A body of one’s own: the institutional point of self-ownership

1. Introduction

What is the point of self-ownership? The idea that each person enjoys the same kind of exclusive power of control over themselves and their bodies as they might have over objects of private property is heralded by proponents of self-ownership as an intuitively appealing principle. It is thought to capture a basic moral fact about how we relate to one another, as well as providing a parsimonious model for theorizing the basic rights of the individual. Rights of self-ownership are accordingly ascribed a high level of stringency. In addition, the concept of self-ownership promises further dividends by generating implications for the regulation of systems of private property. From the idea that full self-ownership entails a right to reap the benefits of one’s own labour, libertarian self-ownership theorists assert the stringency of private property rights and debate the justifiability of redistributive taxation. The appeal of the concept of self-ownership is twofold if it can both provide a simple model for the basic rights of individuals and yield criteria by which to assess the regulation of systems of private property in external objects. It is perhaps no surprise that much of the historical debate around self-ownership has turned on the question of its implications for the regulation of private property.¹

However, these two advertised advantages of self-ownership have been revealed to stand in tension with one another. The notion that one can model the basic rights of persons by reference to full liberal property rights has been criticized as an incoherent way of capturing the basic moral

¹ E.g. see the debate between Robert Nozick and GA Cohen. Cohen concedes that full self-ownership indeed entails a right to reap the full amount of what others are willing to pay for one’s services, rendering taxation akin to slavery. In light of that, Cohen argues that egalitarians should reject the principle of self-ownership. GA Cohen, Self-Ownership, Freedom, and Equality (Cambridge University Press, 1995). Among those who endorse a principle of self-ownership, the debate between right-libertarians and left-libertarians turns on the question of which constraints there are on the appropriation of external resources by self-owners. While libertarians on the right such as Rothbard, Narveson and Nozick impose minimal such constraints, those on the left invoke egalitarian constraints. All share in common, however, the view that once private property rights are in place, those rights must be secure from redistribution. On the right, see Murray Newton Rothbard, For a New Liberty: The Libertarian Manifesto (Ludwig von Mises Institute, 1978); Jan Narveson, The Libertarian Idea (Broadview Press, 2001); Robert Nozick, Anarchy, State, and Utopia, vol. 5038 (New York: Basic Books, 1974). On the left, Hillel Steiner, ‘An Essay on Rights’, 1994; Michael Otsuka, Libertarianism without Inequality (Clarendon Press, 2003).
importance of persons. Moreover, the project of identifying the determinate boundaries of self-ownership is beset by problems which threaten to hamstring the very liberty rights that self-ownership is supposed to secure. Looking to property rights to provide a determinate model for the basic rights of the individual, then, ends up undermining the intuitive appeal of self-ownership.

Much of the above debate has turned on the merits of self-ownership construed as a foundational principle, with arguments on either side focussing on how to refine the conception of its boundaries such that it could play that foundational role. That project then becomes mired in complex and contested debates about specific conceptions of autonomy or metaphysical views of the self.

These problems appear to present the self-ownership theorist with two options: stick to the property conception of self-ownership and accept the consequences of collapsing the person and her property into the same moral category; or proceed with a pared-back conception of self-ownership as a kind of personal sovereignty that retains its intuitive moral appeal, and relinquish its use as a tool for theorizing about the stringency and distribution of private property.

Neither of these options are satisfactory, as both strip self-ownership of its potential to shed light on the similarities, as well as the differences, between the rights we have over ourselves and the rights we have over things that we own as property. The cluster of rights we have with respect

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4 E.g. TM Scanlon suggests that while there may be some rhetorical appeal to invoking the idea of self-ownership, in order to draw any implications from it, we need to understand the reasons that lend it such appeal. One implication of this approach is that the supposedly unified notion of self-ownership breaks down to a disparate set of reasons which may bear on policy proposals in different ways. Thomas Scanlon, Why Does Inequality Matter? (Oxford University Press, 2018). For a conception of self-ownership which explicitly denies any claims to extension or stringency with regards to property rights, see John Thrasher, ‘Self-Ownership as Personal Sovereignty’, Social Philosophy and Policy 36, no. 2 (ed 2019): 116–33
to ourselves is functionally similar to the cluster of rights we have over property. We treat various aspects of ourselves as potentially alienable, just like property, while some aspects of our property become very personal to us. As Bas Van der Vossen puts it, “When our homes get burgled, we feel like it’s we who got violated (it’s a metaphor, but not merely a metaphor).” And yet, not all property rights get imbued with the significance of self-ownership in this way. If the burglar had only entered your garden shed, I take it, that trespass would not seem like such a personal violation. A serviceable conception of self-ownership should allow us to trace the connection between rights of self-ownership and the rights we get to have over external property in a way that helps to make sense of the points of continuity and divergence between ourselves and our property.

This paper makes the case for re-orienting our approach to self-ownership. Instead of trying to identify a foundational principle with determinate boundaries, we should start by asking what function the concept of self-ownership can usefully play in our political theorizing. To that end, I offer a different, institutional conception of self-ownership premised on the idea that rights of self-ownership provide a solution to the question of how to regulate our lives in community with one another. This institutional approach involves accepting that the boundaries of the right of self-ownership are negotiable, rather than pre-determined. Thinking of self-ownership as negotiable in this way, I suggest, renders it all the more serviceable as a tool for political theorizing, by avoiding the pitfalls of the foundationalist approach. The institutional conception of self-ownership I offer retains its broad intuitive appeal, while still providing a useful principle by which to assess the justifiability of different distributions of private property, as well as the stringency of property rights within those systems.

2. Self-Ownership as an Institutional Solution

There are two ways we might approach the question of the point of self-ownership. One is to ask what value it protects or instantiates. As we saw above, answering that question leads us down a

6 Following Barbara Fried’s point about property rights, one might think of the determination of the boundaries of self-ownership being the result of the negotiation of a number of moral, political, or legal arguments. Fried, ‘Left-Libertarianism’. 
garden path of identifying a specific conception of autonomy and/or metaphysical view of the self in order to justify and explain a determinate conception of self-ownership. A second is to ask what function it can usefully perform in political theorizing about how to regulate society.

Recently, a number of self-ownership theorists have argued in favour of seeing self-ownership as providing a solution to the problem of how to regulate the social life of individuals living in community with one another.⁷ One way to motivate the justification for rights of self-ownership on this basis is to present those rights as necessary for securing the very possibility of harmonious social life. That view characterizes the problem that self-ownership responds to as being that without such rights, we would all be part of the commons, with any part of any person freely available for use by any other. In doing so, it invokes an assumption which has been prevalent in the literature on self-ownership, that for a person to lack rights of self-ownership amounts to them being available for use or appropriation by others at their own convenience.⁸

Some argue on this basis that rights of self-ownership provide the very conditions of meaningful social interactions, making it possible to foster values such as neighbourliness, friendship, or even love.⁹ While rights of self-ownership are presented as institutionally constructed, they are also seen as foundational to securing our moral status as separate persons, and for grounding the value of our relationships with one another. That form of argument seeks to establish self-ownership as an institution to which people have a natural right.¹⁰

One might well question whether rights of self-ownership are really so fundamental to the very possibility of meaningful relationships. The dystopian view of the pre-institutional commons

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⁸ Nozick explicitly makes this kind of claim when he argues that patterned principles of distributive justice involve a shift from self-ownership to partial ownership by others: Nozick, Anarchy, State, and Utopia, 5038:172. See also See Russell, ‘Self-Ownership as a Form of Ownership’, 28.


¹⁰ Moreover, the form of the solution is seen as containing a principle by which to determine the boundaries of the right, even if the project of determining the boundaries takes consideration of the empirical facts of any given social and historical context. E.g. Russell proposes the principle of reciprocal benefits as the justificatory test of any system of ownership. A system of self-ownership is justified when it secures a trade-off between liberty rights to act and claim rights against interference, such that for each person the costs of enforcing it are outweighed by the costs of remaining in the commons. Russell, ‘Self-Ownership as a Form of Ownership’.
as leaving all vulnerable to any use by others is not the only imaginable alternative to a system of self-ownership rights. What makes the concept of self-ownership intuitively appealing, I take it, is the idea that we have a basic duty to refrain from interfering with others in morally prohibited ways. Moreover, many of the most basic ways of wronging a person involve intrusions to the body. Those who think of self-ownership as a foundational right take it to be the expression of a basic moral right against interference.

For example, Judith Thomson reflects on the similarities in the structure of rights over one’s body and rights over property, while pointing out that there are differences, as well as similarities, between my body and my typewriter. In order to capture the moral importance of the body in contrast to other objects, Thomson characterizes a person’s body as ‘First Property’ and argues that claims against trespass, defined as a “claim-infringing bodily intrusion or invasion” stand at the centre of the realm of rights. It is the body, on Thomson’s view, that provides the boundary of the foundational category of moral rights. In response to the same initial insight, instead of identifying a specific foundational moral boundary, I propose that taking an institutional approach to self-ownership should prompt us to proceed in two steps. The first is to ask which kinds of actions constitute a basic moral intrusion. The second is to determine how a right of self-ownership serves to protect us from such intrusions.

To motivate the idea that we can make sense of the first question without invoking any notion of self-ownership, we might envisage a community in which people recognize the basic moral prohibitions against wantonly harming one another. They also recognize each other as beings to whom reasons are owed in the deliberation of how to regulate conduct toward each other, but do not consider the simple reason ‘because it’s mine’ to always be decisive. We might think it plausible that people in such a community could still engage in many valuable and morally

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12 Take, for example, the question of whether or not I must give some of my blood to save the life of someone else. That the transfusion would harm me or endanger my life may be a good reason to object to it, but if the only reason I can provide to justify my objection is that the blood is mine, that strikes me as a rather churlish refusal rather than a genuine engagement in reasoned moral debate.
permissible joint activities to mutual benefit and enjoyment without interpreting those interactions as being regulated by the transaction of self-ownership rights.\(^\text{13}\)

Nevertheless, reasonable disagreement over what each person morally owes to another in terms of their time, efforts, or even bodily resources would likely lead to protracted discussions about how much each person may demand from another, and which purported obligations to others could be enforced. A distinctive element of self-ownership is that it gives people claims against being compelled to come to the aid of others, even where they may be morally required to do so. In a context in which there is disagreement over which moral duties there are, a right of self-ownership serves to take some questions off the table, placing ultimate authority in the consent of each individual with respect to their domain of ownership.

We can think of self-ownership as providing a solution to a problem of uncertainty and disagreement over how to adjudicate various difficult moral questions. When disputes arise, we need a standard of adjudication to decide what may permissibly be done. Attributing rights of self-ownership is a solution to this problem. Moreover, it is one that is justifiable to each individual. In that sense, we can think of rights of self-ownership as justified on the basis of providing a solution to a problem of disagreement over what morality demands of us, rather than as a matter of necessity in setting the ground for the moral value of our interactions. In response to a basic moral requirement not to intrude on others, rights of self-ownership settle the question of which actions count as intrusive. The institutional determination of rights of self-ownership serves a basic moral purpose by protecting against intrusions which are obviously morally wrong, and serves a further social function by setting a clear standard on questions of moral dispute. There is a moral justification for that social function insofar as it reduces the risk to each individual of suffering intrusions the absolute moral status of which would otherwise be unclear. Once we have such a standard in place, it sets our expectations about how others may behave towards us, such that to infringe someone’s right of self-ownership wrongs them.

However, in terms of assessing the moral value of a right of self-ownership, we needn’t think of it as necessary to grounding the very conditions for human social life. Such an institutional right

\(^{13}\) For a picture of joint actions characterized by that kind of mutuality, see John Gardner, ‘The Opposite of Rape’, Oxford Journal of Legal Studies 38, no. 1 (2017): 48–70.
of self-ownership may be of little value to a small community of people who share a homogenous set of moral values and are well attuned to each other’s moods and desires. By contrast, the institutional case for rights of self-ownership becomes most evident in large societies with a diversity of moral perspectives and social norms.

In the form of solution that it provides, self-ownership represents a basic political commitment to recognizing individuals as independent spheres of authority on matters chiefly concerning themselves. Once we’ve moved away from the idea that self-ownership means having the fullest set of logically possible property rights over oneself, thinking in terms of ownership provides a way of structuring the rights of individuals in light of a commitment to liberalism. To paraphrase Samuel Freeman, it’s a way of defining a person’s status as a free agent, and a way of securing the ideal of free agency “via the institutional recognition of basic rights and liberties that protect the integrity and freedom of the person.” Basic rights of self-ownership secure that status by asserting for each a domain over which they have claims, privileges, powers and immunities which allow them to keep others at bay or let them in, at their own discretion.

Taking this kind of institutional view of self-ownership doesn’t yield determinate boundaries for that right. The solution requires that individuals be attributed some sphere of exclusive control sufficient to securing their status as independent from others and to be able to live life on their own terms, but it leaves open the question of how extensive the bundle of claims, privileges, powers and immunities which delineate that sphere must be.

One way to identify what must be included in the minimum set is to see what self-ownership requires on its own terms. If the purpose of self-ownership is to place each individual in a position

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14 As characterized (critically) by G.A. Cohen, Cohen, Self-Ownership, Freedom, and Equality. And (approvingly) by libertarians such as Nozick, Anarchy, State, and Utopia. And Vallentyne, Steiner, and Otsuka, ‘Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant’.
16 Russell is more optimistic that the principle of reciprocal benefit can provide answers on a case by case basis. For example, he argues that self-ownership must include rights to one’s own kidney, because leaving such things in the commons would be too destructive. Russell, ‘Self-Ownership as a Form of Ownership’, 33. However, once we’ve recognized that exclusive ownership or the commons are not the only two options on the table, this leaves open the possibility that even the principle of reciprocal benefits might best be served by having a public system regulating the distribution of kidneys, if it could be done in such a way as to optimize the probabilistic cost/benefit ratio for each person of their risk of needing a transplant against the risk that they will be selected in a publicly mandated lottery to donate one.
of authority over their own domain, where that authority consists in being able to assert their claims, privileges, powers and immunities against others, then a minimum condition of meaningful self-ownership would be to protect each person’s capacity to exert such powers.

This indicates something else about the structure of self-ownership, namely that we can draw a distinction between the powers of control required in order to regulate the exclusiveness of one’s boundaries – to keep others out or let them in at one’s own discretion – and the powers of alienation that include rights to reap the income of what one alienates. One can think of the former as more basic than the latter, to the extent that powers of alienation presuppose the exclusivity protected by the more basic control rights. Moreover, some forms of alienation may be such as to undermine a person’s ability to exert the powers of control that hold a right of self-ownership stable. From that perspective, the institutional case for self-ownership is compatible with protecting some rights as inalienable.

As a starting point, the boundaries of self-ownership must encompass elements of the person necessary to their physical safety and survival. Beyond the fundamental biological necessities, the determination of which kinds of interferences or intrusions to a person’s body or surroundings require self-ownership protection are likely to be influenced by cultural and sociological factors about how individuals relate to certain objects or aspects of themselves. Self-ownership as an institutional solution, then, cannot yield determinate boundaries on the terms of its own justification, but can provide some guidance of where to start from, and what kinds of considerations to be led by in the institutional determination of its contours.

In light of the case for thinking of self-ownership as a solution to the problem of how to adjudicate the demands we can place on each other, let’s proceed with what one might call a

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18 Consider the question of whether self-ownership includes the right to voluntarily enter into a slavery contract, as Nozick suggests it does Nozick, Anarchy, State, and Utopia. As Samuel Freeman points out, the question at hand is not so much whether a person should be able to privately pledge to serve another in this way. Rather, it’s a question of whether or not the state has a duty to recognize and enforce such contracts. For individuals to demand such recognition of the state is to demand of it action that violates the basic premise that its institutions serve to secure the status of individuals as free agents capable of standing as independent authorities on matters concerning themselves. Freeman, ‘Liberalism, Capitalism, and Libertarianism’.
negotiable principle of self-ownership. Rather than providing a blueprint for the precise boundaries of self-ownership, it simply stipulates that each individual must have some domain over which she has exclusive ownership-type control, where ownership entails having normative powers to regulate access to one’s boundaries (with the precise boundaries to be determined as a result of moral, legal, or political arguments).

This institutional approach captures the intuitive appeal behind the concept of self-ownership while avoiding the counter-intuitive implications of insisting that ‘full self-ownership’ must include the logically fullest set of property incidents over oneself. It departs from approaches in the Lockean tradition in the fact that it doesn’t privilege any particular type of action or aspect of the self as providing a moral bridge to the acquisition of material objects as property. It provides no natural or moral principle for the just acquisition of property. In defending a sovereignty conception of self-ownership which similarly privileges rights of control and self-determination over rights to reap income, John Thrasher suggests that such a conception has no implications about the relationship between the self-owner and external property. It supports no extension claims – about the extension of the right of self-ownership over external objects – nor stringency claims that property rights are as morally serious as the underlying right to self-ownership. If that were the case, retaining the broad appeal of self-ownership would appear to strip the concept of its ability to tell us anything about how to regulate external property. In what follows, I’ll argue that the conception of self-ownership offered here, even one which leaves the precise boundaries of self-ownership indeterminate, has positive implications for both extension and stringency with respect to the boundaries of external property.

3. Extension and Stringency

There is a connection to be made from our institutional conception of self-ownership to property rights via the recognition that some minimum of private property is required in order to establish rights of self-ownership in a way that meaningfully solves the problem on which its justification was premised. Self-ownership solves the problem of how to determine the limits of the demands

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we can rightfully make of one another. It does so by attributing exclusive authority to individuals over some minimum domain of their person. That solution also requires that individuals have exclusive control over some minimum sphere of physical space. If we could only exclude others from our physical bodies, without recourse to any physical space from which to shut out others, we would be vulnerable to behaviours which pose a threat to one’s ability to exert the authority that self-ownership provides.

On the problem of homelessness, Jeremy Waldron has argued that there is a freedom-based concern to be raised about a society in which all spaces are privately owned, and some are left homeless.20 Waldron presents the problem as rooted in the fact that in such a society, people experiencing homelessness have no place they are free to be. Christopher Essert pushes the argument further, suggesting that the problem of homelessness is that even if one is able to secure permission to stay in a place, such as surfing on a friend’s couch, the homeless person still lacks an important kind of normative control – that of “deciding how things will be as between them and others in the space where they live.”21 Essert’s argument in particular establishes the importance of each person having some minimum space over which they have adequate ownership-type rights of control, in a way that connects to our perspective on the point of self-ownership.

The extension from self-ownership to external property does not happen by way of a metaphysical extension of the self to incorporate external objects. It is simply a recognition that if self-ownership is a solution to a problem of how to regulate our lives together, having ownership of some minimum of external resources is part of providing a meaningful such solution. Ensuring that each has some space over which they have authority to set the terms of entry and behaviour is an important part of settling questions about the limits of interference with people’s actions. It provides a domain of self-expression in which each is insulated from the demands of others to live a certain way. Again, once we have such a boundary in place, it sets expectations about the exclusive

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21 Christopher Essert, ‘Property and Homelessness’, Philosophy & Public Affairs 44, no. 4 (2016): 274. The argument doesn’t require that each person have full private property in the sense of owning a house. It could be sufficient for each person to have a secure tenancy agreement which gives them the control to exclude others from their living space, including the actual owner of the property (subject to reasonable conditions).
status of that personal domain, such that infringements of it function as personally intrusive. We
needn’t assert that external objects become constitutive of selfhood in order to connect the right to
self-ownership with external property. Instead, to the extent that self-ownership provides the
institutional structure to secure the status of persons as free agents with authority over their own
lives, for the institution to serve that purpose requires some minimum guarantee of ownership of
external resources, including a space to call home as well as reliable access to adequate means of
subsistence. If, as I have suggested, we have reason to posit an institutional right of self-ownership
as a basic and inalienable right, that brings in its wake an inalienable right to a minimum of
personal property.²²

This claim of extension from self-ownership to external property provides part of the
answer to the question of what we can do with a principle of self-ownership. Namely, we can
examine any given distribution of property rights and interrogate the extent to which it supports
the minimum guarantee of property rights required to secure a stable right of self-ownership for
each individual. The most obvious indication of a society failing on that front is the prevalence of
people experiencing homelessness or malnutrition. In that sense, the conception of self-ownership
I’m proposing yields criteria by which we can assess some aspects of the legitimacy of distributions
of private property.

From recognizing that some forms of property are central to securing the solution that self-
ownership provides, we can draw further conclusions about the stringency of trespasses on various
objects that fall within a person’s sphere of ownership. Theories of self-ownership have typically
faced a choice between two options. One option is to insist that there is a principled distinction
between a person’s body and other objects, such that trespasses on a person’s body are accorded
special moral status. The drawback of that stance is that it makes it hard to explain the ways in

²² By personal property, I mean in the sense of having exclusive rights of control over access to and use of
the space, not necessarily including rights of alienation to sell or reap income from it. By inalienable, I
mean in the general sense of having a right to access that kind of personal property, not in the sense that
homes are not the kinds of object one can alienate through sale or gift. It clearly doesn’t violate the terms of
self-ownership to be able to share one’s space with a partner or with housemates, or even to enter into a
communal living arrangement in a co-operative community or religious order. The point is that a
commitment to self-ownership requires that society be structured in such a way that nobody who needs it
is left without a space of their own.
which we become enmeshed with some forms of property such that trespasses on them do function as personally intrusive. The other option is to invoke a strong claim of extension from self-ownership to external objects, such that once one has property rights in any external objects, those get imbued with the significance of self-ownership.\textsuperscript{23}

The institutional formulation of self-ownership offers a way to avoid that dichotomy. Instead of identifying two separate categories of ownership such that one pertains to (the metaphysical) self, and one pertains to external objects, we can instead think of a continuum of ownership rights, the importance of which can be measured by their relative centrality to securing the kind of exclusive boundary that self-ownership requires. Having the basic means of subsistence as well as some private space in which to take shelter, I have suggested, are necessary to securing a minimum sphere of self-ownership. Further contextual factors may make other types of object more or less central to the protection of self-ownership status, such as where people are reliant on certain medical devices, mobility aids, communication aids, or prostheses.\textsuperscript{24}

In any society, there will be some minimum sphere of external objects whose protection through property rights can be justified by reference to self-ownership. For systems of property which extend beyond that minimum set, there may be other justifications for allowing people to accumulate external property beyond the basic set required for the protection of self-ownership. The view of property I have in mind is what one might call a ‘hybrid view’.\textsuperscript{25} On this kind of view, we can think of some minimum of property as guaranteed by reference to its importance in

\textsuperscript{23} Alan Ryan criticizes Nozick for playing on conflicting intuitions about the stringency of one’s body, on the one hand, and the straightforward disposability of external objects, on the other, in order to establish both the stringency of property rights and the full alienability of self-ownership rights. Ryan, ‘Self-Ownership, Autonomy, and Property Rights’. I have argued elsewhere that both the Nozickian approach to property and self-ownership as well as neo-Kantian approaches to self-sovereignty fall foul of this dilemma.

\textsuperscript{24} In the midst of the current pandemic, where many places have mandated the use of face coverings in public, mobile devices which can be used to run transcription apps for those with hearing difficulties strike me as a good example of the kind of external property whose function is fairly central to securing self-ownership. For a case in favour of extending the concept of assault against the person to include battery such on items of property, see Gowri Ramachandran, ‘Assault and Battery on Property’, Loy. LAL Rev. 44 (2010): 253.

\textsuperscript{25} For an example of such hybrid view see Rowan Cruft, Human Rights, Ownership, and the Individual (Oxford University Press, 2019). For a hybrid view based in a natural rights theory, see Anna Stilz, ‘Property Rights: Natural or Conventional?’, in The Routledge Handbook of Libertarianism (Routledge, 2017), 244–258; Cruft, Human Rights, Ownership, and the Individual.
securing some good for the individual. Beyond that, we can think of the more extensive scheme of property rights granted under a certain institutional system as justified on the basis that it serves some common good. This might be by solving certain coordination problems, or by virtue of being the most efficient system for securing high levels of prosperity across society.\(^{26}\)

However, that characterization of a two-tier justification for different sets of external property rights might appear to simply push us back to the dichotomy above. Instead of drawing a principled line between the body and external objects, we seem to have merely extended the basic self-ownership-based sphere to cover some external objects, implying a strict line between those objects central to the protection of self-ownership, and all the rest. I suggested above that instead of insisting on a sharp distinction between two such categories, we could allow for variable stringency to the extent that some objects vary in their centrality to the protection of self-ownership.\(^{27}\) This introduces a measure of variable stringency for ownership boundaries on the basis of reasons internal to self-ownership, without having to appeal to other interests in order to weigh the relative severity of different trespasses. Variable stringency of this kind helps us to explain the sense in which some forms of external property play a role in securing self-ownership such that trespasses on those kinds of property function as personally intrusive, while trespasses on other objects of property do not.

One way to capture this idea is through the image of a set of concentric spheres emanating out from the core of self-ownership. The further out each layer falls from being central to the protection of self-ownership, the weaker the case will be for its grounding in self-ownership. I take this to be an appealing feature of proceeding with the conception of self-ownership I’m proposing. A key point, though, is that the placement of objects within those concentric circles cannot be settled purely by reference to the kind of object in question — for example whether it be an item of basic nourishment or part of my accommodation. In the assessment of the severity of different kinds of trespass, we have to take on board the social significance or function of a given item, the

\(^{26}\) See chapter 13 of Cruft, Human Rights, Ownership, and the Individual.

\(^{27}\) Cruft argues for this kind of variability in the strength of justification for property rights as grounded in the good of the individual, see his sections 8.2 and 9.4
way in which it features in the set of property I own, and my position in the wider distribution of wealth in society.

To illustrate this, consider the following examples, each involving different kinds of property infringement:

**Milk Delivery:** My regular delivery of milk & eggs is stolen from my doorstep one morning, before I get up to bring it in.

**Thief in the Night:** Having left my window open on a hot night, someone stealthily climbs through and steals some cash I had left out in the living room.

The question at hand is how to assess the severity of these various trespasses. More specifically, the challenge set out above was to see whether self-ownership can tell us anything about the variable stringency of these different trespasses, without having to invoke a specific conception of autonomy or a metaphysical view about extensions of the self. Critics who are sceptical about the latter strategies have suggested that once one has a principle to identify a determinate boundary, all boundary-violations must be treated as equal relative to that principle. Though one might distinguish between the level of compensation owed for the trespass by reference to the monetary value of the property damage or theft, the stringency of the boundary right is constant across all cases. That approach leaves us with no resources to distinguish any stringency between these three cases.

This comes out especially clearly if we stipulate that the amount of cash stolen in Thief in the Night is less than the value of the groceries stolen in Milk Delivery. In each case the thief has crossed my property boundary, and I may be owed more compensation for the groceries than for the cash. This is a problem if one is drawn by the intuition that an intrusion into one’s house is personally intrusive in a way that trespasses onto one’s front garden are not. That intuition can be explained by noting that different ways of standing in the ownership relation with respect to some

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objects matter more than others. What I’ve suggested is that relations of ownership matter more, the more central they are to self-ownership.

This allows us to make some distinction between Milk Delivery & Thief in the Night. Both involve trespass on your property, but there is a difference between trespassing on your front garden and trespassing into your house. This is partly explained by the social function of having pathways leading to doorbells as the conventional means of requesting access to your space, even though your property rights include the power to exclude someone from stepping foot into your front garden. From that perspective, the exclusivity of the boundary represented by your front garden is less central to self-ownership than the exclusivity of the boundary represented by the door or windows to your home. Invoking the picture of the concentric circles of property outlined above allows us to distinguish between the severity of the boundary crossing in each case relative to the principle of self-ownership, to explain why intruding into someone’s home is a more severe instance of trespass than stealing from their doorstep.

Now consider a different case again:

**Meddling Neighbour:** My neighbour pops round to deliver some community news. On her way to my door, she takes it upon herself to tidy the various pots and ornaments in my front garden to better match her own next door.

On the one hand, my garden ornaments are not the kind of property included in the minimal set required by self-ownership. And yet, the neighbour’s meddling may well come across as personally intrusive. The way in which we traced the connection between self-ownership and property rights provides some explanation as to the intrusiveness of this gesture. The structure of property rights is functionally identical to the rights of self-ownership, and rights of ownership over oneself and external property are operated by the same normative powers. This fact of the structure of rights of ownership sets the conditions against which wantonly interfering with someone’s property can function as a form of controlling behaviour towards that person. The imposition of the meddling neighbour in tidying my things to better suit her aesthetic, I suggest, exhibits this aspect of
uninvited control. Part of the reason it functions this way is the social context in which my neighbour and I both stand as property owners with a sufficient level of wealth to meet our basic needs and more. By contrast, the theft in Milk Delivery doesn’t obviously express the same controlling aspect, assuming whoever took the groceries did so because they lacked the means to buy their own. I’ll provide more argument for that claim in section four.

Moving on from the question of the variable stringency of the boundaries represented by my front door as compared to my front garden, as well as the question of the expressive significance of certain boundary crossings, there is another aspect of Milk Delivery that demands explanation. In light of the claim that the basic means of sustenance fall under the type of external property that is central to establishing a meaningful sphere of self-ownership, one might be led to think that stealing someone’s groceries is exactly the kind of property transgression that a commitment to self-ownership would treat as severe. That assumption would be correct to the extent that I was heavily reliant on that grocery delivery to meet my needs. In that case, depriving me of my groceries would indeed be the kind of trespass against property rights that intrudes on self-ownership. The assessment of the case changes, however, if I have plenty of groceries left in my pantry to keep me going, and it poses no financial difficulty for me to order a replacement in time to meet my needs. That is to say, it is not the mere fact of the object in question being a certain kind (i.e. intended for basic nourishment) which bears on the question of its centrality to the sphere of self-ownership. Also relevant is how significantly it features in the whole set of property that I own, as well as how I am placed relative to others in the overall distribution of wealth in my society. This brings us on to the question of whether our institutional conception of self-ownership yields any criteria for assessing distributive principles for systems of private property. The next section shows what can be done on that front.

4. Assessing distributive principles for systems of private property

In order to understand the distributive implications of our conception of self-ownership, we need to get clearer on the connection between the category of external property that can be justified on the basis of self-ownership, and the category of external property which is not central to securing self-ownership, but may be justified on other grounds. As we saw above, there is some minimum
of external property that will be justified on the basis of its importance to self-ownership. If we have reason to protect a meaningful right of self-ownership, we also have reason to ensure that each person has access to some minimum amount of property required by a commitment to self-ownership. The centrality of that minimum set of property, I suggested, serves to explain the severity of trespasses within that domain, such that some kinds of property interference, like intrusions into your home, function as personally intrusive. It also sets some constraint on the shape of the system of property rights whose justification is not grounded in self-ownership. Namely, that those systems be organized in such a way as to ensure that the minimum be guaranteed for all.29

One important question that arises from considering such a hybrid view is what to make of the normative significance of the set of property that is justified on grounds other than by reference to individual rights of self-ownership. Rowan Cruft has suggested that property rights which are justified by reference to some common good, rather than by reference to the good of individuals, could be construed as instantiating a form of ‘controllership’ for individuals over external objects.30 On this proposal, while controllers of property would be accorded the same Hohfeldian privileges to use and control access to the external property under their control as one has with typical property rights, the trespassory duties of others with respect to that property would be owed to the collective, rather than directly to the individual controller. Cruft argues that most of the common good grounds for systems of property would be served equally well by this kind of controllership system as by one involving property rights with trespassory duties directed to individual owners.31

Assuming a controllership view of trespassory duties as owed to the community, we can note that such a system may nevertheless end up establishing certain directed duties towards a controller. This happens as a result of the legal-conventional system of controllership rights creating a context in which individuals come to rely on the exclusivity of the boundaries of their property. The fact that we can rely on the exclusivity of the boundaries of property allows us to use

29 For a similar argument see Stilz, ‘Property Rights’, 255.
31 Cruft, 242–43.
our property to pursue plans that may be deeply personal to us. Take an example involving the kind of thing that would fall outside the category of property justified by its centrality to self-ownership. If I were to accidentally set fire to your partner’s elaborate balloon arrangement, I would owe you an apology for ruining the birthday surprise you had set up for them. I take it my apology would be owed to you, rather than owed to the community but directed towards you. That perspective gives us reason to think that I can still wrong you by trespassing on your property, even if we think that the trespassory duties in question are grounded in duties to the community. The wrong in question, however, is dependent on the specific plans thwarted by my trespass, rather than the mere fact that your property represents a sphere of agency exclusive to you.

Even if the chief justification of property rights in things beyond the minimal set is grounded in the good of the system to the community, we can still think that once we have such a conventional system, it creates a sphere of potential personal value to the individual by virtue of attributing to her exclusive control of the things she owns. The way in which the system makes it possible for individuals to rely on their ownership powers in that way makes it possible for the property rights it protects to become imbued with a certain level of moral significance, even if that value itself does not provide the justificatory ground of the property right.

In his denial that the sovereignty conception of self-ownership entails any claims of extension to external property, John Thrasher describes property as a “shadowy projection” of sovereignty. In light of the discussion above, we might think of the nature of this shadowy projection as follows. Assume that the justification for extending the scope of property rights beyond those required by self-ownership is that such a system is the most efficient way to generate wealth across society, by harnessing the self-interest of individuals. The mechanism used to do this is to extend the same pattern of Hohfeldian powers included in self-ownership to apply to ownership of a wide range of external objects. They model the kind of exclusive control required by a right of self-ownership and apply it to external objects, harnessing the motivation of individuals to maximise the value of their property by protecting it from the claims of others. In other words, such systems harness our self-interest in acquiring the same kind of exclusive control

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32 Thrasher, ‘Self-Ownership as Personal Sovereignty’.
of external objects as we have over ourselves. That is the sense in which property gets instantiated as a kind of shadowy projection of self-ownership.

The common-good based classical liberal defence of free markets proceeds on the basis that the optimum way to harness people's self-interest and limited altruism is to provide for full liberal ownership of private property, allowing people to acquire extensive rights of exclusive use and alienation over external resources. On that picture, the strength of the justification for a system of private property will depend in part on the extent to which it successfully provides for the possibility of individuals having full liberal ownership of some property, in a way that is robustly immune from the claims of others.

We've already seen that if self-ownership requires that each have access to a minimum set of property to ensure their physical wellbeing and secure their status as free agents, this imposes a constraint on the wider system of private property rights in that it must fulfil the basic minimum for all. What we now need to examine is how that minimum constraint bears on the distribution of property in the wider system, relative to the aim of that system of securing the possibility of full liberal ownership.

One might think of the minimal constraint as incurring on all participants in the scheme of private property an imperfect duty to ensure that the scheme as a whole supports the basic minimum. The very justification for attributing exclusive ownership claims over external property beyond the minimum derives in part from the ability of such a system to provide at least the basic level of sufficiency for all. Those who benefit from being able to accumulate a large amount of surplus private property do so on the condition that the system can sustain such surplus property rights without violating its justificatory criteria.

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34 Or what we might call “full liberal controllership”, on the hybrid view.

35 Ann Cudd proposes the existence of such an imperfect duty on her view of connected self-ownership. Ann E. Cudd, ‘Connected Self-Ownership and Our Obligations to Others’, Social Philosophy and Policy 36, no. 2 (ed 2019): 154–73. However, we needn’t commit to Cudd’s metaphysical views about the social constitution of selves in order to arrive at this conclusion, instead we can invoke some of the justificatory criteria of ownership construed as an institutional solution in order to establish the same notion of an imperfect duty to sustain a just system.
This allows us to track a correlation between the robustness of the exclusivity of claims provided for by a system of private property and the extent to which that imperfect duty is satisfied. The picture can be put more sharply into focus by considering what happens to the distribution of claims and duties with respect to property rights when things go wrong. That is, when the system fails to provide the basic minimum, allowing some to fall to a level of poverty and precarity which undermines their right of self-ownership. The status of property rights as holding in rem is dependent on the collective satisfaction of that duty through the system. If the system fails to satisfy this condition of justifiability, such failure can trigger a reconfiguration of the claims of the well off, such that their property becomes vulnerable to the claims of those who fall below the sufficiency level. In a sense, the imperfect duty becomes a directed duty, which no longer merits the property-type protection of being unenforceable.

Alejandra Mancilla has recently argued that subsistence rights should be viewed as “individual moral powers delineating a sphere of sovereign action”. On Mancilla’s view, a meaningful conception of subsistence rights should include the right of individuals to act in order to secure their own subsistence, including such action as taking property from those who are better off, as long as that taking does not threaten someone else’s subsistence. On the view I’m proposing, we needn’t think of self-ownership as entailing any special moral power to appropriate objects, as found in Lockean views about the significance of labour. Instead, we can think that a system of ownership rights which starts from the basic principle of securing some core domain of self-ownership must contain some mechanism of stability to ensure for all the ongoing protection of the minimum access to property required by self-ownership. Allowing that the property rights of the rich lose their immunity with respect to the subsistence claims of the poor provides that mechanism of stability.

Looking back to the Milk Delivery example, this allows us to explain that case in the following way. The milk was stolen from the doorstep of my parents’ house in Westminster, a very

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37 Mancilla argues that there is precedent in the writings of both Locke and Pufendorf with respect to the concept of property in the person to support such an interpretation of subsistence rights.
38 Provided, of course, that the property they take doesn’t involve a trespass on the other person’s rights of self-ownership.
affluent area of London, which also has a large population of people experiencing homelessness. We can assume that whoever took the milk and eggs did so because they needed the nourishment. Conversely, given the location and size of my parents’ house, it would have been reasonable for whoever took the milk and eggs to assume that this was a household of people who could afford to replace a few missing groceries. The argument above regarding the priority of protecting self-ownership claims over the exclusivity of more extensive property rights suggests that in this scenario, I had no claim against the homeless person taking the milk and eggs from my doorstep. This is compatible with thinking that I still had some ownership rights in the milk and eggs as against others. I would have still had a claim against my affluent neighbour taking the delivery for his own convenience. But considering the failings of the system, and my placement in the overall distribution of property, I lacked a claim against the homeless person’s taking something from me which was necessary to meeting their basic needs.

One objection to this picture might be that the subsistence claims of the poor should be directed at the system, rather than individual owners within the system who will end up carrying the burden of fulfilling the duties to the poor on an arbitrary basis. Instead, we could perhaps think of people who are poor having claims to government assistance. However, where such assistance programs are not already in place or readily accessible, gaining the necessary access would presumably take time and/or require the consent of lawmakers. To harness a Lockean argument, if the consent of all were required in order to access the means of survival, we would perish before being able to do so. It therefore better serves the justificatory purposes of a hybrid system of property to think of my property rights against the homeless person’s taking being forfeited directly in response to their claim of subsistence, as I’ve suggested above. This is compatible with thinking that on the grounds of fairness, I may have a claim of compensation against the system for it having failed to maintain the conditions in which the exclusivity of my property rights is robustly assured.39

39 This is in contrast to the view that Feinberg and Thomson take in response to similar cases. E.g. in Feinberg’s discussion of a hiker who has to take shelter in a person’s cabin, he uses Thomson’s distinction between violating and infringing a right as follows. Because the hiker was justified in trespassing, he does not violate the cabin-owner’s right, but rather infringes it. In cases of infringement, the hiker still owes compensation to the owner for use of the property. In cases of necessity, I suggest, there is something morally askew about the cabin-owner insisting on his compensation. If there is an issue of fairness in
This analysis of the way in which the exclusivity of property rights may become vulnerable to subsistence claims yields further insight into how to assess the robustness of different distributive principles governing systems of property. Take for example a society close to Nozick’s idea of a minimal state, in which as much private property as possible is characterized by full liberal ownership and entirely regulated by free market transactions. Only minimal taxation is countenanced in order to fund the protection agencies and judicial structures necessary to protect people’s rights. It is possible that such a society could generate a level of prosperity such that everyone would manage to acquire and retain enough wealth to meet the requirements of self-ownership. In that society, the property rights of all would be invulnerable from the subsistence claims of the poor, as a matter of empirical contingency.

However, that system leaves open the possibility that some people could fall into poverty after becoming unemployed and unable to find work again. If everything, including the means of production, is owned as private property on the basis of full liberal ownership, then the unemployed person’s ability to earn a living will be dependent on the consent of employers. As for the employers, no property owner would be under any enforceable duty to offer the unemployed person an employment contract. Under such a system, the possibility would remain that some be left to fall below the level of sufficiency required by self-ownership, as a result of being unable to convince anyone to hire them. That system would be vulnerable to failing to meet its justificatory standards as a result of the cumulative effect of rightful choices made by property owners.

Note that the mere possibility of this scenario is enough to undercut the value of the property rights provided by the system. Even if we posit the libertarian utopia in which all have enough and are trading pareto-optimally, the very possibility that people may fall into destitution as a result of the cumulative choices of others to exclude them from gainful employment weakens the conceptual exclusivity of the property rights of all. In such a society, the exclusivity of your property rights will always be conceptually conditional on the consequences of the rightful choices of others.

settling who is to bear the costs of coming to the assistance of those in dire need, I suggest that question is better settled by distributing the burden of compensation costs across the system that sustains the property rights in the first place, rather than to the unfortunate subject of the original predicament. Joel Feinberg, ‘Voluntary Euthanasia and the Inalienable Right to Life’, Philosophy & Public Affairs, 1978, 93–123.
This argument is a corollary of a form of argument levelled in defence of the need for private property rights, rather than mere access to the commons. Even if I have the ability to access and make use of parts of the commons, that argument goes, unless I have a right to exclude others from making use of the same portion I am working on, my plans will be subject to disruption by the choices of others. Whatever time and effort I invest in any parcel of external resources will always be subject to undoing if another can come along and erase or work over my progress to suit their own ends. What is required in order to guarantee my ability to pursue my own plans over time is not the contingent fact of other people not interfering, but the assurance of a right against such interference.\textsuperscript{40} In the same way that my plans become vulnerable to interference by others in a world without property rights, the libertarian utopia leaves my external property in principle vulnerable to interference as a result of the cumulative rightful choices of others.

If instead the system allows for a more limited realm of private property characterized by full liberal ownership, and treats more of the surplus value created by social cooperation as a public resource to fund robust access to sufficient shelter and nourishment for all, the private property rights that are protected under that system become accordingly less vulnerable to claims of subsistence. The further a system of private property rights slides the scale of wealth owed to the collective, while the sphere of privately held property gets narrower, the more robust its exclusivity becomes. Consider a system in which the property distribution and welfare provision is such that all reliably have their basic needs met. Under such a system, for someone to take the milk from my doorstep would now be more like the case of the meddling neighbour. That kind of property intrusion would signal an imposition of control over my boundaries of ownership, a personal intrusion on my status as authority over my own domain.

If a system of property rights is premised on the efficacy of providing full liberal ownership in privately held property, the private property it protects will be more robust to the extent that the system provides a robust guarantee of sufficiency for all. We can think of this as involving a scalar trade-off: the more extensively society is governed by private property, the less conceptually robust those private property rights become. In order to increase the robustness of property rights as

\textsuperscript{40} See e.g. Essert, ‘Property and Homelessness’, 279–81; Stilz, ‘Property Rights’, 247. For discussion of a Hegelian argument to this effect, see Cruft, Human Rights, Ownership, and the Individual, 215–17.
characterised by full liberal ownership, we have to reduce the proportion of social life governed by private property.

5. Conclusion

The advertised advantages of the concept of self-ownership are its intuitive appeal coupled with the fact that it is taken to yield implications for the regulation of systems of private property. Those two aspects of the concept have typically stood in tension with one another. Libertarian approaches which seek to assert full self-ownership as a foundational right lead to counter-intuitive conclusions. On the other hand, approaches which seek to retain the intuitive appeal at the heart of the concept risk relinquishing its ability to tell us anything useful about property rights. Moreover, the project of trying to settle the determinate boundaries of self-ownership becomes mired in complex and contested debates about specific conceptions of autonomy or metaphysical views of the self.

In this paper, I’ve proposed an institutional conception of self-ownership that allows us to retain both of the advertised advantages of the concept of self-ownership, while bracketing the metaphysical question of its determinate boundaries. The institutional conception of self-ownership I’ve offered involves accepting that the boundaries of self-ownership are negotiable, rather than pre-determined. Though it offers no fixed answers as to how to settle on the precise boundaries of the right, this approach offers us a conception of self-ownership which can be put to serviceable use in political theorizing. It allows us to trace the connections between self-ownership and property ownership in a way that sheds light on the stringency of property rights in different social contexts, and gives us criteria by which to assess the relative justifiability of different distributive principles for systems of private property.

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