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PROPERTY AND AUTHORITY

Almost all human societies recognise property in some form and in most of them that includes personal property, property owned by individuals. To my mind, the prevalence of personal property indicates that it serves some individual interest, that owning things is good for us as individuals. Individual ownership puts people in authority over the things around them, it is good for individuals to have authority of that sort and a system of personal property can be justified, at least in part, by the fact that it serves that interest.

In the first section of this paper, I'll expound and develop the idea that it is good for people to be in authority over the things around them because it is good for them to have control over those things. Call this the *control interest hypothesis*. I'll suggest that the control interest hypothesis can't provide a complete account of the property rights that we recognise. According to the *authority interest hypothesis*, personal property matters at least in part because it gives individuals control over a certain aspect of their normative situation, namely the rights and obligations both they and others have in respect of the things around them. In the final section of the paper, I develop and defend this hypothesis.

There are those who argue that individual interests of any stripe cannot support the recognition of personal property. For them a system of personal property is to be justified entirely by appeal to the collective interests that it serves, such as society's interest in the efficient allocation of economic resources. I agree that such collective interests play an important role in shaping property rights but I doubt that collective interests alone can do the job. To make sense of personal property, we must also appeal to the interests of individual owners and in particular to the value of certain forms of control.¹

¹ I assume that property rights are based on human interests, on facts about how property benefits people both individually and collectively. On other views the rights of personal property reflect the necessary presuppositions of rational agency (Kant 1996, Part 1) or else what an individual deserves to have as a result of their creative activity (Locke 1988, pp. 284-302). I shall not attempt to rebut such views, nor to defend an interest theory of rights more generally but a successful defence of an interest theory of property rights would bear on these wider issues. For the interest theory of rights, see (Mill 2015, pp. 162-4) and (Raz 1986, Chapter 7).

1. The Control Interest

Here is our first conjecture:

The Control Interest Hypothesis (CIH): Personal property rights exist (at least in part) to serve the right holder's interest in controlling things.²

A right-holder has an interest in control where that control is good for them in some respect and, according to the CIH, violation of a personal property right wrongs the right holder because of their control interest.³ I'll elaborate on the content of the CIH and then outline a number of its theoretical advantages.

The CIH is a theory of personal property rights. It is generally agreed that a property right is a claim on some item, an item that is at least potentially under our control. In flouting such a claim, we don't just do wrong, we also wrong the owner. Private owners can be individuals, groups, families, corporations etc. and a theory of private property should explain group ownership as well as ownership by individuals. In what follows I shall be focusing almost exclusively on what I call personal property (i.e. ownership by an individual) but I hope the account can be generalized to private property held by groups.

Personal property is an established social institution. Most of the property rights I discuss are recognised in law but why that is so is a question I leave unaddressed. For me, the normative significance of the institution of property lies in the fact that it generates rights and obligations, whether or not they are legally enforced.⁴ If you own this field then I am obliged not to walk across the

² The restriction to 'things' ensures that neither contractual nor bodily rights count as property rights since persons are not things. For more on the relationship between property and bodily rights see (Owens 2019).

³ (Bentham 1982, p. 210).

⁴ This is one point at which my treatment of property diverges from that of (Ripstein 2013). Ripstein thinks of property as a legal institution and is interested exclusively in social norms that are backed up by coercion. My notions of wrongdoing and wronging are tied to blame rather than to coercion. For an investigation of non-legal property norms see (Ellikson 1994). The normative significance of property may be even broader than its deontic significance.

field (at least without your permission). Furthermore I owe it to you not to cross that field and I would wrong you if I did. No general account of rights and obligations will be offered but two connotations should be noted. First it makes sense for me to refrain from crossing your field simply because you own the field, simply because I would thereby be wronging you. This is something I could intentionally refrain from doing out of respect for your property. Second if I do cross your field without your permission then *ceteris paribus* it is apt for you (and others) to blame me and for me to feel guilty about what I have done. Property rights are *socially recognised* where people tend to act and to react in the ways just specified and rights can be socially recognised whether or not they are legally enforced. Many writers would add a third connotation, namely that if I am obliged to do something then I *ought* to do it (or at least ought to do it *pro tanto*), that I am justified in doing it all things considered. Though that is often so, it is not something included in my notions of right and obligation.⁵

This all raises the question as to why we should take property so seriously: the mere fact that it *is* taken seriously does not settle the matter. The CIH answers that property rights are rights whose normative significance depends at least in part on their serving the control interests of individuals. For example, unless I can control who inhabits my house or drives my car, it will be difficult to lay any plans involving my house or my car and life in a developed society requires that I plan my life around the availability of a living space and various means of transportation. It usually matters that property rights also serve other interests (they are rarely grounded personal control interests alone) but what distinguishes personal property rights from other rights over things is (a) that they do serve the control interests of individuals and (b) that this (partially) explains their normative significance.⁶

⁵ (Owens 2012, Chapters 2 and 3).

⁶ One striking feature of personal property is that it gives us the right to control specific things: this house, this car and so forth. You are not usually entitled to borrow my car without permission even if you replace it with a car of similar functionality. This fact makes some sense once we recall the breath of human concerns: aesthetic, historical, sentimental and so forth. One can value many features of a car – its colour, its antiquity, that it means so much to our partner – and we have an interest in being the judge of which of its features matter. But I suspect this is not the full story (Owens 2019).

The CIH is a theory of personal property rights, not a theory of personal ownership. According to the CIH, a *property right* is a right whose recognition serves our interest in controlling things. Property rights so understood include many of the rights we have over the things around us – short term and long term leases, easements, shares etc. – and a number of people might possess such rights in respect of the same thing. Much ink has been spilt in failed efforts to specify exactly which combination of property rights make someone an owner of a house (or a piece of land or a company), leading certain writers to propose that we dispense altogether with the notion of ownership. I shall not pronounce on whether ‘ownership’ is a theoretically useful notion. My concern here is with the prior concept of a personal property right. In discussing various accounts of personal property I shall feel free to speak of ‘X owning O’ but this should be understood simply as an economical way of referring to X’s possession of certain unspecified property rights over O.

The CIH appeals to the plausible idea that it is good to control one’s environment but it isn’t invariably good for me to have such control even over things that matter to me. I might be better off were my parents or friends to decide whom I live with or when I get to drive my car, yet my property rights in my house or my car surely don’t depend on whether this happens to be true. The CIH can explain why benevolent interference can violate my property rights (even if it can be justified in the light of my interests taken as a whole) so long as having control over the thing in question remains, in some respect, in my interests. It may well be that this control interest is on a given occasion outweighed by other affected interests (my own or another’s) and then people may be justified in wronging me by depriving me of control but the fact that I retain this control interest is sufficient to make room for the possibility that I am wronged by being so deprived.⁷ So what are these control interests and are they sufficiently widespread to ground the familiar set of personal property rights?

⁷ (Owens 2012, Section 17). I doubt it is enough for the CIH to maintain that observance of property rights generally protects the control interests of individuals even if it does not do so in a particular case (viz. harmless wrongdoing). That would leave it unclear why this particular violation of an individual’s property rights might wrong this individual.

On one view, control is never valuable for its own sake: control interests are by-products of our other concerns. We have an interest in controlling (say) where we live simply because we are more likely to get a place that suits us if we choose that place for ourselves. In that case the value of control is purely instrumental, is entirely a matter of its furthering our non-control interests. I don't doubt that the instrumental value of control will play an important role in any plausible version of the CIH but it would be difficult to ground our property rights entirely on such instrumental considerations for it frequently happens that my non-control interests in respect of O would be furthered by my losing control over O and yet, as just observed, such a deprivation may still violate my property rights over O. One way of dealing with this difficulty is to invoke values that are conceptually independent of control but which can only feasibly be served by giving us various forms of control. For example, Mill grounds the value of liberty in the value of self-development. Now the value of having my faculties fully developed may be logically independent of the value of making choices but, as things stand, the only way of developing such faculties is for me to exercise my capacity for choice. Here something would always be lost to me, namely an opportunity to develop my faculties, whenever I was (even in my own interests) deprived of a choice.⁸

Another way to meet the worry would be to argue that control is often valuable simply for its own sake. Take my interest in controlling how my house is decorated. Even if others would make a much better job of deciding this for me, I have some interest in deciding it for myself. Perhaps this is just because it is good for each of us to have a bit of the world that we dominate (e.g. our home), that we are able to use as we see fit. This need to dominate may be taken as a primitive, like our need to have some control over our own bodies and what happens to them.⁹ Alternatively it might be grounded in other values. Perhaps it is a good thing to be able to *express* one's tastes and inclinations in various ways (however vulgar) and in particular to have one's décor be a statement of one's

⁸ (Mill 2015, Chapter 3). Having an opportunity or an option can be good for me even though I don't actually make use of that opportunity or take that option.

⁹ (Owens, forthcoming).

own rather than someone else's taste.¹⁰ Here our interest in control may still depend on our other non-control interests i.e. on the value of the object of the choice (choice of décor matters in the expressive way only because it matters aesthetically) while remaining distinct from these non-control interests. The CIH can leave it open exactly which of these considerations, instrumental and/or non-instrumental, generate the control interests to which it appeals but whatever line it takes on this, for the CIH, a property right is a right which is grounded in an interest of a certain sort.

Might we instead analyse 'property right' or 'proprietary authority' in terms of property's incidents i.e. of the *content* of the claims, liberties and powers that it involves?¹¹ This approach faces two problems. First take any incidents that might be considered distinctive of either property or ownership. As we'll see, there are cases in which someone possesses these claims, liberties and powers over O but has no personal property rights over O. Second, the claims, liberties and powers associated with either property or ownership vary greatly across place and time and so efforts to delineate property by reference to such incidents have foundered. Should we manage to overcome the above difficulties and construct some complex, perhaps disjunctive but extensionally adequate incident-based definition of 'property right', it would remain a mystery that the recognition of property so defined is a topic of lasting controversy. Why should anyone care about *that*? If, on the other hand, personal property involves my claiming exclusive control over things in our shared public space because it would be good for me to control them, it makes perfect sense that such claims might be disputed (viz. 'Property is Theft').

I'll now expand on these last two points by highlighting a couple of theoretical advantages of the CIH. As to the first, it enables us to distinguish a system of property rights from a system of *allocation*. Most physical objects are such that one person's use of them is likely to interfere with another's use of them. The air and the sea may be exceptions to this rule but productive employment of many

¹⁰ (Scanlon 1998, 252-3).

¹¹ (Hohfeld 1919) and (Honore 1961).

natural resources (such as land) requires that they be put under the control of some individual person or other decision making entity. On the CIH, whether such allocation creates private property depends on what interests determine the allocation. Where the control interests of the specific individual in charge play a significant role then we have personal property, where that role is instead played by the control interests of a family or corporation we have group property and if considerations other than the control interests of those put in charge are doing all the work, we have not property but mere allocation.

Consider a monastery. The monks take a vow of poverty and such vows are part of a general project of self-renunciation. The monk wishes to be governed by rules whose justification makes no appeal to his personal interests, to facts about what is valuable to him; he seeks to live for God in ways embodied in the collective life of the monastery. Now monks are typically given a great deal of control over their personal space and items: other monks may not enter their cell or use their clothing without their permission but this sort of thing does not infringe their vow of poverty nor show it to be hollow provided they are given this control purely to ensure the smooth functioning of the monastery. For example the monk won't be able to plan his life so as to be present for the daily offices unless he can predict where his clothing will be and when his cell will be empty. Anyone who steals the monk's habit or occupies his cell without his permission wrongs the monastery. They also wrong the individual monk only if we make some further supposition (e.g. that the monk has a personal interest in fulfilling his monastic duties which ought to be considered).¹² Perhaps the monastery as a whole owns the monastic land since that land is meant to further the collective control interest of the monks. That is so at least from the point of view of a secular society which does not share the goals of the monastery and just permits them to use their land as they see fit. From the monks' point of view

¹² What is crucial to whether a social group has a system of property rights is whether personal control interests help to explain why people are given authority over things. The system need not have been *designed* to serve those interests for it to be no coincidence that people with the relevant interests have the relevant rights. In the case of conventional systems of property established by laws (or by the rules of the company or the monastery) design is just the most obvious way of establishing an explanatory connection between the rights that are recognised and the underlying interests.

the deeper truth is that no human entity, individual or collective, owns what has been allocated to the monastery. The monastery ought to hold what it does, not in order to serve the control interests of the monks but to serve God and the person who is wronged by trespass or theft of monastic lands is God rather than those to whom these things have been allocated.¹³

For a secular illustration of the point, consider your office computer. Here ownership and allocation may come apart in less clear cut ways. The primary purpose of giving you authority over a computer is to facilitate the functioning of the relevant University or Corporation rather than to further your personal interest in controlling your working environment, yet such organisations are not committed (as monks and other communists are) to excluding consideration of your personal interests in allocating goods. Your employer may take account of the fact that there is some value *to you* (and not just to the company) in your exercising control over how you do your work. Should another employee interfere with your computer there is now a case for saying that your rights are violated by such interference (and not just because they might have made it more difficult for you to discharge your duties of employment).¹⁴

One's relationship to one's office computer is perhaps a borderline case of a property right but if so we need to be clear about what makes it a borderline case. The point is *not* that employees have only some of the liberties, claims and powers supposedly definitive of property e.g. that I have the right to use my office computer in various ways but not to sell it. The Abbot of the monastery or the Director of an art gallery may have full control over the monastic lands or the paintings including the power to buy and sell but that does not give them any personal property rights in the land or the paintings, nor mean that they are personally wronged by trespass, theft etc. The way to settle whether X has a property right in O is not to look at the precise scope of the authority X is being

¹³ In a pure communist society people are allocated personal items solely to ensure that they can participate in its productive activities. Such communists rightly maintain that they have abolished private property (Harris 1996, pp. 17-19).

¹⁴ The *legal* owner of the computer is probably the employer but other more informal property conventions are usually operating in situations of this sort.

given over O: rather we should look to *why* X has whatever authority they are given. It is a matter of degree how much the distribution of authority over things is grounded in the control interests of individuals but we can still draw a (fuzzy) line between cases where the right holder's personal interest in controlling O is a significant part of the explanation of why they are given authority over O and cases in which this is not so.¹⁵ According to the CIH, that is the boundary between proprietorial and non-proprietorial rights. Nor does the fuzziness of the line undermine its theoretical importance. It matters whether and when our personal control interests play a significant role in the explanation of the authority we have over the things around us.¹⁶

I'll now turn to the second theoretical advantage of the CIH, namely that it can explain the precise scope of proprietorial authority (and variations thereof) as the product of an interaction between personal control interests and the other factors in play.¹⁷ Any system of property rights reflects interests other than the control interests of proprietors, namely the interests of affected individuals and the collective interests of society. The CIH aims to explain familiar limitations on proprietorial authority as the result of weighing the proprietor's interest in control against these other interests. Restrictions on proprietorial authority fall

¹⁵ In order for the control interests of individuals to give rise to a socially recognized property right held by each of those individuals, the control interests in question may need to be fairly widely shared. Setting up and sustaining a conventional system of property rights has social costs and it would not be worth the trouble unless a substantial number of individuals could benefit from the system. Nevertheless it may still be the case that you wrong a given individual when you violate their property rights because *their* control interest explains *why they* have that right, at least given that a similar right of others can be grounded in their control interests. This is all quite different from a case in which each individual is put in charge of various items solely in order to serve an interest of the group and regardless of the extent to which that collective interest is shared by the particular individual.

¹⁶ There are laws about copyright, patent, trade secrets and 'moral rights' and we can ask whether these laws create a form of intellectual property and make people owners of ideas and works of art. For example where the law forbids us to reproduce an author's book or perform a composer's symphony without their permission, does that mean that the author and the composer have property rights in their intellectual products? And where others are instead free to reproduce the book or perform the symphony at will, perhaps upon payment of a fee (set by some public licensing authority), are we thereby denying ownership of intellectual products to their creator? According to the CIH, intellectual property is recognised just where significant weight is being given to the value, to authors and composers, of controlling the use that is made of their creations. For example, authors and composers are not being treated as the owners of their intellectual products where the legal system is designed purely and simply to maximise the production of worthwhile books and symphonies.

¹⁷ Note we are here discussing how non-control interests circumscribe proprietorial authority rather than how they might justify the flouting of it.

into two broad categories. As an example of what I shall call a 'horizontal' restriction, consider the laws against nuisance or certain planning regulations. Perhaps I have an interest in using my land in a way that adversely affects my neighbours by making noise, spreading pollution or spoiling the appearance of the neighbourhood. Here my interest in controlling my own property must be weighed against my neighbour's concerns and some compromise reached that gives the welfare of all, both their control and non-control interests, proper consideration.

'Vertical' restrictions concern the relationship between the individual and the social body as a whole, not just those directly affected by the owner's use of their property. Here I am thinking of the power of eminent domain, the right to roam and the obligation to pay a land tax, all of which restrict my ability to use my own land as I see fit and to exclude others from it. There is a collective interest in the construction of major public works, in giving people access to the countryside and in financing the government's activities, an interest that grounds these restrictions.¹⁸ On the CIH, the land remains my personal property despite these impositions, provided my personal interest in controlling that land plays a significant role in the story of why I have the authority over it that I do, a story which involves weighing my interests against the needs of a broader public. In explaining the precise contours of our personal property rights, the CIH must assume that there are sensible ways of adjudicating such conflicts of interest. It need not suppose that there is a single right answer here – perhaps details are settled by convention – only that the interests at stake limit the scope of legitimate variation. Some method of adjudicating conflicting human concerns is needed for purposes well beyond the domain of property rights and whatever

¹⁸ Being part of the collective, I may well have a personal interest in the provision of transportation which boosts collective prosperity but actions in furtherance of this collective interest (like airport building) are not meant to further my interests any more than anyone else's and so violations of the collective's rules don't wrong me as opposed to anyone else. By contrast, in so far as the property system is meant to further my interest in controlling my environment as opposed to whatever interest other people may have in my controlling my environment, violation of its rules may well wrong me rather than anyone else.

story works more generally can be adopted by the CIH to account for the scope of proprietorial authority.¹⁹

I conclude this section by noting that the CIH can remain neutral on the extent to which property rights are conventional, are rights that exist prior to their social recognition. Control interests are largely pre-conventional but that observation does not settle the status of the rights they explain. My control interests may directly entail that I have property in O regardless of social recognition. Alternatively they might ensure that the social recognition of those rights over O is normatively significant. In so far as property rights are conventional, my ownership of O cannot pre-date the social recognition of that ownership: the most we can say is that we are obliged to create a system of property in things like O. But if some property rights are natural, I may already have property in O prior to any recognition of my rights because of the claim that my control interests give me over O. The CIH leaves these questions largely open.

For example, certain conventionalists about property maintain that such rights cannot exist unless two conditions are satisfied: (a) we can all be confident that if we respect the rights of others, they are likely to respect ours and (b) there is some mutually accepted specification of our respective rights, a specification which resolves reasonable disagreements over boundaries, the content of horizontal and vertical restrictions on our rights and so forth.²⁰ Such a conventionalist may concede two points. First that there are certain very basic rights, such as the right not to be subject to a bodily assault without cause, rights that we possess regardless of whether (a) and (b) are satisfied. Second, that we all have an obligation, in so far as we can, to create a much more extensive system of (property) rights by setting up social institutions that recognise and specify the said rights.

¹⁹ The 'Law and Economics' tradition explains the process of weighing in broadly utilitarian terms (e.g. (Ellikson 1994) and (Smith 2012)). (Scanlon 2018, pp. 105-16) does the balancing within a contractualist framework. Kantian approaches to property rights have been accused of ignoring the need for it (Hart 1973).

²⁰ Such conventionalists include opponents of the CIH like (Ripstein 2009, Chapter 6) for whom social recognition must involve enforcement. Ripstein is expounding Kant's views (Kant 1996, Part 1).

An advocate of the CIH can keep an open mind about all this. Perhaps some property rights, such as my right to the walking stick that I have fashioned from the wood of the virgin forest and need to be mobile are like the right not to be assaulted and should be respected by others prior to any public recognition. Here the person's control interests are sufficiently weighty and their implications sufficiently determinate that there is no need for recognition to give them normative standing but elsewhere social convention is required both to fix the scope of our property rights and to ensure that we are not played for a fool – respecting the rights of others whilst they violate our own. The CIH as such need take no view on where the boundary lies.

2. Two Objections

In this section, I want to raise two worries about the CIH. Firstly, when discussing the way in which control interests might ground property rights, I focused on our interest in making use of our property. Ownership surely does give us the right to put whatever we own to a wide variety of uses without interference from others; many property rights are rights of use. Ownership also gives us the right to exclude other people from the things that we own, to prevent them from using our car or crossing our land or entering our house without our permission. The control which ownership gives us is as much a matter of our being able to stop others from using what we own as it is of our using it ourselves. When someone crosses my front lawn at 3am, they thereby wrong me even if they do not disturb me and leave no trace of their presence. It is immaterial to the trespass whether I am planning to use my lawn at 3am, whether my activities are interfered with; what matters is that another person used my lawn without my permission. On the CIH this can only be because it is good for me to be able to exclude other people from my lawn at 3am. But why so

when such an incursion interferes with none of my activities, current or projected, and indeed has no discernable impact upon me?²¹

Advocates of the CIH may respond by claiming that we do have an interest in being able to exclude others from our property, not indeed for its own sake but for the sake of facilitating its possible use.²² I might have wanted to contemplate the night sky at 3am and my lawful contemplations would have been disturbed by the trespass. Do rights of exclusion really depend upon rights of use in that way? Suppose I am (justly) imprisoned and so without access to my house. People still wrong me by trespassing on my land even though I myself have been deprived of the right to make any use of it with which their trespass might interfere. Similarly I am wronged when others make temporary use of the money in my bank account, even when I am lawfully prevented from using it myself (or allowing anyone else to use it) because my accounts are frozen. If the money is replaced in good time, it is hard to see what harm I would suffer, what damage would be done to any protected interest of mine other than an interest in the exclusion of others.²³ Our interest in excluding others from our property does not seem a mere by-product of our interest in being able to make use of it ourselves.

Unlike our interest in use, the exclusion interest is an essentially *social* interest, an interest in how we relate to others.²⁴ The use-interest can be furthered or frustrated by the behavior of non-human animals or inanimate objects as easily as by the actions of other people. Were our interest in exclusion just an interest in facilitating possible use, it too would be only contingently social because other human beings are only one kind of threat to that interest: my use of my lawn at

²¹ Ripstein regards the right to exclude (rather than use) as fundamental to ownership and infers that we should not base property rights on interests because the power of exclusion is not as such good for us (Ripstein 2013, p. 164).

²² For example (Smith 2012, pp. 1704-5) and (Scanlon 2018, pp. 105-16) maintain that our interest in excluding others from our property derives from our interest in making use of it ourselves.

²³ Many such wrongs fall into the category of 'bare wrongings' discussed in (Owens 2012, pp. 15-6).

²⁴ I'm using 'social interest' to refer to inter-personal interests and 'collective interest' to refer to what is good for groups of people.

3am may be frustrated either by a neighbor or by a downpour. The difficulty of reducing our interest in exclusion to our interest in use suggests that we are dealing with an essentially social interest, one that necessarily concerns my relations with other people. How might that be?

Here is one possibility. It is good for me to be able to form more or less intimate relationships with other people, relationships that involve their being allowed different kinds of access to myself and to what I own.²⁵ Consider the case of bodily rights. People can wrong me by preventing me from making use of my limbs in various ways (breaking them, blocking my path) but they can also wrong me simply by touching me or abusing my body whilst I am asleep. Such wrongs can be serious yet they don't seem to involve someone's interfering with my ability to use my own body. Rather the problem is that they have violated a zone of exclusion around my body. Some people are allowed to touch me others are not as some are allowed into my home while others are not. My plans for my party involve exclusion as well as inclusion and similarly for my sex life. That sounds plausible enough but why does a 3am trespass or touching compromise that social interest? At 3am I am not holding any garden parties nor engaged in any bedtime activities. Why should I care what happens to my land or my body when I have no ability to use it? How are my relations with others affected by events both harmless and beyond my ken (because I'm asleep) or by equally harmless events I have no ability to control (because I'm in jail). We'll return to this issue in the next section.

My second worry about the CIH concerns the role played by collective interests in grounding personal property rights. On the CIH, we have personal property just where the control interests of the owner play a significant role in explaining their rights over the thing in question. This fits property in things like clothing, living space, personal tools and so forth extremely well: my control interests plausibly help to explain why I am given the right to use and exclude others from my principal residence for instance. Not so once we turn to the ownership of

²⁵ (Essert 2016, pp. 288-9).

major economic resources.²⁶ Consider Trump Tower. Trump has property rights in his Tower and perhaps these rights serve a control interest of his, perhaps it is good for him to control the Tower. Nevertheless we should not suppose that this control interest of his helps to explain why he is granted authority over an outsized building. The rest of us have an interest in controlling a modestly sized personal residence and since we can all hope to gratify this interest, given an efficient market for sale and rental together with some social support, it is reasonable to design the property market with an eye to serving this interest. I doubt many of us have a similar interest in controlling gargantuan bits of real estate but even if we did there would be no way of designing the property market so that more than a tiny number could realize this ambition. Thus there is no case for instituting a property market that serves such individual interests.²⁷

The standard story of why Trump is given control over Trump Tower appeals entirely to our collective interest in the existence of a market in real estate.²⁸ We suppose that the efficient employment of the various factors of production that go into building projects is best achieved by enabling Donald Trump and others to engage in real estate transactions of a sort which allow them to acquire huge assets. For the sake of argument I shall take it that a free market in real estate has the virtues just described but however our collective interests end up explaining Trump's ownership of his Tower, the point remains that the control interests of particular individuals play no significant role. Donald Trump may

²⁶ Rawls includes the right to hold 'personal property' on his list of basic liberties (Rawls 1999, p. 53) whilst also maintaining that the choice between private ownership of the means of production and a socialist regime is a matter of how best to serve collective interests (Rawls 1999, p. 242).

²⁷ One might respond that competitions with only one winner are often a good thing in part because they gratify personal interests in gambling, competing or even winning. If so that fact may justify the distribution of a small proportion of the social product as prizes in voluntary zero-sum games but it couldn't help to justify anything so big and so inescapable as the real estate market in property.

²⁸ Thus the case differs from some of those discussed by Raz. For example, Raz argues that violations of the right to freedom of expression wrong the right holder even though collective interests play the major role in explaining why we take such freedom seriously because the right holder's interest in expressing themselves also plays a significant role (Raz 1986, pp. 178-9).

acquire or build the Tower because he believes it is in his interests to do so but this fact does not explain why he is given control over it.²⁹

Now, on the CIH, it seems to follow from the standard story that Donald Trump has no property rights in Trump Tower. True he is given control over the Tower of the same general sort that I have over my house but, as we saw in the first section, that fact does not establish that he has property in the Tower any more than the Abbot owns the monastery or the Director owns the Art Gallery. These characters are mere stewards of the resources in question, put in charge of them with a view to serving some collective interest. By contrast, Trump Tower is a paradigmatic instance of personal property in a capitalist society. Trump would certainly feel wronged (i.e. would personally resent it) if the authorities arbitrarily confiscated his Tower or unreasonably forbade him to use it in various ways.

An advocate of the CIH may respond that the objection rests on a false assumption (unquestioned until now) namely that one is wronged by a certain action only if that action violates some right of one's own.³⁰ Perhaps a harm can wrong me simply in virtue of the fact that the harm resulted from the perpetrator's breach of an authoritative social rule. On this view Trump's resentment at confiscation is reasonable provided he is harmed and regardless of the fact that the rule against confiscation was not put in place in order to protect any interest of his.³¹ Suppose the Abbot or the Director are personally inconvenienced by a theft from their organization, perhaps because the theft creates more work for them or deprives them of some resource they need to do their job. Here it would be entirely appropriate for them to resent the inconvenience and to feel personally wronged by the theft for their lives have been messed up by the thief's wrongdoing but it need not be that any right of *theirs* has been violated.

²⁹ I am not denying that Trump shares in the general interest in social prosperity, merely that his sharing this interest can't explain why Trump in particular should be wronged by trespass on his Tower etc. See note 18.

³⁰ On the distinction between wronging someone and violating their rights see (Cornell 2015) and (Owens, forthcoming).

³¹ (Hume 1975, pp. 310-11).

The objector may be correct in maintaining that you can be wronged in this way but this point does not by itself resolve the difficulty. Firstly, it is not clear that Trump's resentment at confiscation is apt only where he has been harmed. Secondly, even where Trump is harmed by confiscation, the effect of the harm is simply to magnify the wrong done to him; it does not make it the case that he is wronged. By contrast, neither the Abbot nor the Director have any cause to personally resent the theft (to feel wronged by it) unless they have been harmed. At this point, an advocate of the CIH might just dig in their heels and insist that we have failed to grasp the extent of the difference between the property rights ordinary people have in respect of their personal residence and Trump's authority over his Tower. Unless Trump has been harmed by confiscation he has no cause for resentment and even this harm is cause for resentment only because of wider collective interests but before taking this revisionary course, we should ask whether there isn't another way of understanding the wrong here, one that builds on the strengths without sharing the weaknesses of the CIH.

3. The Authority Interest

The last section suggested that property rights might be grounded in an essentially social interest. In my view what underwrites property is an interest in controlling the normative situation, specifically people's rights and obligations i.e. in controlling the normative character of inter-personal interactions. Recall that property rights often include not only rights of use and exclusion but also certain normative powers, powers to modify property rights and transfer them by declaration. As to modification, I can grant you an easement with respect to my land i.e. contractual permission to cross. As to transfer, I can sell you my land, transferring all of my property rights in the land *en bloc*, provided you are willing to buy or at least accept the transfer. All of this happens by fiat, by my communicating the intention of hereby changing the normative situation in the relevant respect. Of course these normative powers are restricted in various ways in the service of collective interests – I may not be able to sell to a foreign

power and I may have to pay stamp duty on the sale – but, as we have seen, all property rights are so restricted.

An advocate of the CIH must suppose we are given the ability to manipulate the normative situation *qua* owners only in the service of our interest in controlling the physical situation. Let's instead suppose that we have *normative interests*, that we are interested in the normative situation for its own sake, that it is good for people to be in authority over things, to have rights of use and exclusion over them. Furthermore it is good for us to be able to alter the scope and allocation of this authority by fiat. Fans of the CIH need not deny that we have an interest in controlling the normative situation, that people value the ability to modify and transfer title for its own sake but they must deny that such a normative interest plays a significant role in grounding the above normative powers. I shall instead propose that the interest served by personal property is a normative control interest, an interest in rights and obligations we control by fiat, an *authority interest*.³²

I shall defend the following hypothesis:

The Authority Interest Hypothesis (AIH): Personal property rights exist at least in part to serve the right holder's interest in having authority over things.

To see that people might have an interest in having authority over things distinct from any interest in controlling them, consider the owner of a stolen painting. Perhaps the painting was stolen some time ago and it is quite unclear whether it will ever be recovered. Still the owner may sensibly value the rights and powers that come with ownership of the painting and may resent it if someone queries their ownership and these attitudes are perfectly intelligible even if the owner entertains little hope of actual recovery. Two features of the case help to make

³² A terminological point: the authority interest is in one good sense a control interest but I have been and will be using the unadorned phrase 'control interest' to refer exclusively to an interest in controlling non-normative items.

sense of this attitude. First, paintings are the sort of thing that people have an interest in actually controlling (e.g. by controlling whom, where and in what circumstances the painting is viewed) and this fact helps to explain why they are interested in owning the painting even when title gives them only the right to control it and not actual control over it. Were we dealing with something our owner could have no interest in controlling, it would be much harder to make sense of their valuing title. Our authority interest in a thing may be distinct from without being wholly independent of our control interest in that thing.

There is a further connection between the control interest and the authority interest. I am imagining a society in which title is widely recognized and so having title to something generally gives you a certain degree of control over it. The form of authority appealed to by the AIH must be socially recognised authority, for possession of authority cannot be good for us unless it makes some difference to our lives. It would make little sense to value title to a stolen painting if nobody paid any attention to who owned what. Where property rights are recognized, people both tend to respect such rights themselves and tend to criticize others (or themselves) for not respecting them. Those facts give title over our painting social significance and our owner may intelligibly value such recognition of their ownership even in a case where title is unlikely to give the owner actual control of that particular thing. I'm not denying that there are forms of authority and other rights that exist whether or not they are socially recognized; I am just claiming that a form of authority that exists *because* it benefits someone (e.g. the authority) must have a certain social reality. It follows that possession of such authority will in many cases (though not in all) serve our control interests, so the AIH can account for the *prima facie* appeal of the CIH.

The AIH shares the advantages of the CIH highlighted earlier. First, it differentiates property from mere allocation. The monks, the communists and so forth are given control over the things around them in the service of something other than their personal authority interest. Second, it allows us to delineate the contours of proprietorial authority by weighing the authority interest together with other relevant interests, individual and collective. Third, though the AIH

need not commit itself as to the precise basis of our authority interest, the accounts sketched in the first section of why control might be valued (the ability to plan your life, self-expression, self-development etc.) can also be applied at the level of control over normative items, given that such things matter to us for their own sake.

Since authority must be recognized if it is to be good for us, the AIH (unlike the CIH) is committed to conventionalism about the property rights it explains. Furthermore, on the AIH social recognition generates property rights by a mechanism rather different from that operating within the CIH. On the CIH we need have no interest in the possession of conventional property rights as such. Rather when our non-normative needs (including our control interests) are best served by setting up a conventional system of ownership, we may be pre-conventionally obliged to ensure the recognition of property rights and where that is so, we are also obliged to follow the rules of the relevant system once established.³³ By contrast, the AIH leaves it open whether we are obliged to set up social institutions that serve our interest in having authority over the things around us. It assumes only that it is often good for us to have such socially recognized authority and that this interest, when sufficiently widely shared, provides us with good reason to set up such a system. Once the system is actually established, we are bound by its rules (partly) in virtue of the fact that it serves this widely shared interest. Here it is because the interest in question is precisely an interest in rights and obligations (and not because we are obliged to set it up) that the system, once established, imposes binding obligations.³⁴

Can the AIH deal with the two problems that confronted the CIH? One issue was how to understand rights of exclusion as well as rights of use. The owner has the right to exclude others from their property. How should we ground this right in their interests? They do have an interest in using their property in various ways but what of property they cannot use? Now suppose that human beings have normative interests, that they are interested not merely in what happens, in who

³³ (Scanlon 2017, pp. 106-7).

³⁴ For a parallel point about promising, see (Owens 2012, p. 153).

does what but also (for instance) in who has the right to do what. We already noted that permissions are valued for their own sake at least in the context of certain valuable relationships. Your being permitted to enter my house without prior invitation (or use the money in my bank account) is a point of intimacy between us, an intimacy that contributes to the distinctive value of our friendship. Having the power to bestow such a right on you enables me to control something which is of value to us both and where something matters to me in this way, I generally have a further interest in controlling it.³⁵

Recall our nighttime trespasser. Though the landowner has no interest in controlling who is actually on their land at 3am in the morning, they may still have an interest in determining who is forbidden or permitted to come onto their land at 3am. This is the kind of thing that matters to people whether or not it affects the probability of trespass and because this sort of thing matters to both parties, the ability to control it by giving or withholding permission also matters. Thus the AIH helps explain the significance of such harmless wrongings.³⁶ The same applies to our stolen painting. I can grant you permission to view the painting and you can sensibly value this permission, though it gives neither of us any control over the relevant phenomenon. You'll likely and sensibly prefer it to be the case that you are permitted to look at the painting whether or not this affects your ability to view the painting. Thus I have an interest in being able to grant you this permission, an interest distinct from an interest in controlling whether you take advantage of it. I can also have an interest in being able to transfer this authority to my children and they in

³⁵ This is not an attempt to treat permissions as devices for cultivating intimate relationships etc. Rather it is an illustration of the way in which a permission may have value, namely by being an aspect of a relationship whose value includes the value of that permission (Owens 2012, Section 21).

³⁶ The fact that the property right is grounded in my personal authority interest will explain why I am wronged by its violation even though my rights in the thing are unaffected by their violation. X's normative interest in A's being a wronging can explain why A constitutes a wronging of X even if A does not set back X's normative interest. Non-normative interests like the control interest work differently (Owens 2012: Section 28).

receiving such authority from me, whether or not this is likely to give them any actual control over the painting.³⁷

Note the AIH does not imply that when people acquire property, their standard motivation for so doing is a desire to be in authority over the things in question. An important feature of property rights is that they are normally intentionally acquired and so the prospective owner must believe that there is some point in owning the thing in question but people purchase things, accept gifts and so forth for all sorts of reasons. Sometimes they want title; more often they want to control the thing in question and ownership is just the most secure or convenient form of control. In yet other cases I might prefer to have neither title nor control and acquire them simply to please my mother. The AIH makes no assumptions about how frequently the interest to which it appeals helps to motivate property transactions. Its claim is this: the fact that possession of this property serves the relevant interest of X's helps to explain why X is wronged by violation of that right. Both the AIH and the CIH make a claim of this form and neither is refuted by the observation that many of those wronged by theft etc. make use of the system for other reasons, provided those people have the benefit in question and that fact explains their having the right.

What of the second problem confronting the CIH? Why is Trump wronged by the confiscation of Trump Tower even though his rights over it are not grounded in his personal interest in controlling it? If Trump's personal control interests do nothing to explain why he is given authority over Trump Tower, why should his personal *normative* interests have any more to do with it? And unless his

³⁷ Ripstein argues that the value of exclusion can be explained only by reference to the right to exclude (Ripstein 2013, p. 170 and p. 176). Ripstein thinks that our interest in exclusion presupposes the validity of the relevant norm (and so cannot explain its validity) for it is an interest in not being wronged in a certain way. My normative interests are rather different. They are interests in whether acts of a certain type have a socially recognized normative character rather than in whether they actually (and wrongfully) occur. You can have an interest in its being the case that acts of a certain type would constitute a socially recognized wronging whether or not they actually do constitute a socially recognized wronging and whether or not they actually occur. Because this normative interest does not presuppose the normative fact, such an interest can help to explain why acts of that type constitute a wronging once they occur in a social context in which they are recognized.

ownership of the Tower is grounded in Trump's authority interests we will struggle to explain why he is wronged by the confiscation of the Tower.

Before responding it is worth highlighting the force of the worry by comparing the case of property with that of promise. Elsewhere I've argued that promises bind because they serve the authority interests of the promisee, because promises give them control over who is obliged to do what and that is why the promisee is wronged by breach of the promise.³⁸ The promisee is wronged even when the breach of promise is perfectly harmless because a form of authority in which they have an interest has been flouted. Such a view of promising dovetails nicely with the present view of property rights and, if correct, indicates that appeal to authority interests in the theory of property is far from *ad hoc*, for our need to control the obligations of those around us manifests itself in other corners of morality; yet I'm mentioning promising now less to shore up my view of property than to highlight a point of difference between the two cases. The promisee can indeed oblige the promisor to perform but only with the full consent of the promisor: the promisor must intentionally exercise their power to bind themselves to the promisee before they are bound, and be induced to do so without duress, deception and so forth. Furthermore, the promisor and the promisee are the only people whose rights and obligations are directly affected by the promise (*viz.* privity of contract). Third parties are neither bound to do anything simply in virtue of the bindingness of this promise, nor are they wronged simply by breach.³⁹

As authors from Pufendorf onwards have pointed out, there is no such privity where property rights are in play.⁴⁰ Property rights are 'rights against the world';

³⁸ (Owens 2012, Chapter 6).

³⁹ The qualification 'simply' is needed here: the harm-inducing circumstances of either the making or the breach of the promise can generate further normative consequences (*viz.* the tort of inducing breach of contract)

⁴⁰ Pufendorf focused on the power of original acquisition, on the power to acquire unowned items but the point applies equally to the power of transfer, a power the natural lawyers rather took for granted. See (Waldron 1994, pp. 262-71) and (Ripstein 2009, p. 90 and pp. 148-54). As Waldron notes we frequently affect people's obligations without their consent by doing things that change the non-normative situation; what is distinctive about both promise and property is that they enable us to do so simply by declaration.

if you sell me your car that changes everyone's normative situation with respect to the car. Previously all must ask you for permission to use it, now all have to ask me; previously they would wrong you if they used the car, now they would wrong me. A valid sale requires only an agreement between you and me. No one else's consent is required and yet by-standers' rights and obligations are changed by fiat simply in virtue of the validity of the sale and in a way that might be very material to their interests. Perhaps the personal authority interests of the buyer and seller can help to address this concern in the case of small scale economic resources like a car but Trump Tower is a different matter. That is the charm of basing Trump's property rights entirely on collective interests. Were Trump given the power to acquire Trump Tower by purchase only in so far as such transactions serve a collective interest then the above concerns would be unfounded though we would still need to explain why Trump can personally resent those who tamper with his rights over the Tower.

It is true that Trump is given the chance to acquire authority over such large pieces of real estate only because, as we suppose, giving people like him this opportunity serves our collective interests. However it is also the case that Trump has what I'm calling an authority interest, an interest in being able to control his own normative situation, in being able to control by fiat the claims, liberties and powers that he has. Moreover this normative control interest applies *regardless of whether the claims, liberties and powers in question are given to individuals to further their personal interests*. Even if such property rights exist solely because they serve a collective interest, it may still be that individuals are granted control over whether *they* have such rights and *which* rights they have at least partly in the service of their personal authority interest. Though such normative control interests may not explain why any individual is put in charge of things of a certain kind, they may help to explain why individuals are given the power to determine which members of the relevant kind are in their charge and precisely what claims and liberties they have in respect of those objects.

Consider political authority.⁴¹ The office of President of the United States together with its claims, liberties and powers does not exist in order to serve the personal interests of its occupant, whether normative or non-normative; the office is created purely in order to serve the collective interests of the American people. No one would have such Presidential authority unless these collective interests were in play but once the office of President has been created, the issue becomes whom should occupy it, for how long and what control the occupant should have over how they conduct themselves in that office. Individuals are not forced to assume the Presidency and they have a fair amount of control over how long they remain in office once they have assumed it precisely because of their personal interest in controlling their normative situation. Furthermore, they have the discretion to delegate many of their powers to other officials. No doubt various interests are relevant here but the President's personal interest in controlling their own normative situation is surely a significant part of the explanation of why e.g. it is left up to them when they resign it or whether to run for a second term. Much the same is true of property in large economic assets. It is not to further our personal interests that people are given the chance to acquire authority over such things as Trump Tower but where collective interests suggest that we make this opportunity available, the owner's personal interest in controlling their normative situation comes into play, helping to explain why it is left up to them whether to acquire Trump Tower, what agreements to make about its use and when exactly to divest themselves of this asset. No doubt collective interests remain relevant but surely the authority interests of potential owners do play a significant role here.⁴²

If my analogy between political authority and proprietorial authority over Trump Tower is along the right lines, there is a distinction to be drawn between two different ways in which that authority might be disregarded. In cases of the

⁴¹ The parallels between ownership and political office have been put to various uses (e.g. Katz 2008 and Essert 2013). There is a case for saying that land ownership in the mediaeval world actually was a form of political office (Mill 1994, pp. 28-9).

⁴² Could an advocate of the CIH take advantage of this reply? That would require them to argue that the President's interest in controlling their normative situation was reducible to their interest in controlling their non-normative situation. But I doubt (e.g.) deprivation of office matters to the President only in so far as it deprives them of the physical control of events.

first kind, the right holder's authority is actually removed or modified in some inappropriate way: Trump Tower is confiscated or he is forbidden to use it for some ordinary purpose or else the President is deprived of office by some constitutional move of doubtful legality. Here the problem is not the absence of a social structure serving Trump's authority interests: that would be true in a state of nature. Rather the established system is being run in a way that disregards those interests. Where the right holder's need to control their normative situation is disregarded by the prevailing conventions of politics or property, it is appropriate for them to feel personally wronged and this is so regardless of whether any other interest of theirs is affected. Alternatively suppose Trump Tower is trespassed upon or damaged. Here Trump's authority over the Tower is unaffected since he retains full title to his building. It is as if some naval ship had disobeyed the President's orders; the President's authority, his right to give orders, is unmodified by this. Persistent violation might undermine both forms of authority but no single violation will have that effect. So what should we say: should Trump, should the President feel personally wronged here?

There are two possible grounds for resentment (a) their personal authority interest and (b) their personal control interest. As to (b) both Trump and the President may be entitled to feel wronged by a flouting of their authority that harms their non-normative (e.g. control) interests even though the authority is not grounded in those interests.⁴³ Disobedience, trespass and so forth often do cause anxiety, inconvenience etc. and where this is so, the affected party is arguably wronged but we have yet to see why a truly harmless trespass should wrong Trump. As to (a) in the case of a promise, the promisee's personal authority interest does explain why a promise made to them binds and so why violation of the promise wrongs them even when the violation does no harm but this is only because the whole point and value of a promise is to further their personal interest in being able to bind the promisor. That is not how it is with either Trump's prerogatives or the President's: their authority interest does nothing to explain their proprietorial or political authority and so there is no

⁴³ On this point, see pp. ?? above.

parallel case for saying that they are personally wronged by harmless trespass etc.

I think this account of Trump's situation does capture the complexity of our reactions. Depriving him of ownership of his Tower will wrong him because it traduces his legitimate authority interests. Those unjustly deprived of large assets may expect to receive whatever public sympathy they would get were they instead unjustly deprived of political office. When we are dealing with trespass on Trump Tower, the situation feels different. Third parties might share the owner's indignation at their being seriously damaged by the trespass but their being harmlessly deprived of a small amount of control over a gargantuan resource will elicit little sympathy. Since individuals are not given the right to control such things as Trump Tower (as opposed to their own homes) in order to serve either their control or their authority interests, there is no basis for Trump's feeling personally wronged by harmless violations. Doubtless that is one reason why many of us feel much more reluctant to invade someone's principal residence than their business premises.

A final worry. I have been developing a parallel between proprietorial and political authority but we also need to distinguish Trump's proprietorial authority over the Tower from the authority Trump enjoys once he assumes the Presidency. At least according to modern understandings of political authority, Trump does not come to own the USA by election as he comes to own Trump Tower by purchase even though both forms of authority are grounded in collective interests, as modified by the personal authority interests of the owner/occupant. So what exactly is the difference? A President is obliged (and indeed swears an oath) to exercise the prerogatives of the office in the interests of the American people and must not consult their own personal interests. By contrast an owner, including the owner of Trump Tower, is fully entitled (though not obliged) to consult their personal interests in deciding how to exercise their proprietorial prerogatives, even though those prerogatives have not been

granted in order to further those interests.⁴⁴ We have been assuming that, given the operations of the invisible hand of the real estate market, things go better for all if everyone is free to pursue their own interests.⁴⁵ Be that as it may, we shouldn't assimilate (modern) property owners to stewards or trustees of the things they own. A trustee can't consult their interests, whilst the owner can. The trustee must have regard to the purpose for which the trust was established while an owner need have no regard to the social function of ownership.⁴⁶

4. Conclusion

This paper outlined two accounts of personal property rights one of which grounds them partly in our control interests the other partly in our authority interests and it highlighted two crucial features of personal property that can be explained only by appeal to our authority interests. Still might an appeal to both authority and control interests be needed for a full account of the normative significance of ownership? Suppose there are natural property rights generated by basic and weighty control interests similar to those we have in respect of our bodies, rights that exist prior to any form of social recognition. It won't be possible to ground these rights in our need for a socially recognized form of authority. We can afford to leave this possibility open: any claims from the state of nature are long superseded by conventionalized property rights.

Allowing that an authority interest is required to ground familiar forms of conventional property, one might still wonder how different our lives would be

⁴⁴ Harris says that one of the distinctive features of rights of ownership is that they 'authorise self-seekingness on the part of the individual or group to whom they belong.' (Harris 1996, p. 5). This requires qualification. Trump is constrained in how he pursues his self-interests and some of those constraints may be ones that apply to him specifically *qua* owner (Essert 2013, pp. 29-36). Still within those constraints Trump can exercise his proprietorial powers without regard to the interests of others. By contrast, holders of public office are required to take those interests into account when exercising the powers of their office. (Pre-modern patrimonial conceptions of political authority fail to recognise any distinction between the interests of the office holder and the public interest that the office is meant to serve.) See also (Ripstein 2017, 254-5).

⁴⁵ Whether one endorses private ownership of the means of production will partly depend on whether one thinks that the fair and socially efficient allocation of resources is likely to be furthered by permitting people to disregard the fair and socially efficient allocation of resources.

⁴⁶ Thus when Hume (and others) ground personal property in purely collective interests, they need not be assimilating ownership to stewardship though, for reasons already given, they will struggle to vindicate the idea of a personal property right.

under a system of ownership that served only our control interests. Would we greatly miss the rights of exclusion and transfer that, as I have argued, depend specifically on the authority interest? A parallel question arises with both promise and consent. Much (but not all) of our interest in having the power to make and accept promises would be served by a normative structure designed simply to enable us to co-ordinate our behavior with others and much (but not all) of our interest in having a power of consent would be served by a normative structure which gave us the power to choose what happens to us.⁴⁷ My own view is that property, promise and consent as we have them gratify basic human needs, needs the imagined alternatives would neglect. Many social theorists have supposed otherwise, hence the depth and intractability of disputes about the foundations of private property.⁴⁸

Bibliography

Bentham, Jeremy. 1982. *An Introduction to the Principles of Morals and Legislation*. Edited J.H. Burns and H.L.A. Hart. London: Methuen.

Cornell, Nicolas. 2015. Wrongs, Rights and Third Parties. *Philosophy and Public Affairs*, 43, 109-43.

Ellickson, Robert. 1994. *Order Without Law*. Cambridge: Harvard University Press.

Essert, Christopher. 2013. The Office of Ownership. *University of Toronto Law Journal*, 63, 418-461.

Essert, Christopher. 2016. Property and Homelessness. *Philosophy and Public Affairs* 44, 266-294.

⁴⁷ On promises see (Owens 2012, Section 26) and on consent see (Owens 2012, Section 32).

⁴⁸ I began work on this paper some ten years ago with the intention of including a chapter on property rights in *Shaping the Normative Landscape*. Since then I have benefitted from discussion with audiences at Stirling, Surrey and Nottingham Universities, Kings College London and the University of Southern California. Thanks also to Rowan Cruft, Crescente Molina, Felix Koch and two *Journal of Political Philosophy* referees for their comments on earlier drafts.

- Harris, John. 1996. *Property and Justice*. Oxford: Oxford University Press.
- Hart, H.L.A. 1973. Rawls on Liberty and its Priority. *University of Chicago Law Review*, 40, 534-55.
- Hohfeld, Wesley. 1919. *Fundamental Legal Conceptions as Applied in Judicial Reasoning*. New Haven: Yale University Press.
- Honore, Tony. 1961. Ownership. Pp.107-147 in *Oxford Essays in Jurisprudence* ed. Guest, A.G. Oxford: Oxford University Press.
- Hume, David. 1975. *Enquiry Concerning the Principles of Morals*. Edited Philip Nidditch. Oxford: Oxford University Press.
- Kant, Immanuel. 1996. *The Metaphysics of Morals*. Edited Mary Gregor. Cambridge: Cambridge University Press.
- Katz, Larissa. 2008. Exclusion and Exclusivity in Property Law. *University of Toronto Law Journal*, 58, 275-315.
- Locke, John. 1988. *Two Treatises of Government*. Edited Peter Laslett. Cambridge: Cambridge University Press.
- Mill, John Stuart. 1994. *Principles of Political Economy*. Oxford: Oxford University Press.
- Mill, John Stuart. 2015. *On Liberty, Utilitarianism and Other Essays*. Edited Mark Philp and Frederick Rosen. Oxford: Oxford University Press.
- Nozick, Robert. 1974. *Anarchy, State and Utopia*. Oxford: Blackwell.

- Owens, David. 2012. *Shaping the Normative Landscape*. Oxford: Oxford University Press.
- Owens, David. 2019. *Private Authority*. *Jerusalem Review of Legal Studies*.
- Owens, David (forthcoming) – ‘The Roles of Rights’. In *Civil Wrongs and Private Law* Edited by Paul Miller and John Oberdiek, Oxford: Oxford University Press.
- Rawls, John. 1999. *A Theory of Justice*. Second Edition (Cambridge: Harvard University Press).
- Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Oxford University Press.
- Ripstein, Arthur. 2009. *Force and Freedom*. Cambridge: Harvard University Press.
- Ripstein, Arthur. 2013. *Possession and Use*. Pp 156-181 in *Philosophical Foundations of Property Law*. edited by James Penner and Henry Smith. Oxford: Oxford University Press.
- Ripstein, Arthur. 2017. ‘Property and Sovereignty’ *Theoretical Inquires in Law* 18: 243-268.
- Scanlon, Thomas. 1998. *What We Owe to Each Other*. Cambridge: Harvard University Press.
- Scanlon, Thomas. 2018. *Why Does Inequality Matter?* Oxford: Oxford University Press.
- Smith, Henry. 2012. *Property as the Law of Things*. *Harvard Law Review*, 125, pp. 1691-1726.

Waldron, Jeremy. 1991. *The Right to Private Property*. Oxford: Oxford University Press.

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