense of this position relies, in part, on the prince and cobbler thought experiment: “...should the soul of a prince, carrying with it the consciousness of the prince's past life, enter and inform the body of a cobbler, as soon as deserted by his own soul, every one sees he would be the same person with the prince, accountable only for the prince's actions...” [Essay, XXVII, §15] The physical substance of the cobbler is not relevant for holding accountable, since, in truth, it is filled with the prince’s thoughts, intentions, memories, beliefs, and other mental states that constitute Locke’s “consciousness.” It is on the basis of sameness of consciousness that we ought to hold people accountable, not on the basis of a physical or biological criterion.

---

Locke’s theory of personal identity for moral purposes can also be called a theory of “ownership.” Here, however, we are concerned with owning actions, rather than in owning things or objects -- ownership-as-attributability. Thus, on Locke’s view, P at t2 owns the actions of Q at t1 just in case P and Q share the identical consciousness, making P and Q the same temporally-distinct person. Writes Locke [Essay, XXVII, §26]:

*Person*, as I take it, is the name for this self. Wherever a man finds what he calls himself, there, I think, another may say is the same person. It is a forensic term, appropriating actions and their merit... This personality extends itself beyond present existence to what is past, only by consciousness, -- whereby it becomes concerned and accountable; owns and imputes to itself past actions, just upon the same ground and for the same reason as it does the present.

Later, Locke [Essay, XXVII, §26] writes:

[W]hatever past actions it cannot reconcile or *appropriate* to that present self by consciousness, it can be no more concerned in it than if they had never been done: and to receive pleasure or pain, i.e. reward or punishment, on the account of any such action, is all one as to be made happy or miserable in its first being, without any demerit at all. For, supposing a *man* punished now for what he had done in another life, whereof he could be made to have no consciousness at all, what difference is there between that punishment and being *created* miserable?

Just as with Locke’s labour theory of property for ownership of things or objects, there are many difficulties with Locke's particular account of personal identity for ownership of actions. The most forceful objections are circularity objections. Joseph Butler objected to Locke’s view on these grounds. If I have an apparent memory of leading the troops at Waterloo, that would not make me identical to Napoleon. Marya Schechtman summarizes this part of Butler’s circularity objection like this: “...real memories are apparent memories in which the person remembering is the person who actually had the experience. The obvious problem with
the memory criterion of personal identity, then, is that one must already have a criterion of personal identity in order to define memory.”¹³⁴ David Shoemaker, meanwhile, summarizes Butler’s objection like this: “I can remember only my own experiences, but it is not my memory of an experience that makes it mine; rather, I remember it only because it's already mine. So while memory can reveal my identity with some past experiencer, it does not make that experiencer me.”¹³⁵

As a criterion for the reidentification sense of identity, or for numerical identity -- what makes me the same object over time -- the memory criterion needs to be abandoned. However, there is something very plausible about the claim that it is some psychological criterion, like memory, that underpins our normative practices of holding responsible or accountable.

According to Shoemaker, “...concerns having to do with moral responsibility are... about the relations between various psychological states... and so if personal identity is a necessary condition for moral responsibility, the Psychological Criterion provides a plausible and satisfying account of that condition: I cannot be responsible for the actions of some person if I'm not the inheritor of that person's psychology.”¹³⁶

The most popular contemporary version of the psychological criterion insists on psychological continuity, with overlapping chains of strong psychological connectedness. The second option can be put formally like this:

(2) P Φ x at t₁. Q₂ has a claim to x, just in case Q₂ is the same person as P₁₁.


¹³⁶ Ibid.
On this view, what matters is that the person now making an ownership claim to some object is identical to the person who was responsible for the claim-generating action. Like all of the views, this is simultaneously a theory of holding responsible. Someone is open to being held responsible for some action $\Phi$ just in case she is identical to the person that performed the action, who was a person open to moral responsibility at the time of the performance of the action.

A rival view that also takes seriously the requirement of being a moral agent is the Identity of Selves view.

### 10.4.3. THE IDENTITY OF SELVES VIEW

The identity of selves view can be put formally like this:

(3) $P_{t_1}\Phi x$ at $t_1$. $Q_{t_2}$ has a claim to $x$, just in case $Q_{t_2}$ is the *same self* as $P_{t_1}$.

For precision, what we would require is the right account of a "self." There are several options. What unites these options, and what is sufficient for our purposes here, is a commitment to *psychological connectedness*, and not merely psychological continuity, as the relevant relation that grounds attributions of responsibility, and ownership claims over time.

Recall that psychological connectedness includes "tight" links between our various mental events, like beliefs, desires, memories, intentions, and so on. Psychological continuity, meanwhile, only requires *overlapping chains* of psychological connectedness. Thus, the duration

---

of a person and the duration of a self may differ -- a single person may have, over their lifespan, several different, but overlapping, selves.\textsuperscript{138}

The same, however, might be true of persons. A single living human being may suffer from psychological discontinuity. Take the case of Phineas Gage. At 25 years old Phineas Gage had one set of beliefs, values, memories, intentions, concerns, interests, preferences, dispositions and commitments that informed his character. On September 13, 1848 while working on a railroad, he accidentally lit the gun powder at the base of the iron rod he was using to tamp down the charge. The rod went clean through his brain and skull, destroying either just the left or both of his frontal lobes. Phineas Gage survived, but he was changed. So much so, that some claimed that he was "no longer Gage."

The historical Gage does not matter. What matters is that it is possible for a person's psychological profile to change so dramatically, that we may be justified in saying that the very same individual may no longer be the same person. While they would be the same biological animal -- the same living human being -- they would be two different persons. And since, on the Identity of Persons view, what matters for holding responsible is identity of persons, a person suffering from radical psychological discontinuity would also no longer be held responsible for the actions of her earlier, different person.

We might wonder whether mere psychological continuity is sufficient for holding responsible. When considering whether or not someone is fit for blame or punishment, we might think that what we need is stronger ties between the various bundles of interrelated mental events -- the ties of psychological connectedness, which correspond with a self, rather than a person.

\textsuperscript{138} It is, however, possible that a person and her self are co-extensive.
Shoemaker offers the example of someone (we'll call him Gineas Phage) who might have performed some action that would, had he performed it now, cause him to feel shame but for the fact that "[t]he ‘self’ that performed that action seems to him now to be a stranger: that self believed certain things, lived his life in a certain way, and desired certain things that are quite different from the corresponding beliefs, goals, and desires of the man's present self. This attitude of nonidentification, of indifference, is a reflection of the lack of connectedness between the two selves."\textsuperscript{139} If our reactive attitudes, like shame, are indicators of the metaphysical fact of identity, then it looks as though it would be unjust for us to hold Phage responsible for the action that would have caused, but now does not, shame. And if first-person shame is not a fit reaction to that past action by Phage, then the corresponding third-person attribution of blame would not be fitting.\textsuperscript{140}

Consider also the case of Patty Hearst. According to accounts, Hearst was kidnapped, "brainwashed," and then actively participated in a bank robbery.\textsuperscript{141} While brainwashed Patty Hearst and the "deprogrammed" Patty Hearst are psychologically continuous -- they are two temporal parts of the same person -- they are psychologically disconnected, different selves. If our inclination is to balk at the suggestion that Hearst should now be held accountable for what she did while brainwashed, then we are partial to the view that what really matters, at least for holding responsible, is identity of selves, not of persons. We might justify our balking by

\begin{itemize}
  \item \textsuperscript{139} David Shoemaker, “Theoretical Persons and Practical Agents,” at p. 329.
  \item \textsuperscript{140} This assumes that blameworthiness and feeling shame are importantly related. They might be two sides of the same coin, captured by the following biconditional: I am warranted in feeling shame for an action if and only if it is warranted for a third party to blame me for that action.
  \item \textsuperscript{141} Just like in the case of Phineas Gage, the actual history of what happened to Patty Hearst does not matter. What matters is the possibility of psychological disconnectedness, and a case that might tempt us to conclude that this is what really matters for attributing responsibility.
\end{itemize}
insisting that the bank robbery did not "flow" from her "real self" -- from the values, beliefs, and commitments that Patty now endorses, and did endorse prior to being brainwashed. And we might think that we should only hold people responsible if their actions are tied to their "real self."\footnote{Marya Schechtman captures this view by insisting that what we are looking for is not a criterion of, what she calls, "reidentification," but, rather, a criterion for "characterization." These are two different senses of "identity." Marya Schechtman (2005). "Personal Identity and the Past," \textit{Philosophy, Psychiatry, \\& Psychology}, vol. 12, pp. 9-22. In an earlier paper, Schechtman explains that the former answers the "question of reidentification," where a "questioner is asking which history her life is a continuation of..." The latter answers the "question of self-knowledge" where "the questioner presumably knows her history but is asking which of the beliefs, values, and desires that she seems to have are truly her own, expressive of who she is." Marya Schechtman, "Personhood and Personal Identity," at p. 71.}

The Identity of Persons view is persuasive when applied to responsibility attributions in the case of punishment and blameworthiness. Phineas Gage after the accident should not be held accountable for his pre-accident actions. He should not now be punished for bad deeds, and should not now be blamed. If we were to punish or blame him, Gage might legitimately respond, "but that wasn't \textit{me} who performed those actions. \textit{I} am a different person." Similarly, and symmetrically, it may also be persuasive for responsibility attributions in the case of benefits and praiseworthiness.\footnote{R. Jay Wallace, however, believes that there is an asymmetry, and a proper account of moral responsibility applies to forms of blame alone. R. Jay Wallace (1994). \textit{Responsibility and the Moral Sentiments} (Cambridge: Harvard University Press).} If Gage were to demand a benefit for some pre-accident action now, we might legitimately say to Gage, "but that wasn't \textit{you} who performed those actions. \textit{You} are a different person."

We may find the Identity of Selves view either more or less persuasive, depending on how important we think tight links between interrelated mental events are to responsibility attribution. Burdens and benefits, praise and blame would both be subject to this possible
rejoinder if there is psychological disconnectedness: "but that wasn't me (you) who performed those actions. I (you) am a different self."

We may not find the same conclusion (whether we opt for an Identity of Persons or Selves view) persuasive when it comes to the continuity of ownership claims. After all, it would be strange to say that Gage loses his ownership claims because of a freak accident. Would we insist that Gage has lost his moral ownership claim to the log cabin that he built before the accident? To the plot of land that he tilled before the accident? To everything? If an enterprising Frank witnessed the accident, and judged, correctly, that Gage would undergo radical psychological discontinuity, could he rush off to Gage's cabin and perform the relevant claim-generating action on it to generate a claim for himself? If this is implausible in the case of persons, it is more implausible in the case of selves, which requires less of a psychological change to generate a different morally relevant metaphysical unit for purposes of moral responsibility.

It looks as though that is the conclusion that we will be compelled to adopt, if we want to maintain a special rights view of property, and insist on the Requirement of Responsibility. Phineas Gage really is no longer responsible for the claim-generating actions of his pre-accident person. Gage really cannot credibly say, "that plot of land is mine because I tilled that soil many moons ago." He cannot say this because the "I" that tilled the soil, and the "I" that is now attempting to uphold the claim are different persons. It is possible, if we prefer the Identity of Selves to the Identity of Persons view, that Gineas Phage, after sufficient psychological disconnectedness, cannot credibly lay claim to property that he acquired while being an earlier
He cannot say this because the “I” that tilled the soil, and the “I” that is now attempting to uphold the claim are different selves.

At least, neither can lay claim to those objects for that particular reason -- they cannot make a claim based on being responsible for the claim-generating action. The Special Rights view of property may still be saved from the implausible implications. One of the sticks in the bundle of rights that we acquire when we acquire an ownership claim to an object is the right to transfer the object. If the relevant metaphysical unit is a person (or a self), then just as we may transfer an object to a spatially-distinct someone else, we may also be able to transfer the object intrapersonally (or to a successive self).

CHAPTER 11: JUSTICE IN TRANSFER

11.1. VIEWS TRACKING JUSTICE IN TRANSFER

It is possible that, instead of attending only to moral responsibility for a claim-generating action, we should also attend to justice in transfer. Above, we have concentrated our attention only on the scope of the principle of justice in acquisition:

Q has a claim to x, just in case Q acquired x according to the principle of justice in acquisition.

The principle of justice in acquisition just is the Special Rights view of property. We have highlighted the fact that the scope of Q is more limited than all theorists working within the Special Rights view of property, and property theory in general (with exceptions), may have realized. This is why we made use of Q and P (rather than just Q), and introduced different periods of time (t₁, t₂, t₃, etc.). We should not, however, overlook the importance that the
principle of justice in transfer may play not only in cases of spatially-distinct interpersonal transfers, but also in the possible case of *intrapersonal* transfer.

Justice in transfer needs to meet two conditions; that the thing to be transferred is part of that person's just "holdings," and that the transfer be "voluntary." A holding is just if and only if the person with the holding acquired it justly (either through the method stipulated by the principle of justice in acquisition -- the Special Rights view of Property -- or by means of a transfer that meets the principle of justice in transfer). The set of current holdings is just just in case everyone is entitled to their holdings through repeated application of the principle of justice in transfer, terminating for each holding with the principle of justice in acquisition. The principle of justice in acquisition can be put formally like this:

Q has a claim to x, just in case Q acquired x according to the principle of justice in acquisition, or Q acquired x from P according to the principle of justice in transfer and P has a claim to x according to the principle of justice in acquisition, or P acquired x from O according to the principle of justice in transfer and O has a claim to x according to the principle of justice in acquisition, or... etc.

Putting the Nozickian point in the terms that we are now more familiar with:

P Φ x at t₁ and has a claim to x at t₁. Q at t₂ has a claim to x just in case Q at t₂ is the same morally relevant metaphysical unit as P at t₁, or Q at t₂ acquires x according to the principle of justice in transfer from P at t₁.

If P is responsible for the claim-generating action, she can legitimately transfer the object so acquired to Q. If Q is still within the scope of the relevant metaphysical unit that is responsible for whatever was the basis of the transfer, then she can legitimately transfer the object and bundle of rights to R. And so on. Thus, we cannot summarily object to R's purported
claim to x by saying to R, "you are not responsible for the claim-generating action, and therefore
do not have a claim," since R can point to a chain of transfers that terminates in the original
acquirer's having performed the relevant claim-generating action.

P, Q, and R may either be spatially-distinct persons, or be different selves or persons
within the scope of the same living human being. Meanwhile, a transfer can either be explicit, by
contract, or implicit, without a contract; either way, a transfer may also be contingent on the
recipient performing some action, or doing something specific, with respect to the transferred
object. We'll take each of these possibilities in turn.

11.2. THE TACIT TRANSFER

Most transfers are explicit. Q asks P for some object, and Q delivers the object on, say, payment
of some amount, or in exchange for something else. Sometimes, Q does not ask for anything, but
P offers the object as a gift. This might be viewed as an objection to the view that the same living
human being (or person) might transfer objects to a future person that is him (or to a future self
that is him). After all, none of us can have a conversation with our future self, since the various
stages of ourselves do not exist simultaneously in time.

So an intrapersonal transfer could not be explicit, like an interpersonal transfer, but would
have to be implicit or tacit. Tacit transfers are possible. We may have the following in mind when
we, say, save for our retirement: "I am paying into an account for my own future benefit." I think
this is an ordinary case. If we do something like this, everything will hinge on what "my own"
refers to. Ordinarily, I think it is plausible to suggest that what we actually mean for "my own" to
refer to, in the vast majority of ordinary cases, is me-as-a-living-human-being, rather than
anything more temporally restricted (like person or self). This is so even if we are aware of the
possibility of radical psychological discontinuity, as may happen in Phineas Gage-type cases (or Alzheimer's disease, or other neurological ailments\textsuperscript{144}).

Whether or not we are justified in thinking like this is a separate issue. We may think that the requirement of prudence, or the referent for "self" in self-interest, can only legitimately refer to either the person that is me, or the self that is me, and not the living human being that is me. We might think that extending the scope over the whole of our lives as a single living human being is not justified by appeal to prudence, since, in effect, this would \textit{not} be prudent, but altruistic. We would be benefiting something that is not identical, in the morally relevant respects, to me.\textsuperscript{145} This, however, does not matter. This does not matter because, on the Special Rights view of property, we do not have to justify any of the particular transfers, only the system that permits transfers in general. It is up to the owner of an object or thing to decide who to transfer things to, and for what reason.

Some of us are aware of the possibility of psychological disconnectedness, as may happen in Gineas Phage- or Patty Hearst-type cases. Nevertheless, it is plausible that very many of us would still have a concern for the future, psychologically disconnected, person that is me. We might still want our psychological continuer to benefit from our current actions. We can rephrase our intentions like this, "I am paying into an account for the benefit of a future self who will be the same person as me." This would restrict the scope of a justified transfer within the person category, and not range over the whole of the living human being.

\textsuperscript{144} We do, for example, countenance living wills and DNRs (do not resuscitate) in cases where the person falls into a coma.

\textsuperscript{145} Considerations like this are why some who defend animalism, or the biological criterion, reject the psychological criterion. We do, after all, care about the whole of our lives as a living human being, and not temporal stages linked by psychological continuity and/or connectedness. From the fact that this is what we, ordinarily, care about, many think that we are justified in concluding that this is what we \textit{ought} to care about.
If this is true of retirement objects, it may very well be true of other objects as well. When we purchase cars, build log cabins, knit sweaters, etc. we may have in mind a pattern of use over time. We may intend, at the moment of initial acquisition, for the person- or living human being-that-is-me to continue to receive benefits from the acquisition across, and not just within, the morally relevant category. Thus, the Special Rights view of property can overcome the implausible implications above by insisting that these tacit transfers are, in fact, possible, and that Phineas Gage, Gineas Phage, and Patty Hearst all continue to have a claim not on the basis of still being responsible for the claim-generating action, but by virtue of an implicit or tacit intrapersonal transfer.

11.2.1. THE CONDITIONAL TRANSFER

The transfer may be conditional. It may be conditional on the continuation of a particular project. Derek Parfit's Russian socialist is a useful case that can be adjusted for our purposes. Parfit writes:

In several years, a young Russian will inherit vast estates. Because he has socialist ideals, he intends, now, to give the land to the peasants. But he knows that in time his ideals may fade. To guard against this possibility, he does two things. He first signs a legal document which will automatically give away the land, and which can be revoked only with his wife's consent. He then says to his wife, 'Promise me that, if I ever change my mind, and ask you to revoke this document, you will not consent.' He adds, 'I regard my ideals as essential to me. If I lose these ideals, I want you to think that I cease to exist. I want you to regard your husband then, not as me, the man who asks you for this promise, but only as his corrupted later self. Promise me that you would not do what he asks.'

There are many things to respond to in the above example. For example, it would be important to know which self, the socialist-self, or the future more-conservative-self, is actually

---

entitled to the property. It is not obvious that just because the socialist self is aware of a future inheritance, that he, rather than a future more conservative self, is the intended recipient of the inheritance. But these considerations do not matter for our purposes. What matters is the possibility that someone intends for benefits to accrue only to a psychologically connected self. What follows is a slightly adjusted case of Parfit's Russian socialist:

The Russian socialist would like his future self to continue to pursue the project of fighting for socialism. He may acquire goods with this intention in mind. He may acquire many copies of the *Communist Manifesto*, in order to distribute those copies later to get the workers of the world to unite and throw off the shackles of capitalism. He certainly does not want his future self to burn the *Communist Manifestos*. Nevertheless, that may be what his future self most wants to do with them -- burn them while thinking, "how could I have been so foolish? Communism is for dorks."

The implication is not that we have an obligation to continue projects started by an earlier self (although this might be true). The implication is not that our earlier intentions are normative on our current selves (although this might be true). What may be an implication, however, is that we may no longer have a claim to some object our earlier self acquired for a specific purpose, a purpose that we now intend to thwart, or undermine. That reason may be this. It is difficult to believe that P would transfer an object like this to a Q who intends to undermine the reason for acquiring the object in the first place. We would not transfer Leninist tracts to Trotskyites, if we were Leninists and did not want the tracts burned or destroyed. Put differently, Q would violate a condition of the transfer, rendering the transfer illegitimate.
Here is an analogous claim. P transfers *Communist Manifestos* to Q, saying, "Comrade, communism must prevail. I entrust these *Manifestos* to you to help spread the message of comrade Marx and comrade Engels." Q may put the *Manifestos* in his garage. A few years later, P may bump into Q and say, "Comrade, tell me about your successes in distributing the *Manifesto*." Surely, there is something wrong about Q responding, "I am not your Comrade. I have burned the *Manifestos* after reading *Anarchy, State & Utopia*." What is wrong about it is a certain violation of the terms or conditions of the transfer. Those terms included an implicit purpose for those *Manifestos*, a purpose violated by Q. This case is not very different from the case where P and Q are not spatially-distinct, but earlier and later selves (or persons).

It is possible that the terms of the transfer in the example above require Q to actually distribute the *Manifestos*. We can alter the example. P may leave the *Manifestos* to Q in her will. It may have been common knowledge between P and Q, while P was alive, that both of them shared the intention of proselytizing the message of Marx and Engels. But Q may have, in the interim, lost his passion for that message. Q may have changed his mind. Q may have read *Anarchy, State & Utopia*, and rejected his earlier communism. P may not have made explicit what she wanted done with the *Manifestos*. But P need not say this for Q to know that what P really wants is for Q to spread the message, and definitely not to burn the *Manifestos*. If what P wanted most is *for Q* to spread the message, then this might be a reason for Q to spread the message, even if Q no longer shares a desire to spread the message. The weight of reasons might tell against Q's distributing the *Manifestos*, especially if Q now thinks spreading that message is contrary to what he judges as the best thing for him to do. Alternatively, P may most want to *spread the message*, and be either indifferent to, or place less weight on, who, in particular,
spreads the message. Then it seems likely that Q has a strong reason to deliver the Manifestos to someone or some organization that Q has reason to believe will spread the message.

The Communist Manifesto may be a bad example. This is because we may have overriding reason to spread the correct political philosophy, or what we now conscientiously judge is the correct political philosophy. We may have overriding reason to thwart, or at least not promote, the spreading of a false political philosophy, or what we now conscientiously judge is a false political philosophy. The fact that one reason is overridden by other reasons, however, does not negate the existence of the reason, it merely tells us that the weight of reasons tells against the reason under consideration. Thus, there may very well be a reason for Q to spread the message of the Manifesto, even if, all things considered, Q ought not.

The conditional intrapersonal transfer possibility is only worth considering if the implicit intrapersonal transfer view is plausible. One reason why it might not be is this. While our ethical concerns can be abstract, theoretical, and can assume knowledge of certain things that we do not actually have access to (like the intentions of the agent with respect to the referent of "my own"), ownership concerns require access to this knowledge. For practical, legal reasons, the transfer of property requires explicit contracts. Otherwise, we cannot know whether or not a transfer is justified in accordance with the principle of just transfer. We may therefore believe that the implicit transfer view is either false, or inapplicable to actual cases of transfer for this reason. It turns out, however, that the intrapersonal implicit transfer view is less like ordinary interpersonal transfers and more like ordinary interpersonal, post-death transfers.

11.3. THE INHERITANCE VIEW
The tacit intrapersonal transfer view is most analogous not to an ordinary interpersonal transfer, but to the interpersonal, post-death transfer. In ordinary interpersonal transfers, both persons are simultaneously existing, and both exchange the object and payment (or no payment if it is a gift) at a time. In ordinary interpersonal transfers, failure to meet a condition of the transfer means that, at a minimum, the object transferred ought to be returned. Effectively, if there is a condition on the transfer, failing to meet the condition is similar to defrauding someone of their property. In the case of post-death transfer, there is no one to return the transferred object to. In the case of intrapersonal tacit transfer, the same holds -- a past self cannot be compensated by a current self, and the transfer occurs without simultaneously existing persons. To be precise, then, what we have is a case of inheritance. Thus, it is better to call the intrapersonal implicit or tacit transfer view the intrapersonal inheritance view. Q at t₂ inherits objects from P at t₁, where Q and P are the same living human being (or the same person). We can put this possibility formally like this:

\[ P \Phi x \text{ at } t_1 \text{ and has a claim to } x \text{ at } t_1. \]
\[ Q \text{ at } t_2 \text{ has a claim to } x, \text{ in case } Q \text{ at } t_2 \text{ inherits } x \text{ from P at } t_1. \]

Notice that the intrapersonal inheritance view is just like interpersonal inheritance when someone fails to leave a will. Our legal system will, unless there are overriding reasons not to, transfer the property of the deceased to the remaining closest-of-kin, or living family members.

This may be because courts have a false belief in property accruing not to individuals, but to families, with the initial owner having the greatest set of rights with respect to it. But this is difficult to believe. Instead, the best rendering of this ordinary legal practice is that the courts

---

147 I'm grateful to Mark H. Herman for pointing this out.
attempt to infer the intentions of the deceased, based on the best available evidence. In the absence of sufficient evidence to do something else, the courts will automatically transfer the property to closest-of-kin. One plausible explanation for this practice is this: Were the person alive, this is what he or she would most want. Since people ordinarily care most for their family, we are justified, *prima facie*, in making this assumption.

So, too, might we treat the intrapersonal tacit inheritance view. In the absence of sufficient evidence to the contrary, we should simply assume that P most wants to transfer her property to Q, Q being the later stage (whether person or self) of the same living human being. In this way, the implausible implications from the Identity of Persons and Selves views might be overcome.

Our Final Continuity Principle, which is a purported answer to the problem of the continuity of claims can be put like this:

*Final Continuity Principle:* In the case of original acquisition, Q has an ownership claim to x at t₂ provided:
(a) P Φ x at t₁ and has a claim to x at t₁, and
(b) P is morally responsible for Φ at t₁, and
(c)* Q at t₂ is the same morally relevant metaphysical unit as P at t₁ (or, what amounts to the same thing, (c) Q at t₂ is morally responsible for Φ at t₂); or
(d) Q at t₂ (implicitly) inherits x from P at t₁, and
(e) Q at t₂ meets a sufficient number of the (implicit) conditions of the transfer.

Where (a) is the Ownership Claim Generator, (b) reflects the Requirement of Responsibility at a time, (c) is the Requirement of Responsibility at any future time, (c)* expresses the Commutative Claim. Implicit in the Requirement of Responsibility is The Platitude. (d) is the Implicit Inheritance View, (e) recognizes the possibility of transfers that are conditional.
CHAPTER 12: INHERITANCE

On this view, Q literally inherits items from P. Since intrapersonal inheritance is a novel view, it may be fruitful to search our intuitions in the case of ordinary inheritance. If interpersonal inheritance is analogous in relevant respects to the intrapersonal inheritance view, then what we say about the former should hold for the latter. In particular, we should want to know if we have reason to adhere to instructions left in wills.

The instructions that I leave behind after my death may be normative on us in one of several different ways. They may be normative because the post-mortem thesis is true, we have reason not to harm persons, and failing to adhere to my instructions counts as a harm to me. They may be normative because, while not harming me, you would be wronging me, where wronging is different from harming, and we have reason not to wrong people. On both of these views, we would adhere to a will, or follow instructions, for my sake. Alternatively, they may be normative because there are persons who cared for me, who now want to do me honour by following my instructions and who 1) are obligated to follow my instructions, or 2) would be harmed if the instructions were not fulfilled. There are other reasons too. Here I will ignore all reasons apart from reasons of the first kind, where our reasons are reasons to do or not do something or other for the sake of the dead.

12.1. MY DEATH AND MY STUFF

Epicurus argued that death is no harm to us. It is no harm to us, because the subject who dies ceases to exist, and ceasing to exist is not a harm. This view has been expanded like this. There is nothing that can harm us after our death because once we are dead, there is no one who is
harmed by anything. We call this the "existence condition" for harm. The existence condition can be put into the following formula. In order for anything, x (the object of harm), to count as a harm, there must be a subject, P (the subject of harm), for whom x counts as a harm, and a time, t, at which the harm occurs. In death, the subject ceases to exist, and after death, there is no existing subject who counts as the subject harmed. Some have called this the timing puzzle.

Many have disputed the existence condition. When they dispute the Epicurean claim that death is no harm to us, they defend the mortem thesis. The mortem thesis tells us that death is a harm to the person who dies. When they dispute the expanded claim that nothing can harm someone after death, they dispute the immunity thesis and defend the post-mortem thesis. The immunity thesis is the claim that after we are dead, we are immune to harm. The post-mortem thesis tells us that posthumous events can harm the person who is dead.

The options, then, are these. We can believe in the truth of the existence condition and think that both the mortem and post-mortem theses are false. We can believe that the existence condition is false and thus defend both the mortem and post-mortem thesis. We can believe in the truth of the mortem thesis, but think the post-mortem thesis is false. Or we can, with Epicurus himself, insist the mortem thesis is false, but claim that the post-mortem thesis is true. While this does not exhaust logical space, it seems to me that these options exhaust the space of plausible options. Here, I want to offer a defense of the possibility of posthumous harm. I will then apply that to the case of intrapersonal identity “death” to see if it is possible for a later stage of a person to harm or wrong an earlier stage.

On first blush, if we want to say that we have reason to adhere to instructions left behind by someone who is now dead for the sake of the person who is now dead, we will have to argue
that dead people can still have a sake. We will have to argue that things can go better or worse for someone who is now dead. But appearances are deceiving. We can try to demonstrate that someone can be harmed post-mortem, or we can try to argue that something occurring after someone's death can harm the now-dead person ante-mortem. This is George Pitcher's view.

Here is Pitcher's argument. Bishop Berkeley cares very much for his son, William. William will die young. Berkeley has an interest in William's long life. It is plausible to suggest that, whether or not Berkeley outlives his son, his interest in William's long life will be set back, which is a kind of harm.

There is nothing preventing our interests from having a forward-looking character. We might think that it does not matter when our interests are set back, what matters is whether or not they are set back. Patricia might have an interest in her grandchildren living long lives, whoever, in fact, they turn out to be. Patricia may have children who do not yet have children of their own. But it is perfectly plausible to insist that Patricia has an interest in the long and happy lives of her children's children, whoever they turn out to be. This is true of Patricia even if she dies before her children have children of their own. If it were to turn out that Patricia's grandchildren die young and miserable, we can say that, in fact, Patricia's interests have been undermined or set back. And we might think that this is a harm to Patricia, even if she is now dead.

For Pitcher the time of the interest is the relevant beginning point of possible interest set back or harm. So, before Berkeley had a son, it was not true that Berkeley had an interest in the long life of William. We describe Berkeley's interest like this: Berkeley has an interest in the long

---

life of his son, William. Pitcher says that William's early death casts a shadow backwards all the way to the point at which Berkeley's interest in William's long life started.

While Pitcher talks about interests, Parfit and others sometimes speak about desires in similar ways. Since our concern here is formal, it does not matter whether we use desires or interests. What matters is whether either of them can be thwarted (or set back) such that it is true that one's life does not go as well as it might. Thus, we can call it a desire or an interest in the case of Bishop Berkeley like this: Bishop Berkeley has an interest in the long life of William, or; Bishop Berkeley has a desire that William live a long life. On either the desire or interest view, the shadow of harm goes only back as far as the first instance of the having of this particular desire or interest. It does not go further back.

But it might. It might do this if we redescribe Berkeley's interests (desires), or permit higher-order interests about interests (desires about desires). It is plausible to think that we have a second-order interest in the success of our first-order interests. So Berkeley might think, "I have a general interest in the success of my future, more particular interests, whatever particular features they turn out to have." Parfit calls these global and local desires. We have a global desire to see the satisfaction of our local desires. Global, in this sense, means the same as higher-order or second-order, and local, in this sense, means the same as first-order, or lower-order. We have global interests (desires) in our local interests (desires).

If we accept talk of global interests or desires -- and there is no reason why we shouldn't -- then the shadow of harm may reach back further. It may reach all the way back to when Berkeley first had a global interest or desire in the success of his local interests or desires. This would make the shadow very long. It might be implausible that the shadow be that long, since it
might make a tragedy of too much of our lives. And for this reason, we might think the shadow of harm thesis is false.

A second reason to abandon this view, at least post-mortem, is this. Interests and desires appear to have a "bizarre ontological status." The bizarre status is this. Usually, we think that, in order for an interest or desire to exist, there must be a subject who has an interest or desire. It cannot be the case that there are free-floating desires or interests. Neither have a separate existence, they do not persist without a subject who now has these interests or desires. Post-mortem, there are no continuing desires or interests. If we believe this, we will be defending the existence condition for interests and desires, much like some defend the existence condition for harm. And we can insist that the same problem repeats itself. Namely, interests, desires and harms are the sorts of things that require a subject who now exists to be the subject of the harm, or the subject with the desire or interest. Harms, desires, interests, and so on, do not have an independent, free-floating existence.

This second reason can be overcome. George Pitcher has argued that it is not the case that we can be harmed in the time after our death, but we can be harmed by events that occur after our death in the time before our death. The harm occurs while the person is still alive. Pitcher distinguishes direct from indirect harm. Steven Luper summarizes this distinction as follows:\textsuperscript{149}

...an event that is responsible for our coming to be in a bad condition is an indirect harm, while the bad condition itself is the direct harm... On Pitcher’s view, posthumous events can only be indirect harms. The corresponding direct harms are certain facts about us that come to hold by virtue of the posthumous events that occur much later... In sum, posthumous events that harm us do so indirectly.

\textsuperscript{149} Steven Luper (2004), "Posthumous Harm," \textit{American Philosophical Quarterly}, vol. 41/1, pp. 63-72, at p. 70.
Suppose Patricia is alive now at $t_1$, but will be dead at $t_2$. The claim is that Patricia is harmed at $t_1$ because it is true of Patricia at $t_1$ that her desire or interest will be thwarted, ignored, or undermined after her death at $t_2$. Patricia is indirectly harmed while still alive at $t_1$. It is true that she will not be directly harmed, because at $t_2$ she will not be around to be so harmed when her instructions are ignored after her death.

We might think that an indirect harm is not the sort of harm that matters. What matters, we might think, are direct harms. Indirect harms, like the ones Patricia suffers, are harms that Patricia will never be aware of. She will never know that her instructions will be ignored. True, if Patricia had a choice between the state of affairs where her instructions are heeded, and the state of affairs where they are not, she is likely to choose the former, rather than the latter. Put differently, Patricia would choose the possible world where her instructions are heeded, rather than the actual world where they are not. That Patricia has these preferences, however, seems irrelevant if she thinks that she resides in the world where her instructions are heeded, and if she is persuaded that the better, from her perspective, state of affairs will obtain.

We will accept this objection if we think that all that matters is how things seem, from the inside. But this is not all that matters. We do not think that Patricia's life has gone as well as it could just so long as Patricia thinks it has, or just in case it seems that way to her, from the inside. The truth about how well our lives have gone does not hinge merely on how well we think our lives have gone or how our lives seem to be, from the inside.

It matters to us not that we never think that we have been betrayed by a friend, but that we not be so betrayed. In dealing with the famous experience machine objection to utilitarianism, Robert Nozick argues for this point as follows. What we want is not merely to
think or believe that we have authored a fine novel, but that we have authored a fine novel. What we care about, says Nozick, is not merely "seemings," but seemings that accurately reflect the facts. In short, we care about authenticity, where authenticity is a correspondence relation between how things seem on the inside, and how they actually are. We want our seemings to correspond to the facts.

And so it matters that our desires and interests be met or satisfied, and not merely that we think that our desires and interests are met or satisfied. So it was true of Bishop Berkeley that his interest or desire in the long life of William will come to be thwarted by the early death of William, and it was true from the moment that Berkeley acquired this local interest or desire. Berkeley's life did not go as well as it could have, for this reason. It is not a case of backwards-causation, and it is not a case of a bizarrely persistent desire or interest that lacks a subject whose interest or desire it is.

Here is an example that might make this claim more intuitively clear. Suppose Patricia cleans her bathroom. Suppose that tomorrow, her dogs will make a mess of her bathroom. Patricia might think, when tomorrow comes, "I cleaned the bathroom in vain." It would be true of her cleaning the bathroom today that she is doing it in vain because of what will happen tomorrow. The fact that the dogs won't make a mess of it until tomorrow is irrelevant to the fact of the matter now. The cleaning is vanity now, even if its vanity isn't discovered until tomorrow. The temporal gap matters epistemically, but not metaphysically. Similarly with interests or desires. The relevant interests or desires are not free-floating, they attach to the subject at a particular time. Future events can undermine or set-back interests or desires that you and I have now.
12.2. SYMMETRY OF HARM

Here is an objection to the indirect harm view, at least as applied to post-mortem events. On the Parfitian view, we may die more than merely once. There is only one biological death, but there may be more than one instance of the death of our identity, understood as a person, self, or other morally relevant metaphysical unit. If identity is what matters in survival, then it is possible for the same biological organism to die multiple deaths throughout one biological lifetime. Call the various selves over time within one biological organism P₁, P₂, and P₃. On the indirect harm view, P₁ can be indirectly harmed by P₂, and P₂ can be indirectly harmed by P₃. This is because, on Pitcher's view, it is now true that the desires, values, preferences, and projects of P₁ may be ignored or abandoned by P₂. And the same is true of P₂ at the hands of P₃.

This view gives us an interesting symmetry between forward-looking and backward-looking harms. It is clearly possible for P₁ to harm P₂. What we do now will have an impact on what we will be able to do later. P₁ can take up smoking, or be negligent about a medical condition, and so on, doing things or failing to do things that will negatively impact her future self, P₂. P₁ and P₂ are different selves, or different persons, meaning that this is a harm much like a harm between two spatially-distinct selves. Parfit writes, "We ought not to do to our future selves what it would be wrong to do to other people." If we accept the backward-looking harm thesis, then P₁ and P₂ are in a symmetrical relationship with respect to the possibility of harm -- P₁ can harm P₂, and P₂ can harm P₁. Neither is immune against harms at the hands of the other.

P₁ might then generate claims on P₂ by doing things that are good for P₂, with the expectation that P₂ will not undermine deeply-held desires or interests. I might now feel

---

obligated to pursue a project that I started much earlier, just because that earlier self did things that are good for me-now. And P₁ might do good things for P₂ with the hope that P₂ will feel so obligated to reciprocate. This view can appeal to our reciprocity intuitions, or to our intuitions about gratitude. We may believe that we have reason to do something because it counts as reciprocating a good turn. We may also or alternatively believe that we have reason to do something out of gratitude.

But this view might be implausible, or worse. Parfit thinks that our abandoning a desire, value, preference or project, even if we once cared about it very much, does not count as a harm to us. This is because there are at least two ways of satisfying a desire -- we can satisfy a desire by gratifying it, getting the object of our desire, or we can satisfy a desire by abandoning it, by no longer thinking the object of our earlier desire as now desirable. If P₂ abandons a desire P₁ held, that looks like it meets a condition of satisfying that desire. So no harm comes to P₁ at the hands of P₂.

This might be a misunderstanding of Parfit. What Parfit might mean is this. It meets a condition of satisfying a desire or value if it is abandoned within the scope of a self or person. P₁ may abandon a desire for ice cream while still P₁. This is not a harm to anybody, since it is the same person or self that both adopted the desire and later abandoned it. The worry is about abandoning desires, preferences, values and projects across selves. And the claim is that P₂ abandoning a desire held by P₁ is analogous to Q abandoning or ignoring P's desires or interests after P's death.

The existence condition may be objected to on other grounds. We might say that, if the existence condition is true, then it appears that not only can we not harm the dead, but we cannot
harm future generations either. They do not exist now, so nothing we do now can count as a harm to them. It is implausible to believe that future persons' plausible interests and desires do not count. One way to avoid this implication is to insist that the time of the interests or desires is irrelevant. That what matters is that we not thwart or undermine legitimate interests or desires, whether they attach to presently-living persons, or will attach to future persons.

12.3. HARMS & WRONGINGS

We can continue to speak of "harmings" in this way, but it may be better to speak, instead, of "wrongings" and a life not going as well as it could. We might think that the harm thesis is, after all, true. But it is true in this sense. For a harm to occur, it must be the case that an *occurrent* desire or interest or preference be thwarted. There must be a subject who has this desire (preference, interest) which is now thwarted. We might also insist that, for a harm to occur, the subject must be aware of that harm. So this desire is thwarted, and the subject is aware of this desire's being thwarted. In fact, it may be true that the fact of this desire's being thwarted is irrelevant to whether or not the subject is harmed, it might be that the subject need merely *think* that this desire is thwarted for her to have the mental states that constitute harm.

But it does not seem plausible to deny that Patricia can be *wronged* without being harmed, in the sense of “harm” now on offer. It is true that Quincy wrongs Patricia when he betrays her trust, even if Patricia never discovers this and so is not harmed. Even if Patricia is not harmed, it is both true that she is wronged and that her life does not go as well as it could have had Quincy not betrayed her. And if we agree that harm is not all that matters, that being

---

wronged and having a life go as well as it might matters also, then whether we speak of harmings or wrongings or lives going well or poorly, does not matter as much as we originally thought. After all, we ought not harm, wrong, or make someone's life go poorly. Harming, in fact, might just be a specific kind of wronging -- constituted by mental states, rather than the non-mental state facts of the matter -- and it is plausible that what really matters is that we not wrong, or be wronged, whether in the sense of harming or being harmed, or in some other sense.

If this is right, then the question about harm may be a red herring. We may believe that we ought not wrong someone, and we may additionally believe that a person need not presently exist for them to be wronged. They may either have existed, or may come to exist. So the existence condition even if it turns out to be true of harms, may not be true of wrongs.

12.3.1. BACK TO THE INHERITANCE VIEW

We have reason to respect the wishes of the dead if not doing so would be a wrong to them. For the same reason, we have reason to respect the wishes of earlier stages of ourselves, if not doing so would be a wrong to our past person or self. This is reason to uphold inheritance in the ordinary interpersonal case, but also in the non-ordinary intrapersonal case. It is not, however, always true that earlier stages of ourselves would transfer, by way of inheritance, their property to us. There might be conditions on the transfer, conditions that, if not met, would result in the objects acquired by earlier stages of us to return to the commons.

Consider Parfit's Russian socialist again. Parfit's socialist is a man who is now deeply committed to socialism. His commitment is so deep and rich, that he would not want his future self to ever abandon a commitment to socialism. He would consider this a deep tragedy. This is why he engages in activities and does things in an effort to bind his future self to socialist
commitments. The socialist now thinks that if he ever changed his mind about socialism, he would want himself to suffer.

If socialism does not engage your sympathies, perhaps a religious example will. We can imagine a person, Sally, who is deeply committed to her faith. We can imagine Sally now thinks that nothing matters apart from a personal relationship with God. Or, that nothing matters absent a personal relationship with God. There are many people who now believe what Sally believes. They believe this deeply and strongly. Sally considers it a deep tragedy that there are persons who do not share her commitments and values. In an effort to ensure that no such tragedy befalls her own life, Sally does not read books of a different opinion, she avoids the company of persons who do not share her values, she attends services as frequently as she can, and she often communes and builds deep ties to persons who share her values in an effort to make her commitment deeper. The depth of her commitment is matched by the breadth of her commitment. Her beliefs, desires, plans, interests, intentions, values, and so on, are informed by her commitment.

We might think that, if Sally and the socialist were to discover now that they will, over time, come to abandon their current deeply-held values, that each would consider it a tragedy. In the case of Sally, she might think that her life would no longer be worth living. It might be reasonable to suggest that it is a harm to each of them, now, for it to later be true that each abandoned these deeply-held values.

It would not be out of the question for each of them to set up schemes to ensure that their future selves do not change or at least not benefit from their current activities. "If I ever abandon my belief in God, I give you permission to keep the money I have given you in trust," Sally
might say to her pastor-banker. Sally might create numerous conditions to ensure that her future self only benefits from her current efforts, activities, and labours on the condition that her future self maintains a deeply-held belief in God.

These conditions in the case of intrapersonal inheritance appear to be symmetrical to the conditions we discussed in interpersonal inheritance, and interpersonal conditional transfers. We should expect this symmetry. We should expect this if we believe that later selves or persons are very much like spatially-distinct individuals.

CHAPTER 13: VIEWS TRACKING SOMETHING OTHER THAN RESPONSIBILITY

Our purposes, thus far, have been to focus on responsibility for an action as the sole or only grounding for property claims. The Lockean view does not distinguish between what generates a claim, and what perpetuates it. It may be possible that there is a different relation, or different morally interesting fact that perpetuates claims over time.

Responsibility may be only one of several different ways that a claim might be perpetuated. We might believe that, if Q at t₂ is responsible for P's Φ-ing x at t₁, then Q at t₂ has a claim to x. We might, however, think that even if Q at t₂ is not responsible for P's Φ-ing x at t₁, there are other relations that might hold either between Q and P, or Q and x, such that Q continues or perpetuates a claim to x.

Suppose someone, P, performs the morally interesting action that generates a claim to an object x. Suppose the stages of P are as follows: P₁, P₂, P₃, P₄, and P₅. On the earlier view that I presented, P₅ has a claim to x just in case P₅ is the same morally relevant metaphysical unit as P₁. But this is not true, since we are assuming that each of P₁, P₂, P₃, P₄ and P₅ are different
morally relevant metaphysical units. On the alternative view I presented, P5 has a claim to x just in case P5 inherits it from P4, who inherited it from P3, who inherited it from P2, who inherited it from P1.

Let us suppose that a different relation, we can call it the C-relation, is what perpetuates a claim over time, a relation that is independent of both responsibility and inheritance.\(^\text{152}\) It may be possible that P5 is no longer morally responsible for the actions of P1. But P2 may be morally responsible for the actions of P1, such that P2 would have a claim grounded in responsibility. And P3 may be morally responsible for the actions of P2, but not of P1, and P4 is responsible for the actions of P3, but not of P2 or earlier, and so on. If this is true, and if responsibility for the claim-generating action is a necessary requirement, then P3 would no longer have a claim, according to my view. But P3 may be C-related to P2, and P2 may be C-related to P1. The C-relation may obtain from P5 to P4, between P4 and P3, and so on to P1. Even though P5 would not be morally responsible for the actions of P1, the C-relation would obtain along the chain, and would ground P5’s claim to x.

This is a possibility. It may turn out that the C-relation is some mental state, like an attitude, a sentiment, or something similar. It may turn out that our having a justified concern for this object is sufficient to transfer ownership from earlier stages of ourselves to later stages. I will leave this possibility open for future work.

**CHAPTER 14: CONCLUSION**

Robert Nozick thought that a complete theory of property would require three principles: The principle of justice in acquisition, the principle of justice in transfer, and the principle of

\(^{152}\) I am grateful to Steve Wall for pointing this possibility out to me.
rectification of injustice. Nozick, however, is wrong. We require a fourth principle: a Continuity Principle.

Whether or not ownership claims persist over time is a problem for those, like Nozick and Locke, who adopt a Special Rights view of property. The Special Rights view of property requires moral responsibility for the claim-generating action not merely at the time of the action, but also across time, or we have to accept a default inheritance view whereby me-now inherits objects from me-then, if me-now and me-then are different morally relevant metaphysical units. Moral responsibility, however, applies only within, and not across, the morally relevant metaphysical unit, and is commutative on all future temporal parts of the morally relevant metaphysical unit. Since we have assumed, but not defended, the view that Reductionism is true, we have canvassed the following possibilities for the morally relevant metaphysical unit: (1) Identity of living human being, (2) Identity of person, (3) Identity of self, and (4) Identity of momentary experiencer. We argued against (1), and simply insisted that (4) is implausible without argument. (2) and (3) are both plausible, and one of these two options is most likely the truth. I, myself, believe that (3) is the truth.

One tantalizing prospect for this particular view is its kinship with the various laws of abandonment, squatting, adverse possession, and so on. These laws, we may have thought, are most readily justified by appealing to consequentialist reasons. Resources will be more efficiently used to generate well-being or some other good if we have laws like these, we may believe. It turns out, however, that even on the Special Rights view of property such legal practices may be justified. After all, if the scope of the individual who acquires an ownership claim through the claim-generating action ranges not over the whole lifetime of the living human
being, but over some temporally restricted stage, then we may have reason to assume that, after
some approximate (and somewhat arbitrary) period of time, that individual loses their claim
because they are no longer the same morally relevant metaphysical unit. That is, the individual
who presents herself after some years and insists on a claim to some object that she has not made
use of for several years, may not be the same individual who generated a claim.
BIBLIOGRAPHY


