

PROPERTY AND RAWLSIAN JUSTICE

Katy Wells, Nuffield College

*Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in
Politics in the Department of Politics and International Relations at the University
of Oxford.*

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Abstract

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What property institutions should be taken to characterize a society which is, by Rawlsian standards, just? The aim of my thesis is to answer this question. The thesis does so by focusing on three central questions of property and Rawlsian justice. The first is whether Rawlsian political philosophy should include a basic right to privately own or be eligible to privately own personal property. The second is whether Rawlsian political philosophy should include a basic right to privately own or be eligible to privately own productive property. The third is whether Rawlsian political philosophy should defend – on grounds other than a commitment to basic rights – the claim that all citizens should have a stake in the means of production. I answer these questions by doing two things. Firstly, I develop an account of what basic property rights a Rawlsian account of justice should include. With respect to the things normally taken to fall under a basic right to personal property – housing and personal items – I argue that Rawlsian justice should include a basic right to rent, rather than to own, these things. In the thesis, I spell out what a basic right to rent should be taken to consist in. I also argue that Rawlsian justice should not be understood to include a basic right to productive property of any sort. Secondly, I argue that Rawlsian political philosophy should not defend – on grounds other than a commitment to basic rights – the claim that all citizens should have a stake in the means of production. In making these arguments, the thesis claims that the Rawlsian view, properly understood, places less overall emphasis on the importance of ownership than has often been thought.

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Preface

A great number of people have helped me develop the ideas set out in this thesis, and a greater number still have supported me during its execution. I owe a debt of gratitude to all of these people. Particular thanks must go to Stuart White, my supervisor, to David Miller, my advisor, and to Emily McTernan and Chris Sykes.

A version of the arguments presented in Part 1 of this thesis, entitled “The Right to Personal Property” has previously been published in *Politics, Philosophy & Economics*.

A version of the arguments presented in Chapter 4 of this thesis, entitled “High Liberalism and Weak Economic Freedoms” has previously been published in *Critical Review of International Social and Political Philosophy*.

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Introduction

1. Overview of the project

The subject of this thesis is property and Rawlsian justice: it addresses the question of what property institutions ought to characterize a society that is, by Rawlsian standards, just. The main aim of the work is to counter a significant tendency of political philosophers in the Rawlsian tradition to overstate the importance of property ownership. In pursuing this aim, the thesis will also provide something which the current literature lacks: a sustained consideration of the issue of property in the Rawlsian context.

My focus will be on three central issues. These are:

- (1) Should Rawlsian political philosophy include a basic right to privately own or be eligible to privately own personal property?
- (2) Should Rawlsian political philosophy include a basic right to privately own or be eligible to privately own items (or non-physical entities) typically taken to fall under the heading “productive property”?

- (3) Should Rawlsian political philosophy defend – on grounds other than a commitment to basic rights – the claim that all citizens should have, in some sense, a stake in the means of production?

My reason for focusing on these areas is as follows: they are all areas where the importance of property ownership, whether private or collective, has been over-emphasized, either, in the case of (1), by an almost de facto consensus in the literature, or, in the case of (2) and (3), by prominent voices in the contemporary debate.

In this thesis, I argue the following: (1) there is no justification for a basic right to privately own or be eligible to privately own housing and (with certain exceptions) personal items, where housing and personal items are those things normally taken to fall under the Rawlsian right to personal property;¹ there is, however, a justification for a basic right to have more limited rights than ownership over housing and personal items; (2) there is no justification for a basic right to privately own or be eligible to privately own productive property; (3) Rawlsian justice does not require that all citizens have, in some sense, a stake in the means of production.

This thesis is divided into three parts. Part 1 deals with housing and personal items – that is, with question (1) – Parts 2 and 3 deal with productive property – that is, with questions (2) and (3). By the end of the discussions in these two parts of the thesis I hope to have offered a distinctive account of the importance of ownership in Rawlsian thought.² In the remainder of this introduction I will sketch the arguments

¹ The terms “housing” and “personal items” will be defined in Section 3 of this introduction.

² One important category of property which this thesis does not discuss specifically is intellectual property. Whilst there may well be value in developing a Rawlsian account of intellectual property,

that are to follow. Before doing so, however, I wish to briefly explain and defend this thesis' focus on Rawlsian political philosophy.

2. Rawlsian political philosophy

This thesis, as stated above, considers the question of what property institutions ought to characterize a society that is, by Rawlsian standards, just. Let me here justify the focus on Rawlsian political philosophy rather than on liberal egalitarianism more broadly.

Defining “liberal egalitarianism” is a fairly simple matter, since the central features of that theoretical perspective are given by the name. A liberal egalitarian theory is one which is liberal – has a basic commitment to protecting as a normative priority individual freedom or centrally important individual freedoms – and egalitarian – has a commitment to a distribution of what Clayton and Williams call “benefits and burdens” which is, in some sense, equal.³

Regardless of this, however, an inquiry which seeks to sensibly discuss what a liberal egalitarian theory should have to say about property ownership will find the category to be hopelessly broad. Consider, for example, that at least some left-libertarians would happily (and arguably justifiably) characterize themselves as liberal egalitarians, yet their views on property are, as their name suggests, libertarian ones.⁴ The worry is, then, that if the scope of the inquiry is set too wide

such a project lies outside the scope of the present inquiry, since developing it would be a thesis-length undertaking in its own right.

³ Matthew Clayton and Andrew Williams, “Some Questions for Egalitarians,” in *The Ideal of Equality* ed. Matthew Clayton and Andrew Williams (Basingstoke: Palgrave Macmillan, 2000), 1.

⁴ See Peter Vallentyne, Hillel Steiner, and Michael Otsuka, “Why Left-Libertarianism is not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried,” *Philosophy & Public Affairs* 33, no. 2 (2005): 201-215.

it will be difficult to make any sensible generalizations. Instead, we will have to consider each example of a liberal egalitarian theory separately, resulting in a project which does not have much overall coherence and is, in addition, unworkably large. Consequently, it seems sensible to pick one particular version of liberal egalitarianism as the basis for this inquiry. There are, of course, good reasons for the version of liberal egalitarianism to be Rawlsianism. Rawls is still for better or worse a very dominant figure in contemporary political philosophy. Consequently, a thesis on property ownership which speaks to a Rawlsian theoretical perspective is likely to have a wide audience. Secondly, it is my view that a Rawlsian account of justice is broadly the correct one, although I do nothing to defend that view here. Consequently, it makes sense to consider things from this perspective.

There are also reasons internal to the Rawlsian debate which make a study of the Rawlsian view of property in some respects timely, and in other respects overdue. At least some elements of the Rawlsian view of property have benefited from almost no discussion – in particular, whilst Rawls and Rawlsians include a “right to hold and to have the use of personal property” amongst the basic liberties, surprisingly little has been written about this right.⁵ This is something which my thesis hopes to remedy. On the other hand, the debate about what the Rawlsian view of productive property should be is a very live one, and one to which this thesis hopes to contribute.

Finally, considering significant normative issues from a Rawlsian perspective does not preclude the conclusions that arise from such consideration from being significant to a wider audience. The flip side of the fact that Rawlsian political theory lacks a discussion of the right to personal property is that wider

⁵ John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 114.

discussions of whether there is such a basic right lack any input from a Rawlsian perspective. Furthermore, as I will point out during the discussion of the basic right to personal property to follow, the contribution that a Rawlsian account – or, specifically, the Rawlsian account I develop here – can make to these discussions is a distinctive and persuasive one. Consequently, the choice of a Rawlsian framework does not narrow the intended audience down to only Rawlsians.

In order to set out the theoretical framework of the thesis, I will offer a very brief sketch of what I take to be the main features of a Rawlsian account of justice – or rather, the main features of a Rawlsian account of justice which are directly relevant to this inquiry. I certainly do not aim here to give a complete specification of the Rawlsian account of justice.

For the purpose of the discussion to follow, what needs to be set out is the Rawlsian account of what goods are to be distributed in a just society, and the principles according to which those goods are to be distributed. On a Rawlsian account, of course, the goods to be distributed are “primary goods,” which are defined as “various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good.”⁶ Listed, these goods are:

- (i) Basic rights and liberties.
- (ii) Freedom of movement and free choice of occupation.
- (iii) Powers and prerogatives of offices and positions of authority and responsibility.

⁶ Ibid., 57.

- (iv) Income and wealth.
- (v) The social bases of self-respect.⁷

The two moral powers mentioned above are the capacity for a sense of justice, “the capacity to understand, to apply, and to act from ... the principles of political justice that specify the fair terms of social co-operation” and the capacity for a conception of the good, “the capacity to have, revise, and rationally pursue a conception of the good.”⁸ Much more will be said about these moral powers and the primary goods “generally necessary” for citizens to develop and exercise them in the chapters that follow.

Finally, the primary goods are to be distributed, on the Rawlsian picture, according to the two principles of justice. These are:

- (a) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society (the difference principle).⁹

With relevant central elements of the Rawlsian picture of justice outlined, I now turn to set out the arguments of this thesis in more detail. In Section 3 I outline the arguments of Part 1, in Section 4 I outline the arguments of Part 2 and Part 3.

⁷ Ibid., 58-59.

⁸ Ibid., 18-19.

⁹ Ibid., 42.

3. The project – part 1

Part 1 of this thesis considers the question of whether Rawlsian political philosophy should include a basic right to privately own or be eligible to privately own personal property.

Rawls himself claims that there is a “right to hold and have the exclusive use of personal property,” one ground of which is “to allow a sufficient material basis for personal independence and a sense of self-respect, both of which are essential for the development and exercise of the moral powers.”¹⁰ If we interpret “hold and have the exclusive use of” to mean “own” in the sense specified below – a move which I will argue in Chapter 1 is justified – then this is a statement of Rawls’s claim that there is a right to own personal property. Those who would call their theories Rawlsian have, in general, accepted Rawls’s claim that there is such a basic right.

My argument in Part 1 of this thesis is that there is no justification for a basic right to privately own or be eligible to privately own those items normally taken to fall under the Rawlsian right to personal property – housing and (with certain exceptions) personal items. Instead, Rawlsians should support a basic right to exercise a lesser set of property rights – I will call these “rental rights” for reasons to be explained below – over these things.

In order to make this argument I will first be offering clarification on the question of what a right to own personal property *is*. Here I give a sketch of my conclusions.

¹⁰ Ibid., 114.

First, there is the question of what is to be meant by the term “own.” I will argue that the best way to understand what the term “own” means in the context of the Rawlsian right to personal property is in line with a limited version of the characterization of ownership proposed by Honoré.¹¹ I will give a full account of this characterization in Chapter 1 of the thesis. However, we should note that one important limit on Honoré’s definition introduced by the Rawlsian picture is that what it means to “own” some item in the context of this right must exclude the right to income from that item. This is because the Rawlsian position typically stresses a distinction between rights to own personal property and rights to own productive property. The right to own productive property will, of course, get separate consideration in Part 2 of the thesis.

The question of how ownership should be defined is a much-disputed one, and the dispute extends to the question of whether ownership is the sort of thing that even can be defined. In the course of Chapter 1 I will engage briefly with these disputes, defending both the possibility of offering a definition of ownership at all, as well as my particular choice of definition.

The second issue which it will be important to clarify is what a right to own personal property protects the ownership *of*. A right to personal property, I suggest, should be understood as protecting the ownership of two particular types of item. First, what I will call “housing” – houses, and flats/ apartments or any other place where people normally live. Second, what I will call “personal items” – a term which refers a wide range of items such as clothes, furniture, cars, bikes, televisions, trinkets, pictures, and so on.

¹¹ Tony Honoré, *Making Law Bind* (Oxford: Clarendon Press, 1987).

The final issue which it is important to clarify is what is meant by a “right to own.” Jeremy Waldron has pointed out in his work that there are two ways that a right to own can be understood.¹² Firstly, it can be understood as protecting citizens’ *eligibility* to be owners of the item or items specified by the right. On this reading, a right to own personal property does not entitle me to actually be the owner of any item. It only prevents me from being excluded from the class of people who can own the item or items. Secondly, it can be understood as stating that citizens are entitled to actually own (or perhaps entitled to have sufficient resources to be able to obtain) the item or items specified by the right. On this reading, the right has clear distributive implications. If I have a basic right to own housing, understood this way, then this means that I ought to be the owner of a flat or house or be supplied with the resources to buy one. This ambiguity in the meaning of “right to own” adds significant confusion to discussions of a right to own personal property, since we do not know in which way such a right is to be interpreted. To be clear, in what follows I will be arguing that – for the most part – citizens have a right to own personal property in neither sense.

The outline of Part 1 of this project, on the right to own personal property, is as follows. In Chapter 1 I will offer a more extensive defense of my claims here about how the Rawlsian basic right to personal property should be understood. I will then, in the same chapter, outline in more detail the Rawlsian position on what underpins the basic rights and liberties, including a right to own personal property. This position is that the basic rights and liberties are essential to the development and exercise of the two moral powers. The rest of Chapter 1 and Chapter 2 are then devoted to assessing this position. In Chapter 1 I consider arguments of the

¹² Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), 20.

following type: a right to personal property is required for self-respect, privacy, independence, and control, which are necessary for the development and exercise of the two moral powers. I will consider how the arguments might establish that there is (i) a right to own housing, and (ii) a right to own personal items. Then, in Chapter 2 I consider arguments of the following type: a right to personal property is required for agency and a sense of identity, which are necessary for the development and exercise of the two moral powers. Arguments of this type, which can collectively be called Hegelian because of their origins, are a significant category of argument for a right to own personal property, and consequently deserve their own chapter. The conclusion of Chapters 1 and 2 will be that none of these arguments are successful in establishing that citizens must have a right to own housing or – with certain exceptions – personal items.¹³

The central part of my argument consists in outlining two alternatives to the ownership of personal property, and arguing that in these scenarios the basic interests related to the development and exercise of the two moral powers – interests like, privacy, self-respect and so on – are adequately protected, given a certain legislative context. These two scenarios are:

- (1) State rental. In this alternative, all housing and personal items are owned by the state, and leased by the state to citizens for longer and shorter periods, with the state also acting as landlord.
- (2) Market rental. In this alternative, all personal property is owned by either
 - (a) individuals and privately owned businesses; or
 - (b) collectively owned

¹³ The types of item which count as exceptions to my argument that a right to own personal items cannot be justified on a Rawlsian picture are as follows: (1) certain items of religious significance; (2) items which are consumed during use; (3) items which it can be considered unsanitary or unhygienic for individuals to share. These exceptions are discussed at the end of Chapter 2.

businesses (as, for example, might exist in a market socialist regime) and leased to citizens for longer and shorter periods. In this scenario, the businesses in question act as landlord.

Too much emphasis in the literature has been placed on a right to own personal property because the alternative to ownership has often been taken as something like communal living.¹⁴ However, this is clearly wrong – individuals may have rights over a particular item – like rights of exclusion – which are not do not amount to ownership (although they are property rights) but which nevertheless entitle them to have a significant amount of what Ronald Dworkin calls “sovereignty” over that item.¹⁵ This more limited sovereignty is sufficient, I argue, to protect the development and exercise of the two moral powers. What should be protected as a right, therefore, is not ownership, but the ability of citizens to have this more limited sovereignty – which I call “rental rights” – over housing and personal items.

In the final chapter of Part 1 of the thesis, Chapter 3, I will draw on the discussion of the previous chapters to develop a full account of what rental rights over what items citizens of a Rawlsian just society should be taken to have as a basic right. To anticipate, I will claim that citizens should have the following rental rights:

1. a right to (actually) have rental rights over housing.
2. a right to (actually) have rental rights over a subset of personal items, “personal necessities.”

¹⁴ Munzer and Christman, for example, are guilty of this mistake. See Stephen R. Munzer, *A Theory of Property* (Cambridge: Cambridge University Press, 1990); and John Christman, *The Myth of Property: Towards an Egalitarian Theory of Ownership* (Oxford University Press, 1994).

¹⁵ Ronald Dworkin, *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985), 200.

3. a right to (be eligible to) have rental rights over a wide range of other personal items.

I will set out precisely in what such rights should be taken to consist, and – having by the outset of Chapter 3 established that rental rights over housing and a (with certain exceptions) personal items are *sufficient* for the development and exercise of the two moral powers – I will consider the issue of whether the three rights set out above should be taken to be *necessary* for the development and exercise of the two moral powers. I will therefore consider the views of an opponent who might claim, against my own view, that the protection of more communal property arrangements are all that ought to be included as a Rawlsian basic right. I will also consider various objections to my “rental rights” view, as well as clarifying various further aspects of that view.

It is interesting to note that the claim that lesser sovereignty rights may be all that individuals require has been made previously and perhaps unexpectedly by Frederick Hayek. Near the end of “Freedom and Coercion” Hayek claims that

“it is one of the accomplishments of modern society that freedom may be enjoyed by a person with practically no property of his own (beyond personal belongings – and even these can be rented) and that we can leave the care of the property that serves our needs largely to others.”¹⁶

Hayek here seems to be claiming that renting is sufficient for freedom – a full right to own personal property is not necessary. Hayek, however, would strongly

¹⁶ F.A. Hayek, “Freedom and Coercion,” in *The Liberty Reader*, ed. David Miller (Boulder, CO: Paradigm Publishers, 2006), 97.

disagree with my claim that the state could plausibly be the body that rents the items in questions out to individuals. This is because, he goes on to say, although it is acceptable from the point of view of freedom that the care of the property that serves our needs be left to others, “the property should be sufficiently dispersed so that the individual is not dependent on particular persons who alone can provide him with what he needs.”¹⁷ This is where Hayek’s views and my own part ways.

The conclusion I reach in Part 1 of my thesis may seem controversial: Rawlsian theorists, as I have already noted, take it that there is a basic right to *own* housing and personal items; I, for the most part, want to deny this. Should it be a matter of concern that the arguments of Part 1 of the thesis go so against the grain of contemporary Rawlsian (and probably more broadly liberal egalitarian) political philosophy? I don’t think we should be worried, for three reasons.

The first is what we might call the “philosopher’s response.” This is to claim that if we have constructed a sound argument for a particular conclusion, then we have a good reason to think that conclusion is right, even if it is somewhat counter-intuitive. In the case of the arguments here, the claim is rather that if no good arguments can be found for why there should be a right to own housing and personal items, then we should conclude that there is no good reason for there to be such a right. I think that the “philosopher’s response” as I have called it makes a reasonable point. However, it may be responded that we also accept that a conclusion can be too counter-intuitive, and in these cases we should consider that perhaps our argument or arguments for this conclusion are not, in fact, sound. In the case of a right to own housing and personal items, we might say that if existing

¹⁷ Ibid.

arguments for a right to own personal property are inadequate, this simply means that our efforts should now go into constructing better ones.

The second reason relates to this last point. I want to suggest that the conclusion of Part 1 of my thesis, that there is no right to own housing and (with certain exceptions) personal items, is not in fact as controversial or counter-intuitive as it seems at first glance. This is because I do not advocate that no sovereignty rights over housing and personal items at all should have the kind of protection that basic rights do. This would, I think, be a troubling thing to conclude. The claim that in order for the development and exercise of the two moral powers only limited sovereignty rights of the sort I describe are necessary is not, however, a deeply controversial or objectionable thing to claim.

The final reason is that whilst many Rawlsians and perhaps liberal egalitarians more broadly might take it for granted that there ought to be a basic right to own or be eligible to own housing and personal items, this view is not consistently shared in the wider literature on property where there is more skepticism about the idea of a basic right to own property.¹⁸ Consequently, to claim that there is not a basic right to own housing and personal items may not, in fact, be such a controversial claim after all.

I have now summarised the arguments of Part 1 of my thesis. I now turn to outline the arguments of Part 2.

4. The project – parts 2 and 3

¹⁸ See, for instance, Lawrence C. Becker, “Too Much Property,” review of *The Right to Private Property* by Jeremy Waldron and *A Theory of Property* by Stephen R. Munzer, *Philosophy & Public Affairs* 21, no. 2 (1992): 196-206; and Rowan Cruft, “Are Property Rights Ever Basic Human Rights?,” *The British Journal of Politics and International Relations* 12 (2010): 142-154.

Parts 2 and 3 of the thesis move on to consider a different form of property, productive property. Unlike the subject of personal property, productive property is a significant topic of discussion in the Rawlsian literature. In Part 2 of the thesis, I consider the question of whether there ought to be a basic right to privately own productive property.

Part 2 of the thesis, which consists of one chapter – Chapter 4 – aims to form a “bridge” chapter between the arguments of Part 1, and the arguments of Part 3. On the one hand, it forms an extension of the arguments of Part 1, since it offers further consideration the question of what property rights over what items should be considered to be a basic right. Part 1 considered two significant types of item which, when owned, are typically taken to exhaust the category of personal property. Part 2 considers a wide range of items (and non-physical entities) which, when owned, are typically taken to exhaust the category of productive property. On the other hand, in putting center-stage a discussion of productive property, Part 2 is closely linked to the discussions of Part 3 of the thesis. There are, however, some differences in focus between Part 2 and Part 3. Firstly, Part 2 considers productive property from the perspective of basic rights, whilst Part 3 considers productive property from the perspective of Rawlsian justice more broadly. Secondly, whilst Part 2 considers the significance of privately owning productive property, Part 3 also assesses the significance, from the perspective of Rawlsian justice, of collective ownership schemes as well as private ownership ones. Finally, whilst Part 2 considers productive property broadly construed, Part 3 considers a particular type of productive property, the means of production.

In Part 2 I consider and dismiss two central arguments for a basic right to productive property. First, I consider the claims of those who are sometimes

dubbed “right-wing Rawlsians” that the proper development and exercise of the two moral powers requires a right to be eligible to privately own productive property to be included amongst the basic liberties.¹⁹ I consider a stronger and a weaker version of the ring-wing Rawlsian view: the former defends what I call, following Tomasi, a “powerful” right to be eligible to own productive property; the latter defends a more limited version of this right. Second, I consider the claims of those who would argue with right-wing Rawlsians that there ought to be a basic right to privately own productive property, but claim that this must be a right to have *actual holdings* of productive property. The main argument I put forward in Part 2 is that there is no justification for a basic right to own, or be eligible to own, productive property. This is because such a right is simply not necessary for the development and exercise of the two moral powers.

The main advocate of the view that there ought to be a basic right to be eligible to own productive property is John Tomasi.²⁰ Tomasi’s views are, of course, deeply controversial among Rawlsians. This is because he aims to use a Rawlsian framework to argue for the kind of laissez faire institutional regime normally associated with a right-wing political philosophy. Tomasi’s claim that certain “economic freedoms” – an important one being the right to privately own productive property – should be included amongst the Rawlsian basic liberties forms a central plank of his argument for this view. However, whilst many have rejected the economic freedoms which Tomasi himself argues for – because, typically, they block the state from engaging in any redistribution in or regulation of the economic sphere – there has been some sympathy for the claim that additional basic liberties protecting what might be called “capitalistic” activities should be

¹⁹ The term “right-wing Rawlsianism” is used, for instance, by Samuel Arnold. See his “Right-wing Rawlsianism: A Critique,” *The Journal of Political Philosophy* 21, no. 4 (2013): 382-404.

²⁰ John Tomasi, *Free Market Fairness* (Princeton: Princeton University Press, 2012).

included on a Rawlsian picture. These liberties are, however, limited in contrast to the rights Tomasi proposes, and consequently do *not* block the state from engaging in activities in the economic sphere. The main liberty proposed for inclusion is a limited right to be eligible to own certain types of productive property.

As a consequence of the emergence of such a view – discussion of which has so far been neglected in the critical literature around Tomasi – my discussion of a basic right to be eligible to hold productive property will consider the plausibility of including Tomasi’s “powerful” right amongst the basic liberties, as well as the plausibility of including the more limited right. I will argue that there is no justification for the inclusion of either right.

What I will claim, however, is that the kinds of considerations Tomasi raises do justify the addition of one basic liberty to the existing set. This is not, however, a liberty which protects *productive* property, but one which protects an individual’s ability to save. Discussion of such a right should, it might be thought, be included in the discussion of non-productive items in the first half of the thesis. However, since the considerations which ground such a right emerge from a discussion of productive property, it seems more suitable to consider the right in this context.

Finally, I will consider – and dismiss – the arguments of those who claim that a Rawlsian scheme should include a basic right to actually own productive property.

In Part 3 of the thesis I move away from the issue of basic rights to consider the claims, made by those who could be described as left-wing Rawlsians, that the Rawlsian view of justice considered apart from basic rights implies that all citizens

must have, in some sense, a stake in the means of production.²¹ These left-wing Rawlsians offer a range of arguments for this claim, which can be summarised as follows. Economic regimes which do not ensure that all citizens have some stake in the means of production – either by ensuring that all citizens are private owners of some holdings in the means of production, or by ensuring that all citizens are participants in some collective ownership scheme with respect to the means of production – cannot ensure: (i) that the difference principle is satisfied; (ii) that the fair value of the political liberties is guaranteed; (iii) that fair equality of opportunity is guaranteed; (iv) that that stability is guaranteed. These arguments are used to establish the claim that a Rawlsian just society must either be a property-owning democracy or a form of market socialism.

It is interesting to note how polarized the Rawlsian debate about productive property is, with right-wing Rawlsians claiming that Rawlsianism should be understood as a version of free-market liberalism, and left-wing Rawlsians claiming that Rawlsianism can only be realized by economic regimes which (for some left-wing Rawlsian views, at least) might be best termed socialist. My aim will be to produce a view which steers between these two poles when it comes to the question of ownership of productive property. Such a view *denies* that there ought to be basic rights to own productive property, but also denies that a Rawlsian regime needs to involve all citizens having a stake in the means of production.

Let me briefly summarise the main arguments of Part 3 of the thesis.²²

²¹ This is not to imply, however, that Rawlsian views which reject the claim that all citizens must have, in some sense, a stake in the means of production cannot be described as “left-wing.” The term “left-wing” is meant to convey that the Rawlsians in question are to the left of traditional interpretations of Rawlsianism.

²² For a contemporary statement of the views of left-leaning Rawlsians see Martin O’Neill and Thad Williamson, eds., *Property-Owning Democracy: Rawls and Beyond* (Malden, MA: Wiley-Blackwell, 2012).

One of the central arguments I consider for the claim that Rawlsian justice implies that all citizens should have, in some sense, a stake in the means of production is a “difference principle” argument proposed by Martin O’Neill.²³ This argument claims that Rawlsians should embrace either social ownership or wide distribution of the means of production because Rawlsians ought to be committed to realizing particular social relationships between persons – in particular, relations of equal status, and relations of non-domination. In order to realize these relations, it is claimed, citizens need to have an ownership stake in the means of production. I argue that this claim is misguided. I do not dispute the claim that Rawlsians should be concerned to some extent with realizing relations of equal status and non-domination. However, I do dispute the claim that realizing such relations requires the kind of arrangements for ownership of the means of production which left-wing Rawlsians propose. This argument rests on claiming that liberal egalitarians have not typically understood properly what we should care about when we care about equal status and non-domination. Confusion about these ideas leads to confusion about their distributive implications, which are less radical – particularly concerning ownership of the means of production – than is often thought.

A second central argument I consider – also a “difference principle” argument – has to do with one of the primary goods which, on the Rawlsian picture, are to be distributed by the difference principle. This is the (as described by one commentator) “mysterious”²⁴ – primary good, which Rawls calls “powers and prerogatives of offices and positions of authority and responsibility,”²⁵ or,

²³ Martin O’Neill, “Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy,” in *Property-Owning Democracy: Rawls and Beyond*, ed. Martin O’Neill and Thad Williamson (Malden, MA: Wiley-Blackwell, 2012), 75-100.

²⁴ Samuel Arnold, “The Difference Principle at Work,” *The Journal of Political Philosophy* 20, no. 1 (2012): 96.

²⁵ *Justice as Fairness*, 58.

alternatively “powers and prerogatives of offices and positions of authority and responsibility in the political and economic institutions of the basic structure.”²⁶ The claim is that a regime which does not ensure that all citizens have, in some sense, a stake in the means of production allows too much inequality in the distribution of this primary good. Again, this is not an argument which has received much attention in the literature on this issue, in part, perhaps, because the views of the central proponents of the argument – I identify these as Samuel Freeman and Samuel Arnold – are not always well-developed. Nevertheless, I argue that the claims of these thinkers fail, because PPO should not, in fact, be classified as one of the Rawlsian primary goods.

A final central argument I consider claims that all citizens must have, in some sense, a stake in the means of the means of production because this is necessary to protect the fair value of the political liberties.

The claim made by left-wing Rawlsians is that there will be significant disparities in the kind of influence citizens have over democratic politics depending on how much of the means of production they own, and this is problematic. In particular, those with significant control of the means of production will wield much greater influence over the democratic process than others. This is partly because of their ability to influence politicians through activities like lobbying and funding candidates for political office, but a second problem, sometimes known as the “structural constraint” is their power to withdraw investment if they are dissatisfied with government policies. Even if no threats are issued, this is likely to influence the direction of government policies. Consequently, left-wing Rawlsians claim, we

²⁶ John Rawls, *Political Liberalism*, exp. ed. (New York: Columbia University Press, 2005), 181.

must ensure that significant concentrations in ownership of the means of production do not exist.

When it comes to the question of those with significant ownership of the means of production lobbying and “buying” candidates, I argue that we can plausibly agree with Martin O’Neill that this kind of behaviour can be prevented by putting in place policies – such as campaign finance reform – aimed at eliminating such behaviour.²⁷ It is not essential to redistribute ownership of the means of production. When it comes to the structural constraint, a different response is necessary. Here, I develop and defend Thomas Christiano’s argument that citizens in a Rawlsian just society should have a duty to refrain from exercising their power in order to undermine democratically-made decisions.

5. Assumptions

This concludes my summary of the arguments of my thesis. There is one final issue which this introduction needs to discuss, before the arguments proper can begin.

This is the issue of what this thesis assumes to be true, but does not argue for.

Much liberal egalitarian writing on the subject of property in the recent past has had, either as its central concern or as a central concern, the defense of liberal egalitarianism against a particular view of ownership.²⁸ This view of ownership forms the central part of a particular version of libertarianism, and holds the following: individuals have a particular relationship to their bodies and skills and

²⁷ Martin O’Neill, “Free (and Fair) Markets.”

²⁸ See, for example, G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995); Waldron, *Right to Private Property*; Christman, *Myth of Property*; and Liam B. Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002).

abilities, and this relationship is self-ownership.²⁹ In the words of G.A. Cohen, self-ownership means that

“each person possesses as a matter of moral right, all those rights that a slaveholder has over a complete chattel as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way such a slaveholder is entitled, legally speaking, to dispose over his slave.”³⁰

These rights are sometimes called full ownership rights, and are “the logically strongest set of ownership rights over a thing.”³¹ The libertarian of this variety wants to claim that the fact that our relationship to our bodies, skills and powers is one of self-ownership has implications for how external things are owned. In particular, it means that when individuals come to own parts of the external world (the libertarian argues that this can come about through a particular process of appropriation), they have rights over the world which are as strong as the rights they have over themselves. The implications of this for the liberal egalitarian theoretical perspective are problematic – if the kind of property rights individuals have in the external world are full ownership rights, then many think that this precludes taxation of individuals’ income and property-holdings for redistributive purposes.³² Consequently, liberal egalitarians will want to reject the arguments of this form of

²⁹ The best known proponent of such a view is, of course, Robert Nozick. See his *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

³⁰ Cohen, *Self-Ownership, Freedom and Equality*, 68.

³¹ Peter Vallentyne and Bas van der Vossen, “Libertarianism,” in the *The Stanford Encyclopedia of Philosophy*, Stanford University, article published September 5, 2002, <http://plato.stanford.edu/entries/libertarianism/>.

³² Not all libertarians think this. Left-libertarians argue that a commitment to full ownership is compatible with redistribution to realize an egalitarian distribution of resources. See, for example, Michael Otsuka, *Libertarianism Without Inequality* (Oxford: Clarendon Press, 2003), chap. 1.

libertarianism and, indeed, there is much literature doing just that.³³ I take the arguments of this literature to be compelling, and consequently have nothing to add here except an endorsement. Furthermore, if further defense of leaving this issue aside is needed, the purpose of this thesis is to explore what a Rawlsian view of property should be. This requires taking the basic assumptions of such a view for granted – particularly, in this case, ones that imply the rejection of the libertarian view of self- and world-ownership.

³³ See, for example, G.A. Cohen, *Self-Ownership*; Waldron, *Right to Private Property*; Christman, *Myth of Property*; and Murphy and Nagel, *The Myth of Ownership: Taxes and Justice*.

PART 1 The Right to Personal Property

Chapter 1: The Rawlsian Right to Personal Property

1. Introduction

In contemporary societies, individuals and small groups like couples and families typically privately own a great number of things: clothes and furniture, items of everyday use, family heirlooms, pets, houses, land, and financial products to name just a few. In addition to the things that we do own there are many things that we could come to own if we had the inclination or the resources to obtain them. It is sometimes claimed that owning or being eligible to own at least some of these things is so important that it should be protected by a right. Just as we might think that there ought to be basic rights to freedom of speech, bodily integrity, freedom of association, movement, and so on, so we might think that there ought to be a basic right to own or be eligible to own certain sorts of item.

The present part of this thesis considers the question of whether there ought to be a basic right to privately own, or to be eligible to privately own, two significant categories of non-productive item: “housing” and what I will call “personal items” – items such as clothes, furniture, items of everyday use and so on.¹ My claim overall

¹ What “non-productive” means will be discussed further below.

will be that there should be no basic right to own, or to be eligible to own, housing and, with certain exceptions, no basic right to own, or to be eligible to own, personal items.² Instead, I will claim that there should be a basic right to be eligible to have, not ownership rights, but what I call “rental rights” over housing and personal items. In the course of Part 1, I will spell out precisely in what such rights consist. To give some intuitive sense of what they consist in here, consider that they are akin to the bundle of rights that a tenant of rented housing would have over that housing.

This thesis uses a Rawlsian framework to consider the question of whether there ought to be a basic right to privately own, or to be eligible to privately own, housing and personal items. Reasons for adopting such a framework for the purposes of the thesis as a whole have been given in the introduction, to which I refer the reader.

The arguments of Part 1 are set out over three chapters. Chapters 1 and 2 set out what I call the “orthodox” Rawlsian answer to the question of whether there ought to be a basic right to privately own, or to be eligible to privately own, housing and personal items. This is that there ought to be such a right, because it is required to protect the development and exercise of the two moral powers, two fundamental aspects of citizenship. These chapters then go on to reject this position on the following grounds: that – again with certain exceptions – nothing more than a basic right to have rental rights over housing and personal items is necessary for the protection of citizens’ moral powers.

Since the orthodox position has quite significant intuitive appeal, considerable time needs to be spent on showing that it should be rejected. At least some of this time will be spent in constructing potential arguments *for* such a position, since such

² These exceptions will be discussed at the end of Chapter 2.

arguments do not really exist in the Rawlsian literature. In constructing such arguments, I will often appeal to existing arguments from the literature on property more broadly, insofar as such arguments can be made to fit into a Rawlsian framework. Then, in Chapter 3, I will set out in detail what I take rental rights to consist in. Furthermore, I will defend the position by showing that nothing less than a basic right to have rental rights over housing and personal items will do when it comes to the protection of citizens' two moral powers. At the conclusion of Chapter 3, then, I will have developed and defended a Rawlsian account of what kinds of property rights over housing and personal items citizens should be eligible to exercise or actually exercise as a basic right. As I have said, these property rights are, for the most part, rental rather than ownership rights.³

The purpose of the present chapter, then, is to start the argument that, with certain exceptions, nothing more than a basic right to have rental rights over housing and personal items is necessary for the protection of citizens' fundamental interests. Before that, however, a significant amount of preliminary work will need to be done. In particular, I will need to set out the orthodox Rawlsian position, and defend my attribution of such a position to orthodox Rawlsians. In addition, something will have to be said about the complicated subject of ownership.

With preliminary issues set aside, we can then turn to the main line of argument. In this chapter, I will consider four types of argument for the claim that there is a right to own or be eligible to own housing and personal items. These claim that ownership protects individuals' fundamental interest in either: self-respect, independence, privacy, or control. The protection of these fundamental interests are

³ As is implied by what I have said, I take the term "property rights" to be applicable both to rental and to ownership rights, since rental rights are simply a more minimal set of property rights than ownership rights. As will be discussed in the main body of this chapter, I do not take the term "rights to property" (as in "right to personal property") to have such broad application. This phrase, I argue, implies an *ownership* relation exclusively.

taken to be necessary for the development and exercise of the two moral powers. I will argue that none of these lines of argument make a convincing case for ownership for the reason given above – these interests and consequently the two moral powers can be adequately protected by a lesser set of property rights than those that constitute ownership, specifically the set of rights I am calling rental rights.

2. Preliminaries

a. The Rawlsian position

First, I will set out the orthodox Rawlsian position on the basic right to personal property. I will take Rawls himself to be representative of this position.

As one of the basic liberties to be constitutionally protected in the just society, Rawls includes a “right to hold and to have the exclusive use of personal property.”⁴ Rawls affirms this right in very similar wording across three major works, *A Theory of Justice*, *Political Liberalism*, and *Justice as Fairness*.⁵ Rawls’s claims about the content of this right can be set out in just a few lines: that what falls under the right “would seem to include... dwelling and private grounds,”⁶ that the right is distinct from a right to privately own “natural resources and means of production generally,”⁷

⁴ *Justice as Fairness*, 114.

⁵ It is described as a “right to hold personal property” in *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), 53, and as a “right to hold and to have the exclusive use of personal property” in *Political Liberalism*, 298. In a global context Rawls mentions a human right “to property (personal property).” I do not, however, discuss this aspect of Rawls’s thought on property. *The Law of Peoples; with The Idea of Public Reason Revisited* (Cambridge, MA: Harvard University Press, 1999), 65.

⁶ *Justice as Fairness*, 114, n. 36. The inclusion of dwellings suggests that Rawls does not use the term “personal property” in the *legal* sense, where this term excludes non-moveable property.

⁷ *Ibid.*, 114.

which are not included amongst the basic rights and liberties, that the right excludes “certain... rights of bequest.”⁸

If Rawls’s claims about the content of this right can be set out in just a few lines, so too can the claims of Rawls’s critics and commentators on the subject. Those who have written about Rawls’s right to personal property include H.L.A. Hart, Jeremy Waldron, James W. Nickel, Samuel Freeman, and Stephen Munzer.⁹ However, such writers have tended to raise questions about the account rather than to attempt to flesh it out in any real way; therefore, for the most part, I do not rely on their discussions. Instead, I argue that the most plausible way to construe the right is as either:

P a right to be eligible to privately own housing and personal items.

Or

Q a right to actually privately own housing and personal items.

Let me explain these rights, starting with what they have in common.

b. Housing and personal items

First, I take it that two major categories of item fall under Rawls’s right to personal property. These are (a) housing (where this term is used to include Rawls’s “private

⁸ *Political Liberalism*, 298.

⁹ H.L.A. Hart, “Rawls on Liberty and Its Priority,” *The University of Chicago Law Review*, 40 (1973): 534-555; Waldron, *Right to Private Property*; Samuel Freeman, *Rawls* (Hoboken: Taylor & Francis, 2007); Munzer, *Theory of Property*; James W. Nickel, “Economic Liberties,” in *The Idea of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham, MD: Rowman & Littlefield Publishers 2000), 155-176.

grounds”), and (b) those things which, when owned, we call “personal possessions.” I will call these “personal items.” This claim about what falls under the right can be taken to be fairly uncontroversial, being both in line with the views of central commentators such as Freeman and consistent with a commonsense understanding of what ought to fall under a right to personal property, given that “means of production generally” are excluded here.¹⁰

A brief note about the category “personal items.” Although the first category of item, housing, is self-explanatory, the second is more problematic to characterize adequately. The latter is a large category, and an exhaustive specification of its contents would be impossible as even if we were able to come up with a full list of the personal items people normally own in contemporary societies, the list would change quickly with technological advancement and the development of new products, as well as with people’s changing tastes. Therefore, I will not provide anything like an exhaustive list of what ought to count as personal items; instead, I will simply provide a rough sense of the kind of things that I mean. These are: clothes, furniture, pictures, books, kitchen items, equipment and accessories for hobbies and pursuits, jewellery, computers, televisions and other electronic items.

c. Ownership

Second, I take Rawls’s right to personal property to be a right to privately own certain items.

How should we understand how the term “ownership” is to be cashed out? There are various well-known characterizations of ownership, here I rely on one of

¹⁰ See Freeman, *Rawls*, 49.

the most well-known, by Honoré.¹¹ Ownership, on Honoré's account, comprises the following standard incidents. (1) *The right to possess*. The right to have exclusive physical control over some thing. (2) *The right to use*. The right to use the thing at one's discretion. (3) *The right to manage*. The right to "decide how and by whom the thing owned shall be used."¹² (4) *The right to the income*. (5) *The right to the capital*. "[T]he power to alienate the thing and the liberty to consume, waste or destroy the whole or part of it."¹³ (6) *The right to security*. The right to "look forward to remaining owner indefinitely" if the owner so chooses and they "remain solvent."¹⁴ The right to security is essentially an immunity against expropriation.¹⁵ (7) *The incident of transmissibility*. The power to transmit the item to others after one's death. (8) *The absence of term*. The lack of term imposed on the owner's rights in the thing. (9) *The duty to prevent harm*. The owner's duty not to use the owned thing to harm others, and a responsibility to ensure that the thing is not used in a harmful way by others.¹⁶ (10) *Liability to execution*. The liability that certain judgments against the owner may fall on the owned thing. (11) *Residuary character*. The owner's residuary right to the thing owned, i.e. the right that once the rights others may have in the owned thing have lapsed (for example, a tenant's lease ends), those rights return to the owner.

We should note two things about this definition. Firstly, that Honoré wants to allow that an individual can be called "owner" of some item even if the individual incidents set out above are compromised to some extent. So, for example, the right

¹¹ Honoré, *Making Law Bind*.

¹² *Ibid.*, 168.

¹³ *Ibid.*, 170.

¹⁴ *Ibid.*, 171.

¹⁵ *Ibid.*

¹⁶ This is perhaps the controversial element of Honoré's definition. See Waldron, *Right to Private Property*, p. 49. We need not discuss this controversy here, however, as the incident does not have a prominent place in the following discussion.

to possess does not imply that the owner has the right to exclude everyone from their property – it is consistent with my being an owner that officials can come onto my property for “some limited period and purpose” without my consent;¹⁷ ownership is compatible with a liberty to destroy the item in question that is to some extent restricted;¹⁸ the right to security is compatible with some parties – the state, for instance – being able to expropriate the item under certain circumstances.¹⁹ Secondly, we should note that Honoré’s aim is to elucidate “common features” of ownership, and not to provide a list of incidents which are individually necessary and jointly sufficient for ownership.²⁰ In particular, although the incidents may be jointly sufficient, they are not taken to be individually necessary.²¹

If we are going to attribute to Rawls a right to privately own certain items, however, “private ownership” must be understood in a more limited sense than this. This is because Rawls explicitly sets certain limits on his basic right to property.

Firstly, he excludes the right to own “means of production generally” from the basic rights and liberties and this has implications for the right to personal property: citizens do not have a right to use housing and personal items as productive property.²² This constraint is best understood as limiting the rights and powers of the private owner in the following way: as limiting their right to use the item in certain ways (for commercial purposes) and as excluding their right to income.²³ This is because the difference between productive and personal property (or “means of production generally” and personal property) is not a difference that has to do with

¹⁷ Honoré, *Making Law Bind*, 166.

¹⁸ *Ibid.*, 170.

¹⁹ *Ibid.*, 171.

²⁰ *Ibid.*, 162.

²¹ *Ibid.*, 165.

²² *Justice as Fairness*, 114.

²³ Honoré notes that the term “income” can be used very broadly – so broadly that merely *using* something can be understood as a way of deriving an income from it. Here I understand “income” in what Honoré calls “the more ordinary sense” – as monetary benefit. *Making Law Bind*, 169. I will discuss this issue further in Chapter 4.

classes of item, but is a difference that has to do with what a particular item is being used for. So, consider, for instance, that I have a car in my possession which I use only to drive my children to school and back. This makes the car non-productive property. If, on the other hand, I primarily rent out the car in order to generate additional income for my family, the car now seems to count as productive property. The difference between productive and non-productive property is a difference in what the items in question are being used for, and, specifically, whether they are being used for commercial purposes, and in order to generate income. Consequently, a picture that just protects a right to personal property as basic is one which protects a right to only have *certain incidents* of ownership over certain items. The incidents which are excluded are those to do with retaining income and with commercial use.

Secondly, Rawls claims that the right to personal property excludes “certain... rights of bequest,” consequently it only includes a limited incident of transmissibility.²⁴ My claim, then, is that the most plausible way to construe Rawls’s right to personal property is as a right to *privately own* housing and personal items, where the term “privately own” is understood as referring to Honoré’s standard incidents, minus income rights, and with the stated limits set on transmissibility and use.²⁵

²⁴ *Political Liberalism*, 298. This limit is likely to be included because Rawls’s wants to prevent citizens from having a basic right to bequeath items that is strong enough to rule out the taxation of bequests.

²⁵ My discussion of the limits set on ownership by Rawls might be thought to raise two points. Firstly, is Rawls justified in setting the limits he does on his basic right to property? The main point of concern is likely to be the exclusion of a right to exercise income rights, and right to use items commercially from this right. This brings us to a question that will be dealt with in Part 2 of this thesis, when the question of whether a basic right to own productive property ought to be included amongst the basic liberties. There, I will defend Rawls’s exclusion of such a right from the set of basic liberties. Second, can Rawls claim that his basic right to property is an ownership right, given the limits he sets on the rights and powers involved? It might be argued that private ownership conceptually involves income rights, or a more robust incident of transmissibility. Here, I can answer more conclusively: most central contemporary analyses claim that we can coherently talk about private ownership even if income rights and the incident of transmissibility are not present (for a summary of these views, see Hugh Breakey, “Two Concepts of Property: Ownership of Things and Property in Activities,” *The Philosophical*

There are now two further points to resolve with respect to the matter of ownership. The first is whether owning personal property in the sense I have just outlined *is* what Rawlsians want to protect with a basic right. The second is to say something briefly in defense of offering a definition of ownership at all against those who would claim that doing so is impossible. First, then, does Rawls, in fact, endorse a basic right to *own* personal property in the relevant sense?

The reader may, in particular, be concerned about a disparity between the wording I am employing, and that employed by Rawls. I am using the term “own”; Rawls, on the other hand, uses the term “hold and have the exclusive use of.” Might not Rawls, in fact, be interested in a basic right protecting something other than the ownership of or the ability to own personal property? A particular worry from the perspective of my arguments here is that Rawls might turn out to be, not an opponent of, but in fact broadly supportive of, the position I ultimately wish to argue for: that for the most part a basic right to exercise or be eligible to exercise a lesser set of rights than ownership is sufficient for the development and exercise of the two moral powers.²⁶ Certainly it is true that in understanding Rawls’s “hold and have the exclusive use of” to mean “own” in the sense given above I am making an interpretive judgment. However, I believe this interpretative judgment to be sound.

The first point to make here is that by understanding Rawls in this way I am by no means offering an eccentric interpretation of Rawls himself or of the standard implications of a Rawlsian theory. On the contrary, this is a standard way of construing the right to personal property.²⁷ The second and more important point –

Forum 42, no. 3 (2011): 241), and Honoré himself thinks it is coherent to talk about ownership even if not all of the incidents he sets out are present. See *Making Law Bind*, 166-171.

²⁶ Thank you to one of the editors of *Politics, Philosophy & Economics* for raising this objection.

²⁷ Hart, for instance, takes Rawls to be talking about a basic liberty to privately own property. See “Rawls on Liberty and Its Priority,” 539. So too do John Tomasi and Joseph Persky. See, respectively, Tomasi, *Free Market*, 43; and Joseph Persky, “Rawls’s Thin (Milleian) Defense of Private Property,”

since, of course, the standard view could be mistaken – is that the wording that Rawls employs in his statement of the right to personal property allows us to be confident that he is – in fact – construing it as a right to private ownership of the relevant items. This is why, I conjecture, so many of Rawls’s commentators have been happy to unquestioningly construe the right in such a way. Rawls’s statement of this right, to recall, is that there is a “right to hold and to have the exclusive use of personal property.” In his important essay on ownership, Frank Snare talks about “the special relationship which may hold between a person and a physical object called “owning” *in virtue of which the latter may be called “personal property” or “a possession”* [my italics].”²⁸ Snare is pointing out that as we usually use these terms, the phrase “personal property” implies an ownership relation. If Rawls talks about a right to personal property, it therefore seems reasonable to take him to be making a claim about ownership.

Finally, we should note that whilst Rawls’s central statement of the right to personal property may seem ambiguous, later statements of that right are less so. Subsequently in *Justice as Fairness*, for instance, Rawls claims that the first principle of justice includes a “right to private personal property.”²⁹ The inclusion of the word “private” here strongly suggests that my interpretation of Rawls’s central statement of the right is, in fact, correct.

Let me now turn to the broader issue of defining ownership. In claiming that there is some “core” to the notion of private ownership which we can capture in a definition or list of incidents, I align myself with what is sometimes termed the “new

Utilitas 22, no. 2 (2010): 145. One important exception here is Samuel Freeman, whose view is much less clear. Freeman never claims explicitly that Rawls is talking about private property, and instead describes the right to personal property as consisting in “control over personal possessions and quiet enjoyment of one’s own living space.” Like Rawls, he does not elaborate on what incidents of property are meant to be included in this right. See his *Rawls*, 48-50.

²⁸ Snare, “The Concept of Property,” *American Philosophical Quarterly* 9, no. 2 (1972): 200.

²⁹ *Justice as Fairness*, 138.

orthodoxy” with respect to this issue.³⁰ Those who accept this new orthodoxy reject a significant challenge to the project of defining ownership from a group of thinkers sometimes known as deflationary theorists.³¹ My discussion of the deflationary view and its rejection by proponents of the new orthodoxy is here taken from a helpful discussion by Hugh Breakey.³² Deflationary theorists claim, roughly, that it is impossible to define ownership because, when we consider what we mean by the various uses of the term “own” in legal and ordinary discourse, we realize that there is no common thread between them. Ownership has “no conceptual integrity.”³³ Consequently, we should abandon talk of ownership altogether and be satisfied with simply describing the (legal) entitlements an individual has with respect to some object in a given case.

Those who subscribe to the new orthodoxy argue that this view is not, in fact, a particularly persuasive one. Jeremy Waldron, in particular, has argued that the deflationary position generates much of the skepticism about the possibility of defining ownership by raising the difficulty of identifying individually necessary and jointly sufficient conditions for ownership.³⁴ However, the fact that we cannot identify these conditions does not imply that there is no conceptual integrity to the idea of ownership – we can still, like Honoré, produce a satisfactory definition by identifying a list of common features of ownership. Indeed, the main line of defense against deflationary theorists is to point out, like Breakey, who himself is restating the views of Jeremy Waldron, James Penner and others, that their skeptical view fails to account for “the clear meaning and use of the term [“ownership”] in theory and

³⁰ Breakey, “Two Concepts of Property,” 241.

³¹ See, for example, Thomas C. Grey, “The Disintegration of Property,” in *NOMOS XXII: Property*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1980).

³² Breakey, “Two Concepts of Property,” 241.

³³ Ibid.

³⁴ Waldron, “What is Private Property?,” *Oxford Journal of Legal Studies* 5, no. 3 (1985): 317.

practice.”³⁵ This is especially true, the new orthodoxy claims, with respect to the ownership of material objects or resources, which of course is particularly relevant for the discussion being undertaken in this chapter, since it is centrally concerned with the ownership of housing and personal items.³⁶ When it comes to material objects or resources, the new orthodoxy states, the correct characterization of ownership can be taken to consist in something like Honoré’s list of incidents as stated above.³⁷

However, we should note that there are variations in what authors in the property literature claim the central incidents involved in ownership are. This allows a new version of the objection considered a few paragraphs ago to be raised. That objection was that Rawls did not intend “hold and have the exclusive use of personal property” to mean “own personal property.” The present objection states that Rawls does intend the two phrases to be equivalent, but takes ownership to involve a more limited set of incidents than, say, Honoré does.

A particularly worrying account of ownership, in this respect, would be one that claims that the term “ownership” can sensibly be used when only rental rights are present. If this were the case then this would offer a different way of arguing for the claim that Rawls is a supporter, rather than (as I argue) an opponent of the “rental rights” position I argue for here. The idea that the term “ownership” can sensibly be used when only rental rights are present might be thought to be an implication of an account of ownership as offered by J.W. Harris, who wants to say that an individual (or group) has an “ownership interest” in some thing in cases where they have privileges to use and powers to control that thing which are “open-ended – that is,

³⁵ Breakey, “Two Concepts of Property,” 241. For more extensive discussion of the deflationary view see for example Waldron, “What is Private Property?” and J.E. Penner, *The Idea of Property in Law* (Oxford: Clarendon Press, 1997), and “The ‘Bundle of Rights’ Picture of Property,” *UCLA Law Review* 43, no. 3 (1996): 711–820.

³⁶ Breakey, “Two Concepts of Property,” 241.

³⁷ Waldron, “What is Private Property?” See also Snare, “The Concept of Property.”

they cannot be concretely listed,” and when they are able to use that thing for self-seeking purposes.³⁸ On my conception of rental rights, as will be discussed below, those who possess these rights over some item *do* have open-ended powers and privileges over the item – they are not only licensed the item for a particular use or purpose. Similarly, someone who has rental rights over some item can certainly use that item in a self-seeking way, in Harris’s sense – that is, they can permit others to use that item in return for favours (although *not* on this account, in return for income in the more usual sense).

The concern here is not that we can’t distinguish between rental and ownership rights in terms of stronger and weaker ownership interests (in Harris’s terminology), but that we do not have the grounds to attribute the stronger ownership interest to Rawls rather than the weaker. In other words, if we can coherently refer to rental rights with the term “ownership,” then how do we know what Rawls means by “ownership”?

We cannot know Rawls’s intentions with respect to this matter. However, we can ask what the most plausible way of understanding the term “ownership” when used in relation to housing and personal items is, the way, in line with Breakey’s comments, that best accords with the “meaning and use of the term in theory and practice.”³⁹ Here, I think, characterizing rental rights as a species of ownership seems the less plausible option. When we consider the ownership of housing and personal items the statement “I own X” is normally used to convey the stronger ownership interest rather than the weaker; indeed, ordinarily it would be odd to say “I own this

³⁸ Harris, *Property and Justice* (Oxford: Clarendon Press, 1996), 5. Someone who had rental rights over a living space or object as I understand them would probably have the kind of ownership interest Harris calls “mere property.” This, for Harris, “comprises the notion that something that pertains to a person is, maybe within drastic limits, his to use as he pleases and therefore his to permit others to use gratuitously or for exchanged favours.” *Ibid.*, 28.

³⁹ Breakey, “Two Concepts of Property,” 241.

flat” if the flat is, in fact, rented; the same goes for a television, or a car. If we stick to the more commonsense understanding of the terms Rawls uses, then we end up being able to claim that his right to personal property is a right that involves private ownership in the desired sense.

Although this discussion of ownership has been rather brief, it is hoped that it will be sufficient for the purposes of the arguments to follow which are not, after all, primarily concerned with the subject of what ownership *is*. It suffices for my purposes here to have offered reasons to think that we can plausibly see ownership as a coherent notion, and to have adopted a particular, defensible, definition of ownership.

d. Eligibility versus actual ownership

Finally, then, what does the difference between *P* and *Q* consist in? These were, to recall:

P a right to be eligible to privately own housing and personal items.

Or

Q a right to actually privately own housing and personal items.

The phrase “a right to own personal property” is ambiguous in the following way: it is not clear whether this describes a right to be eligible to own personal property, or a right to actually be the owner of personal property.

The major discussion of the ambiguity of the phrase “a right to own personal property” is to be found in Waldron’s *The Right to Private Property*. Waldron points out that we can understand this phrase in two different ways. The first, says Waldron, understands the claim “citizens have a right to own property” simply as “the claim not to be ruled out of the class of people who *may* own property.”⁴⁰ This right, he says, is not a right to actually *be* an owner, but simply the right to be eligible to be an owner: a right not to be “excluded from the class of potential property-owners in the way that, say, slaves or women have been excluded in the past.”⁴¹ Waldron suggests that even if we understand a claim that there is a right to own property as a statement of an eligibility right, we may in fact discover a further ambiguity. This is between the following ways of understanding this right: (a) as claiming that no citizen may be ruled out of the class of people who may own property if other citizens are in that class; or (b) as claiming that all citizens must be in the class of those who may own property. The first way of understanding the right rules out situations in which some citizens are in the class of potential property-owners and others are not; the second additionally rules out a situation in which *no* citizens are in the class of potential property-owners (consequently ruling out “the wholesale socialization of property”).⁴² For the purposes of the discussion that follows, I will be interested in the eligibility claim understood in sense (b).

The second way that a right to own property can be understood, according to Waldron, is as the claim that citizens should in fact *be the owners* of some property. Whilst understanding a right to property as an eligibility claim has no distributive implications, understanding a right to property in this second way does have distributive implications. If I have a right to own a house, understood in this way,

⁴⁰ *Right to Private Property*, 20-1.

⁴¹ *Ibid.*, 21.

⁴² *Ibid.*

then I am entitled to be given a house (or perhaps the resources to purchase a house) if I cannot come to own one through some other means.

When it comes to Rawls, there is little in the text to help us construe the right one way or another. Therefore, I will not, here, attempt to construe the right one way or another based on text alone, but will instead consider the plausibility of both rights. In what follows, I will argue that neither of these rights can plausibly be established. That is, there is no right to actually be the owner of housing and (with certain exceptions) personal items, and there is no right to be eligible to be the owner of housing and (with certain exceptions) personal items, where the eligibility right is understood in sense (b) of the two above.

e. The basic liberties and what underpins them

What do Rawlsians take to be the grounds of a right to own, or be eligible to own, housing and personal items? In order to discover this, we should consider the grounds of Rawlsian basic rights and basic liberties more broadly.

Rawls takes it that what gives basic rights or basic liberties their special status – for Rawls, this special status is that they are constitutionally protected, and only in very special cases can incursions be made upon them for ends other than the protection of other basic rights – is their connection to what he calls the two moral powers, two fundamental aspects of citizenship. The basic liberties are intended to provide “the political and social conditions essential for the adequate development and full exercise” of these moral powers in what Rawls describes as the “two fundamental cases” – (1) “judging the justice of basic institutions and social policies”;

(2) “pursuing our conception of the good.”⁴³ These moral powers are defined by Rawls as follows:

The capacity for a sense of justice – “the capacity to understand, to apply, and to act from (and not merely in accordance with) the principles of political justice that specify the fair terms of social co-operation.”⁴⁴

The capacity for a conception of the good – “the capacity to have, to revise, and rationally to pursue a conception of the good. Such a conception is an ordered family of final ends and aims which specifies a person’s conception of what is of value in human life, or, alternatively, of what is regarded as a fully worthwhile life.”⁴⁵

For Rawls, the basic liberties are not all related to the two moral powers in the same way. Some basic liberties, which I will refer to as the “primary” basic liberties, are to be accorded their special protection on the basis that their exercise is closely connected to the development and exercise of one of the two moral powers.⁴⁶ For Rawls the equal political liberties and freedom of thought are connected to the development and exercise of citizens’ sense of justice; liberty of conscience and freedom of association are connected to the development and exercise of citizens’ capacity for a conception of the good.⁴⁷ The remaining basic liberties, which Rawls describes collectively as “the liberty and integrity (physical and psychological) of the person and the rights and liberties covered by the rule of law,” I will call the

⁴³ *Justice as Fairness*, 45.

⁴⁴ *Ibid.*, 19.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*, 112.

⁴⁷ *Ibid.*, 112-3.

“supporting” basic liberties.⁴⁸ On Rawls’s account, the reason why these are specially protected is based on the fact that they are “necessary if the other basic liberties [i.e. the primary basic liberties] are to be properly guaranteed.”⁴⁹

Consequently, we can say that, on a Rawlsian account, what grounds the basic liberties is that they are either (a) essential to the development and exercise of one (or perhaps both) of the two moral powers (in the two fundamental cases), or (b) essential to secure the exercise of basic liberties which themselves secure the development and exercise of the two moral powers (in the two fundamental cases).

Specific mention of the right to own personal property is absent from Rawls’s classification of the basic liberties into what I have called the categories of “primary” and “supporting.” However, the right to personal property is normally taken as one of the “rights and liberties specified by the liberty and integrity (physical and psychological) of the person,” which also include freedom of movement, and free choice of occupation.⁵⁰ This means that the right to own personal property gains its constitutional protection in the Rawlsian schema on the basis that such a right is necessary to secure the exercise of the other basic liberties. However, Rawls makes some specific comments on the subsequent page of *Justice as Fairness* which suggest that this is not in fact the whole story on personal property. Rawls claims that one ground of the right to “hold and have the exclusive use of personal property” is “to allow a sufficient material basis for personal independence and a sense of self-respect, both of which are essential for the adequate development and exercise of the moral powers.”⁵¹ Rawls then, appears to think that the importance of a right to own personal

⁴⁸ Ibid., 113.

⁴⁹ Ibid.

⁵⁰ See, for example, Freeman, *Rawls*, 48.

⁵¹ *Justice as Fairness*, 114.

property is not just that such a right guarantees the other basic liberties, but also that it protects certain interests closely related to the two moral powers.

In what follows I will investigate Rawls's claims about the relationship between independence, self-respect and the right to own, or be eligible to own, housing and personal items. I will not, however, tie my discussion too closely to these comments of Rawls, and I will also consider arguments that claim that a right to own, or be eligible to own, housing and personal items protects other interests, which themselves can be connected to the development and exercise of the two moral powers. I will also consider Rawls's claim that the right to own, or be eligible to own, housing and personal items is important because it serves to guarantee other basic liberties such as freedom of thought, association and the political liberties.

3. Outline of the arguments to follow

In the rest of this chapter and the next I will consider the following arguments for a basic right to own, or be eligible to own, housing and personal items.

- (i) **Identity and agency arguments.** A right to own, or be eligible to own, housing and personal items is required for the development of identity and agency, which are required for the development and exercise of the two moral powers.
- (ii) **Self-respect arguments.** A right to own, or be eligible to own, housing and personal items is required for citizens to have self-respect, which is required for the development and exercise of the two moral powers.

- (iii) **Privacy arguments.** A right to own, or be eligible to own, housing and personal items is required in order that citizens have privacy, which is required for the development and exercise of both moral powers, as well as to protect other significant basic liberties.
- (iv) **Independence arguments.** A right to own, or be eligible to own, housing and personal items is required for citizens to have a sense of independence, which is required for the development and exercise of the two moral powers.
- (v) **Control arguments.** A right to own, or be eligible to own, housing and personal items is required for the type of control over one's environment required for citizens to develop and exercise their capacity for a conception of the good.

The discussion of arguments in the first category – identity and agency – will have to wait until the next chapter. These arguments claim that in order for citizens to develop a sense of identity and/or to develop the capacity for proper agency (both, it might be claimed, requirements of the development and exercise of the two moral powers), they need to own, or be eligible to own, housing and personal items. This is because the identity and agency arguments I consider here – all of which have their basis in Hegel's writings on property, and will therefore be called *Hegelian* arguments in what follows – are such a significant category of argument for property ownership that they deserve a detailed, stand-alone discussion. The rest of this chapter will be devoted to the discussion of arguments (ii) – (v). In what follows I will consider the two categories of item that I have identified above – housing and personal items – separately. This is because in certain instances I believe that the arguments under discussion will apply differently to the different types of item under

consideration; some arguments, for example, may seem more compelling as arguments for a right to own personal items than as a right to own housing, or vice versa.

Let me now set out the way in which I will assess the arguments (i) – (v) in the rest of this chapter and in Chapter 2. My overall claim will be as follows: Rawlsians are not justified in claiming that there is a right to own, or be eligible to own, housing and (for the most part) personal items, because the significant interests that this right is supposed to protect can be protected by a more limited set of rights over these items than ownership as we are understanding it. My claim that a right to own, or be eligible to own, housing and personal items cannot be justified does not, therefore, have the implication that the development and exercise of the two Rawlsian moral powers can be protected in a society in which there are no property rights at all over these items. I am not, therefore, making the more radical claim that the two moral powers can be adequately protected in a society in which access to housing and personal items was communal. Instead, my claim is that the property rights which citizens need to have over housing and personal items for the proper development and exercise of their two moral powers falls, for the most part, significantly short of rights of ownership, and can instead be better characterized as what I will call “rental rights.”

What, then, are rental rights? In what follows, it should be taken that an individual exercises rental rights over some item *X* if they possess the following rights and powers with respect to that item: *the right to possess X* – the right to have exclusive physical control over *X*; *the right to use X* – the right to use *X* at their discretion; *the right to manage X* – the right to “decide how and by whom the thing owned shall be used.” This right is limited in comparison to that of an owner, and

mainly involves being able to admit or deny others access to the item, and control what others do once they have the item. An owner, in contrast, has powers of management that relate to the upkeep of the item in question – Honoré, for instance, talks of the owner’s ability (here, with respect to a deck chair) to “direct how it is to be painted or cleaned, contract for it to be mended in a particular way”;⁵² *the right to security* – immunity against expropriation.⁵³ This right is also limited in comparison to ownership, since (a) it expires with the tenancy, and (b) there are additional grounds on which the individual can be ejected from the property in question – for instance, causing damage.

The individual who exercises rental rights over X, then, has many of the same rights and powers as the owner of X; however, many of these rights and powers are limited in comparison to those that an owner would exercise. In addition to this, the reader will notice that an individual who exercises rental rights over X also lacks certain rights and powers altogether, when compared to an owner of X. In particular, the renter of X lacks, relative to an owner, the *right to the capital*, that is, they lack the power to transfer the item to others and the liberty to consume or destroy it. Here we should note too that I take the fact that someone who exercises rental rights over X lacks the liberty to consume or destroy X to imply that this person also lacks the liberty to permanently alter X. This is a fact that will be of relevance in the discussion to follow. In addition, the set of rental rights does not include *the absence of term* – I am assuming here that tenancies are limited to at most a few years; *the incident of transmissibility* – tenants cannot bequeath X to anyone after their death; *liability to execution*; and *residuary character* – when rights in the property lapse, it is not to the *tenant* but the owner that they return. Finally, we should note an important

⁵² Honoré, *Making Law Bind*, 168.

⁵³ This right takes a different form when considered in the context of rental rights. I will discuss this in greater detail, below.

difference between the position of an individual who exercises rental rights over X and an individual who exercises ownership rights over X: the renter is, by definition, in a relationship with the individual, agent, or organisation who *owns* the item in question and has leased it to them, either directly or through representatives. In the case of housing, this relationship is likely to be more involved than in the case of leasing, say, a television. In both cases, however, the relationship is present.

Rental rights, then, are significantly more limited than ownership rights. My overall point will be that rental rights, as they are characterized here, over housing and (most) personal items are sufficient from the perspective of the development and exercise of the two moral powers. The way I intend to make this point is as follows: I will consider two scenarios in which citizens do not own housing and personal items, but instead have rental rights over those items. I will argue that in both of these scenarios the development and exercise of the two moral powers is secured.

The two alternative scenarios that I will consider differ according to the mode of provision of housing and personal items. They are as follows:

Scenario A: State Rental. In England in 2012-13, 17% of the population lived in social housing.⁵⁴ A significant proportion of this housing is owned and run by local branches of government, local councils, and is consequently dubbed council housing.⁵⁵ In the state rental scenario, it is the state which owns personal property items *and* acts as landlord. Consider this scenario first in relation to real property. Here, the state would operate as landlord to everyone, and all citizens would be tenants of the state. Examples workable systems of state ownership of housing do, it should be pointed out, currently exist, although not necessarily systems in which the

⁵⁴ Department for Communities and Local Government, *English Housing Survey Headline Report 2012-13* (2014).

⁵⁵ The rest is owned and run by not-for-profit organizations like housing associations, which are regulated by the state.

state owns all housing. As I have said, many individuals in the United Kingdom, for example, today inhabit council housing which is owned and run by the state. Now consider this scenario with respect to personal items. This scenario is obviously less familiar, but can nevertheless be conceived of. We would have to assume that all personal effects, books, furniture and so on were leased or rented (for longer or shorter periods) to individuals or co-habiting groups by the state.

Scenario B: Market Rental. In this scenario, individuals obtain housing and personal items through the market, much as they do now, except that they would only rent those items rather than come to own them. This scenario is obviously very familiar when it comes to housing, but also not unfamiliar when it comes to many personal items. Currently, when individuals rent housing and personal items in the market, they either rent from private individuals or businesses. However, since we will be in the second half of this thesis interested in the ownership of productive property, we should note that there are two ways that the rental market might be organised, in terms of who owns the items being rented out. Firstly, of course, individuals and private businesses may own the items – this would imply that these individuals are (private) owners of productive property.⁵⁶ On the other hand, however, the market rental scenario is compatible with no private ownership of productive property – instead, we could envisage a scenario in which the companies which rented out housing and personal items were in some sense collectively owned, as, for instance, in variants of a market socialist regime.⁵⁷

Having now outlined the relevant alternative scenarios, we can now turn to examine arguments (ii) – (v). As I have said above, I will consider how these

⁵⁶ This allows for the possibility that in a Rawlsian just society citizens might be able to own productive but not personal property.

⁵⁷ Note that the collective ownership scenario is distinct from the state ownership scenario because in the former the state typically does not *run* the companies in question, and consequently does not act as landlord. In the state ownership scenario, it is state agencies which act as landlord.

arguments work in relation to housing and personal items separately. First, then, I consider housing.

4. Should there be a right to own housing?

a. Self-respect arguments

I shall now consider arguments which claim that citizens need to either own or be eligible to own housing in order to have proper self-respect.

Self-respect is a central value in the Rawlsian picture, and one which I will revisit throughout this thesis. Following Rawls's comments in *Political Liberalism*, I will understand self-respect as having two major elements. The first is a person's "self-confidence as a fully co-operating member of society," which is "rooted in the development and exercise of the two moral powers."⁵⁸ The second is a person's "secure sense of [their] own value rooted in the conviction that [they] can carry out a worthwhile plan of life."⁵⁹ The importance of self-respect is taken to be that, without it, individuals "cannot effectively advance [their] determinate conceptions of the good,"⁶⁰ since without self-respect "nothing may seem worth doing, and if some things have value for [them], [they] lack the will to pursue them."⁶¹ A Rawlsian society cannot sensibly aim to guarantee all citizens self-respect, but it can provide citizens with the social bases of self-respect, which Rawlsians take to be a primary good. The social bases of self-respect are the social, economic and political

⁵⁸ *Political Liberalism*, 319.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 318.

conditions which are required to foster a sense of self-respect as it is described above. The question, then, is whether a right to own housing is a social basis of self-respect.

Let us turn, then, to the arguments which connect ownership of housing with self-respect. There are five central arguments here.

(1) *Owning a home is required for self-respect.* One way to construct an argument for a right to own housing on the basis of a commitment to self-respect is to claim that home ownership is associated a certain social status. Those who own their own home gain certain respect from others, and this may contribute to their sense of self-respect. Those who do not own their own home, on the other hand, fail to achieve this status in the eyes of others and may therefore feel that their particular way of life lacks some important element, and be unable to fully endorse it.

This argument claims not just that citizens should be *eligible* to own a home, but that they should actually own one (or at least have sufficient resources to be able to own one). This is because if only an eligibility right is protected, those citizens who do not have the resources to buy their own home will lack a sense of self-respect.

The argument, however, is not very convincing. Consider the state rental and market rental scenarios, in which no citizens own or are eligible to own housing. Here, I think, the concerns about self-respect do not arise since, *ex hypothesi*, non-home-owners only feel that their way of life lacks an important element if they are exposed to those whose lives contain that element. But in the state rental society and the market rental societies citizens would not be exposed to other citizen home-owners, since there would be none, and are therefore unlikely to feel that their particular way of life or their self-respect more generally was being challenged in a troubling way.

(2) *Not owning a home involves being treated in ways that undermine self-respect.* It seems right to say that individuals can be treated in such a way as to imply a lack of respect for them and/ or their way of life, and that this can, in turn, undermine their self-respect. The argument might go that in the state-rental and the market-rental scenarios, citizens will be treated in ways which undermine their self-respect. How is this so?

The claim might be that the state rental and the market rental scenarios expose citizens, as tenants of either the state as landlord or a commercial landlord, to being subjected to checks to ensure that they were behaving appropriately in their homes. It is not clear that the checks are likely to be more intrusive in one scenario than in another. In the state rental scenario, the state as landlord has the incentive to ensure that collectively owned property is not being abused; in the market rental scenario, landlords have the incentive to ensure that the value of their rental property is not being diminished by tenants. In both cases, intrusive and frequent checks might be self-respect undermining for citizens because it would reflect back at them the judgment that they were not capable of inhabiting the property in the appropriate matter – that there was, therefore, something about themselves or their way of life which did not inspire confidence.⁶²

Note that this argument also seems to be an argument for a right to *actually own* housing rather than a right to be eligible to own housing. If we are concerned about the vulnerability of tenants to being treated in self-respect undermining ways, then we will want to ensure that citizens are not tenants. This seems to require that all citizens should own their own homes.

⁶² The view about the relationship between lack of trust and lack of respect on which this argument relies is proposed by Jonathan Wolff in his “Fairness, Respect, and the Egalitarian Ethos,” *Philosophy & Public Affairs* 27, no. 2 (1998): 97-122.

I think this argument is also unpersuasive. First, consider the market rental scenario. People who currently rent rather than own their homes are not, we tend to think, commonly subject to interference and regulation that is sufficiently intrusive or frequent as to undermine their self-respect. Furthermore, even if this were the case with actual rental markets, it need not be the case in the market rental scenario that tenants are subject to self-respect-undermining interference since the extent to which a landlord can interfere with and regulate their tenants can, itself, be subject to regulation that would prevent such interference. Second, consider the state rental scenario. Although the fact that the state, rather than the citizen, is the owner of the housing in this scenario and therefore ultimately responsible for its condition means that citizens can expect some inspections of their housing, it is not clear that this would be any more self-respect undermining than in the market rental scenario. Furthermore, there seems to be no reason why, in the state rental scenario, regulation of the state as landlord should not exist (and be subject to democratic oversight by citizens), to ensure that the relationship between state and citizen remains respectful by preventing severe interference.

(3) *Not owning a home involves living in ways that undermine self-respect.* It also seems right to say that individuals can live in ways that undermine their self-respect. If we feel, for instance, that we are not living in a way which is in keeping with basic human dignity, we may feel a lack of self-respect. One type of living environment that might undermine self-respect on these grounds is one which is extremely poorly furnished and maintained, or is unclean. It may then be argued that where individuals rent their property rather than own it, they are more likely to find these types of condition. Consequently, we should ensure a situation where citizens

own rather than rent their homes – in other words, we should protect as a right citizens’ actual ownership of housing.

I do not think this argument is convincing for the following reason, namely, that it assumes that in the state rental scenario and in the market rental scenario there will be no regulation of properties in order to ensure that they meet the minimal standards required for habitation. Only if we assume that such regulation forms no part of these scenarios (and I see no reason to), will we think that they typically permit properties to be lived in which are not, in fact, fit to be lived in.⁶³ Of course it is true that in actual market-rental scenarios there are very poorly cared-for properties, but this is because of failures to either put in place the appropriate forms of regulation, or to enforce them once they are in place.⁶⁴

(4) Owning housing is required for privacy; a lack of privacy undermines self-respect. I will deal with this argument under the heading of “privacy” below.

*(5) Owning housing is required to protect individuals against domination, which undermines self-respect.*⁶⁵ A final way to construct an argument for a right to own housing based on an argument from self-respect is to say that, unless citizens own the housing in which they live, they will be *dominated* – in other words, be vulnerable to being subject to the arbitrary power of another – and domination undermines self-respect. In what sense will tenants in a market or state rental scenario be dominated? It might be argued that all tenants are in fact dominated in the following way: they rely on their landlords for the provision of an important good (namely, housing), and are consequently vulnerable to the landlord using the threat of

⁶³ Public housing in the UK, for instance, is since 2004 supposed to meet the Decent Home Standard, which requires that such housing meet certain safety standards, be in a reasonably state of repair, have relatively modern facilities and services and have effective heating. See Department for Communities and Local Government, *A Decent Home: Definition and guidance for implementation* (2006).

⁶⁴ We may also point out that owning one’s own home does not guarantee that it is habitable.

⁶⁵ Thank you to Dan Butt for suggesting this argument to me.

the withdrawal of that good as a basis from which to coerce or exploit them in various ways. If citizens were vulnerable to such coercion or exploitation, we might think that this would undermine their sense of self-respect on the basis that – should such coercion or exploitation occur – they are no longer being treated as a “a fully co-operating member of society,” but rather would now be under the control of another. Only if there is an abundant supply of high quality housing, it might be argued, are tenants not dominated – that is, not vulnerable to being the victim of the exercise of the arbitrary power of the landlord in the way described. This is because in such a scenario tenants could simply leave the housing if the landlord began to behave in troubling ways. However, it might be argued that even if there is an abundant supply of high quality housing, tenants are still dominated, due to the costliness (in terms of, for instance, time and effort) of moving home.

Let me start by considering this argument in the context of the market rental scenario. Although it is, of course, true that tenants in a market rental scenario could be dominated in this way under some legislative conditions, it is not clear that legislative conditions need be such that tenants must be dominated in this way. The power which the landlord exercises over the tenant is based, in the example above, on the ability of the landlord to withdraw the housing arbitrarily – that is, without being constrained by clear rules known to both parties. In order to protect tenants from domination, then, we would have to ensure that no such power was given to landlords. Instead, we would have to ensure that tenants’ *right to security*, their right not to be expelled from the housing in question for the duration of the tenancy, was very robust. Further legislative protections could also protect tenants from domination: for instance, restricting the landlords’ ability to pay visits to the property not scheduled in

advance, or perhaps requiring that third parties – such as letting agencies – mediate between landlord and tenant.

It might be argued that in a market rental society tenants are dominated not because they may be expelled from their property, but because others control *access* to that property. Consider, for instance, a saturated rental market in which many are looking for housing, but little housing is available. Here, because landlords are in control of a scarce resource, they dominate would-be tenants. This is because would-be tenants are vulnerable to the landlord using the threat of failure to supply that good as a basis from which to coerce or exploit them in various ways.

Again, however, it seems as though we can argue that legislation regulating the behaviour of private landlords – particularly, in this case, regulating the kind of tenancy agreements that can legitimately be drawn up between landlord and tenant – would protect citizens from such domination. Furthermore, we should note that what I will argue for in Chapter 3 is a *basic right* for citizens to actually have rental rights over housing. This means that if there is insufficient housing for all citizens of a particular state, their basic rights have been violated. This forms a strong requirement on government to prevent housing becoming a scarce resource, and, consequently, makes it significantly less likely that housing would be scarce.

Finally, we have not considered the extent to which tenants in the state rental market would be dominated by their landlord – in this case, the state. I think, however, that concerns about domination in this case may well directly parallel the concerns we might have about the market rental case, in the sense that tenants and would-be tenants would be vulnerable to the arbitrary exercise of power of those who had direct control over their access to housing – in this case state administrators, rather than private landlords. However, similar legislative provisions to those set out

with respect to the market-rental scenario would, I think, also protect individuals from domination by state administrators; in particular ensuring that tenants had a robust right to security, and ensuring that there is no failure of supply of housing.

b. Privacy arguments

I now turn to examine the claim that a right to own housing is required for privacy. For the purposes of the discussion in this chapter, there are two ways of understanding privacy. The first way has to do with individuals' ability to keep sensitive information about themselves unknown, except by parties with whom they choose to share it. I will consider this understanding of privacy later in the chapter. The second way has to do with individuals' ability to have a physical space over which they have control, in particular, control over the presence of others.⁶⁶ Munzer calls this having the "power to exclude" with respect to some space.⁶⁷ The power to exclude is not meant to refer to a physical power, for example, the physical strength to exclude others, but rather to refer to a duty of others to exclude themselves from a particular space, unless the individual who has control over that space waives this duty.⁶⁸

It is in this sense of "privacy" that it can be argued that privacy is required for self-respect, for personal independence, and to guarantee the primary basic liberties, in particular freedom of expression, conscience and association. Consider the following arguments:

Self-respect. When it comes to self-respect, it seems that an argument might easily be made that privacy is tied to self-respect because it is required to perform certain unavoidable or significant acts. Munzer here lists acts that are "intimate,

⁶⁶ I will offer further discussion of the term "privacy" in Chapter 3. For the purposes of the discussion of this chapter, however, the present definition is adequate.

⁶⁷ *Theory of Property*, 93.

⁶⁸ This useful clarification is from Penner, *Idea of Property in Law*, 93.

shameful, embarrassing... silly.”⁶⁹ Having to perform these acts in public would be humiliating, and would undermine self-respect. Since individuals need to be able to ensure that others are not present during these acts, individuals need the power to exclude over some space.

Independence. We may also tie privacy to the protection of independence. “Independence” is a term used in liberal political philosophy without much consistency, so I will attempt to define it here. I will, in fact, be considering two different ways of understanding what independence might mean, and what might be valuable about it. The first of the two ways of understanding independence I will term “physical independence.” By physical independence is meant something like the physical ability to withdraw from others. The relationship between this form of independence and the two moral powers might be thought to be as follows: the ability to be physically alone is an essential requirement for the kind of reflection required to develop plans and projects, and a sense of self.⁷⁰ It seems that privacy, in the sense of the power to exclude, is needed to ensure physical independence.

Guaranteeing the primary basic liberties. Finally, it can be argued that without privacy, certain of the primary basic liberties cannot be guaranteed. Take freedom of expression, for example. It will be difficult to express and discuss thoughts that might be viewed by the majority as controversial or subversive if there is no way of ensuring that others are excluded.

It has been suggested that it is these kind of arguments to which Rawls himself can best appeal when grounding his right to hold personal property. Robert S. Taylor,

⁶⁹ *Theory of Property*, 93.

⁷⁰ Ruth Gavison offers two reasons as to why the ability to be alone might be viewed as so important. She argues, firstly, that solitude offers freedom from distraction, which, she claims, is required for concentration, and secondly, that it protects individuals from the “inhibitive effects” of being observed by others. See her “Privacy and the Limits of Law,” *The Yale Law Journal* 89, no. 3 (1980): 446-447.

for example, seems to be combining the two arguments above when he suggests that, for Rawls,

“freedom of the person (including psychological and bodily integrity), as well as the right to personal property and immunity from arbitrary arrest and seizure, are necessary to create a stable and safe personal space for the purposes of reflection and communication, without which rationality [the capacity for a conception of the good] would be compromised if not crippled.”⁷¹

Now, we might accept for the purposes of the present discussion that the power to exclude is necessary for self-respect, physical independence, and to guarantee the basic liberties in the way that the arguments above suggest.⁷² However, this does not yield an argument for a basic right to own housing. This is because having the power to exclude over some physical space is not the same as owning that space.

To see this, let us consider whether privacy would be secured in the alternative societies under consideration. First, consider the state rental scenario. It is not clear how, in this scenario, individuals are denied privacy. State ownership of all housing is perfectly consistent with tenants having the required power to exclude, in the same way that a tenant of rental property has the power to exclude. It would seem, then, that in this scenario individuals have the requisite “safe and stable personal space for the purposes of reflection and communication” that Taylor describes. Second, consider the market rental scenario. Again, it is not clear how the fact that one has a landlord undermines one’s power to exclude. It may certainly be true that in both

⁷¹ Robert S. Taylor, “Rawls’s Defense of the Priority of Liberty: A Kantian Reconstruction,” *Philosophy & Public Affairs* 31, no. 3 (2003): 261.

⁷² The relationship between these things will be subject to much greater scrutiny in Chapter 3, as will the relationship between physical independence and the development and exercise of the two moral powers.

cases one's power to exclude is not as strong as it is when one owns one's own property, in the following sense – if the landlord wishes to visit, they may do so, provided (in line with the normal sorts of regulation which govern these interactions) they arrange a time in advance, do not arrive without warning, do not come too often, and so on. This is of course not the case when one owns one's own property. However, it does not seem that the weaker power to exclude possessed by tenants (in either scenario) as opposed to owner-occupiers should be worrying from the perspective of a concern about the development and exercise of the two moral powers, nor the protection of the basic liberties like freedom of expression. This is because the power to exclude remains robust, even where citizens are not owner-occupiers.

c. Independence arguments

We now turn to the claim that a right to own housing is required in order that citizens should be independent, in some important sense. Above, I considered arguments which understood independence as *physical* independence, and concluded that such arguments were unsuccessful in establishing that citizens either needed to be eligible to own or to actually own housing in order to have independence in this sense. Here, we consider a different way of understanding independence.

This is independence as understood by Charles A. Reich. This is a more difficult notion to properly explicate. Reich in his writings on property is concerned with the extent to which citizens of modern states are the beneficiaries of what he calls “government largess.”⁷³ The notion of government largess encompasses a great deal of different things, including unemployment support, the provision of licenses for

⁷³ Reich, “The New Property,” *The Yale Law Journal* 73, no. 4 (1964): 373.

certain activities (for example, if one wants to practice medicine), the use of publicly owned land or property, the provision of subsidies to certain industries, government contracts and government-provided jobs. The concern with the extent to which citizens are reliant on the government, often for their livelihood, is that this gives the government a significant amount of power over those citizens. This, power, Reich argues, in various ways undermines citizens' independence. In particular, he claims, individuals may cease to act in ways that they otherwise might have done if they fear that the form of largess on which they are dependent, for example income support, might be withdrawn. One clear concern is political activities – Reich points to cases from the 1950s in which government largess was withdrawn based on citizens' prior membership of the communist party – another concern is with activities which might be deemed “immoral.” If citizens do not engage in certain activities or forms of expression because they fear the withdrawal of largess on which they rely, then it seems correct to say that they are as a consequence less independent. Another way of putting Reich's concern is also to say that certain of their basic liberties – for example, freedom of expression, are curtailed.

How might this line of thinking be used in an argument for a right to own housing? Reich makes clear that there is, in practice, a clear distinction between the way that a government like that of the United States views citizens' property, and the way that the same government views what he terms “largess.” Reich explains the way that the government views property as follows:

“Property draws a circle around the activities of each private individual or organization. Within that circle, the owner has a greater degree of freedom than without. Outside, he must justify or explain his actions, and show his authority.

Within, he is master, and the state must explain and justify any interference. It is as if property shifted the burden of proof; outside, the individual has the burden; inside, the burden is on government to demonstrate that something the owner wishes to do should not be done.”⁷⁴

When it comes to government largess, Reich argues, there is much less of a burden on government, or specific government officials, to demonstrate that interference is justified. This, of course, makes citizens much more vulnerable to interference in a way that, as described above, can undermine their independence. With respect to our concerns here, the argument might be as follows: if citizens do not inhabit property which they themselves own, then they lack independence for the reasons given above. Reich’s arguments are most relevant to the state rental scenario, in which all residents would be the beneficiaries of government largess in his sense, but perhaps they could be extended to apply to the market rental scenario. In certain legislative and market conditions, the power of commercial landlords over their tenants might be similar in kind to the worrying power over the state over citizens that Reich describes. Consequently, their independence might also be undermined.

Is this an argument then for citizens having a right to own housing? We should note that if it were such an argument, its conclusion would be that citizens should actually own housing, not just that they should be eligible to own it. I don’t think, however, that this argument can be plausibly taken as one for a right to own housing; nor indeed, we should say, does Reich intend it as such. Reich’s point is not that we should attempt to remove any citizen reliance on government largess; instead, he thinks that the problem is precisely that the granting of government jobs, subsidies,

⁷⁴ Ibid., 771.

licenses and benefits is *viewed* as largess: as something that it is a privilege to receive, and that can be revoked. Instead, Reich thinks, we should be concerned to alter the legislative environment so that it is much more difficult for the government to revoke the largess it grants.

We need not agree with all of Reich's arguments here – this work is not concerned with all of what Reich calls “government largess.” Instead, we can merely point out that the extent to which the independence of citizens in the state-rental and market-rental scenarios is curtailed surely depends on the legislative environment. It seems possible, as Reich points out, to arrange this legislative environment so as to shift the burden of proof, when it comes to revoking a person's tenancy, so that it lies very firmly with the government or landlord.

d. Control arguments

Finally, we consider the claim that a right to own housing protects individuals' sense of control, which is required for them to be able to form and to carry out plans.

A claim of this sort is made by John Christman. Christman argues that in order for individuals to have autonomy, they must own certain things. Autonomy, for Christman, “is the condition of being moved by desires that are part of a person's authentic character.”⁷⁵ According to Christman's arguments, a necessary condition for the development of autonomy is that one should have control over one's immediate material environment. In particular, he claims that “one's house, mode of transport, access to social life and family arrangement” must all be things that one can exercise control over.⁷⁶ This is because, he argues, one's immediate material environment is one which has significant influence on one's tastes and one's

⁷⁵ Christman, *Myth of Property*, 166.

⁷⁶ *Ibid.*, 167.

character. “If there is no television around me, for example, or if the books I can read are all Zane Grey westerns, then these conditions will affect directly the values and attitudes that I will come to have.”⁷⁷ Our interest in autonomy, Christman argues, extends to being able to, as far as possible, decide ourselves what will influence the formation of our desires and our character. The requisite control over one’s living environment, Christman argues, is given by ownership rights – specifically, rights to “use, possess, manage, modify, alienate, and destroy one’s property” – it is “the ability on the part of the person to be the final arbiter over what is to be done with a thing.”⁷⁸

The first thing to say about Christman’s argument is that it is not clear to what extent his notion of autonomy overlaps with our idea of a capacity to form, revise and pursue a plan of life. In particular, it is not clear whether our Rawlsian idea requires that individuals have the kind of control that Christman wants over the kind of things that might influence our choice of plans and projects. If this is so, then from the perspective of a Rawlsian account of why there should be a right to own personal property, Christman’s account is not of any help.

More can be said than this, however, about Christman’s argument. A central concern with his argument for our purposes here is that it seems to apply more readily to personal items than housing. Christman cannot, I think, want to claim that, for example, those who live in rental accommodation rather than own their own homes lack the capacity for autonomy in a sense that we should think of as troubling. This is despite the fact that they have less control than those who are owner-occupiers over what their living arrangements are like. Consequently, we can assume that those who are tenants in either the state rental and market rental scenarios *do* have the conditions

⁷⁷ Ibid.

⁷⁸ Ibid., 128.

of autonomy in Christman's sense, and postpone further discussion of his argument until the next section.

This concludes our survey of self-respect, privacy, independence, and control arguments for the claim that citizens must have a right to own their own home (in either an eligibility sense or an actual ownership sense). None of these arguments have been successful. We now turn to consider arguments for the conclusion that citizens should have a right to own personal items.

5. Should there be a right to own personal items?

Let us now consider the arguments for the claim that a right to own, or to be eligible to own, personal items is necessary for the development and exercise of the two moral powers, or necessary for the protection of basic liberties which are themselves necessary for the development and exercise of the two moral powers. I will consider the following arguments:

- (i) **Identity and agency arguments.** A right to own, or to be eligible to own, personal items is required for the development of identity and agency, which are required for citizens to form, revise and pursue a conception of the good.
- (ii) **Self-respect arguments.** A right to own, or to be eligible to own, personal items is required for citizens to have self-respect, which is required for the development and exercise of the two moral powers.
- (iii) **Independence Arguments.** A right to own, or to be eligible to own, personal items is required for citizens to have a sense of independence, which is required for the development and exercise of the two moral powers.

(iv) **Control arguments.** A right to own, or to be eligible to own, personal items is required for a “sense of control,” required for citizens to develop and exercise their capacity for a conception of the good.

It will be noticed that privacy arguments are absent from this list. This is because arguments relating to privacy understood as the power to exclude cannot be applied to personal items. In its place I will consider the following:

(v) **Privacy’ Arguments.** A right to own, or to be eligible to own, personal items is required to protect citizens’ privacy in the following sense (what I will call Privacy’): without such a right, others will end up in possession of too much information about citizens.

Finally, I will consider the following argument, which seems to apply almost exclusively to personal items.

(vi) **Gift-giving Arguments.** A right to own, or to be eligible to own, personal items is required to protect citizens’ ability to give gifts to one another.

The consideration of these five types of argument will take much less space than the consideration of arguments for a right to own housing. This is because a number of the arguments for a right to own personal items are very similar to the arguments for a right to own housing, and consequently will be vulnerable to objections I have already raised. Again, too, I will be postponing the discussion of identity and agency arguments until the next chapter.

a. Self-respect arguments

Let us first consider arguments which claim that citizens need to own personal items in order to have self-respect. If we consider the claim that owning personal items is required for self-respect because a certain status attaches to them, we can see that the same reply can be applied here as to housing – if no citizen owns personal items, then these things will not be a basis for differential status judgments. In terms of the purported connection between ownership and respectful treatment, again, it seems that the rental of personal items from the state or from a private individual or organisation could be governed by regulations that would ensure respectful treatment, much like the rental of housing. Finally, in terms of the purported connection between ownership and non-domination, again, the rental of personal items from the state or from a private individual or organisation could be governed by regulations that would protect citizens from domination by landlords or the state.

b. Independence arguments

Second, let us consider a claim along the lines of Charles Reich's argument as considered with respect to housing above. This is the claim that citizens lack independence as a consequence of the power that the state, or in the market rental scenario private rental agents, have over them because they provide them with personal items. I think we can give the same response here that we gave above – so long as the legislative context is, as it were, on the side of the customer rather than the state or the rental agents, then there is no need to worry that citizens will have troublingly diminished independence.

c. Control arguments

Third, let us consider the kind of argument that John Christman makes for ownership of personal items. To recall, his claim was that in order to be autonomous, an individual needs to have control over their surroundings; the type of control he thinks is necessary is furnished by ownership rights, specifically rights to “use, possess, manage, modify, alienate, and destroy one’s property.”⁷⁹ I claimed above that this argument is not particularly persuasive with respect to housing. Here, I will claim that it is not particularly persuasive with respect to personal items either.

Christman’s argument is, as I said above, that it is a condition of autonomy that an individual has control over what influences her desires and her character. This control, as far as I discern from Christman’s complex discussion, amounts to getting to choose what one is influenced by, and, in particular, getting to choose what one is influenced by in one’s immediate material environment. However, if control simply involves getting to choose what one is influenced by, then it is not clear why ownership is supposed to be necessary for individual autonomy. Consider, for example, our market rental scenario. In this scenario, individuals certainly get to choose what their personal items *are*; it is just that the rights they have over those items are not as extensive as ownership rights. The same can be said about the state-rental scenario. Consequently, it does not seem as though Christman’s argument really supports control ownership over personal items.

There is a slightly different thread of argument running through Christman’s work, which anticipates the discussion of what I have called “Hegelian” arguments in Chapter 2, and which is to be derived from his analysis of the psychological literature

⁷⁹ Christman, *Myth of Property*, 128.

on ownership. The empirical evidence, Christman argues although “complex and incomplete,” points to “a close link between the possession of goods (control rights) and the sense of personal control an agent experiences both over herself and her immediate environment.”⁸⁰ This sense of personal control is linked in the empirical literature to certain psychological traits closely associated with autonomy.

These claims are re-iterated in the more recent psychological literature. In a survey piece of 2003, for example, Pierce, Kostova and Dirks endorse the claim that ownership is linked to “feelings of efficacy and competence.”⁸¹ Although the authors do not then, as Christman does, link these feelings to autonomy, it seems plausible to do so – if one feels efficacious, one is more likely to be able to carry out one’s plans. The aspect of ownership that this sense of efficacy is linked to is control over one’s physical environment and control over other people. So, the authors claim that

“possessions are important to individuals because they are instrumental for exercising control over the physical environment and over people... Control over the physical environment stems from control of the object, control over the use of the object, and use of the object as a mechanism to exert control over other parts of the environment. Social control stems from the ability to regulate others’ access to or use of one’s possessions.”⁸²

Is this, then, an argument for a right to own personal items? I do not think so, for at least two reasons. Firstly, the authors do not seem to go so far as to claim that owning possessions is *necessary* for the feelings of efficacy they describe. There is still a

⁸⁰ Ibid., 169.

⁸¹ Jon L. Pierce, Tatiana Kostova, and Kurt T. Dirks, “The State of Psychological Ownership: Integrating and Extending a Century of Research,” *Review of General Psychology* 7, no. 1 (2003): 89.

⁸² Ibid.

question mark, then, as to whether these feelings could be generated elsewhere. Secondly, when the authors describe, in detail, the kind of control which they take to be important it turns out to be no more extensive than the kind of control someone who rents, rather than owns, an object has. So, consider that I rent my television. In this case, for the period in which I rent it, I have both control over the physical environment, and over other people: I have control over the use of the television, and also control over other people's access to it. Consequently, it looks as if we do not need anything as extensive as ownership in order for the conditions of autonomy to be satisfied.

d. Privacy' arguments

Finally, then, we consider the claim that privacy, understood in our second sense as privacy', cannot be properly protected without a right to own personal items. The concern here is that in the state rental and the market rental scenarios, too much information about individuals' preferences would end up in the hands of others. This presumably is not really a concern about the market rental scenario, since this doesn't seem to differ structurally at all, in the sense of information being shared, from the current scenario where we buy our personal items through the market. The concern is, really, about the state rental scenario, since here the information would be in the possession of a single body, rather than a variety of different entities. However, I think this need not concern my argument too much, since the state ownership of personal items scheme could, in practice, be implemented in such a way so as to avoid these concerns. Consider, for example, the fact that in the UK healthcare is provided by the state through the NHS. In this case the state is, in a sense, in possession of a large amount of highly confidential information regarding its citizens. However, the

way that the system is administered means that this need not be troubling for those citizens. Similar considerations, taking privacy into account, could inform whatever system were to administer personal items to citizens.

e. Gift-giving arguments

One argument that seems to apply to personal items specifically concerns the importance of gift-giving. The argument – here, I consider it as put forward by Annabelle Lever – goes as follows.

Lever’s overall argument is that gift-giving is a significant aspect of caring for others, and that caring for others is part of being a person, and consequently is a significant aspect of an individual’s wellbeing.⁸³ To have a practice of gift-giving of the appropriate sort, Lever claims, implies that individuals should be able to have ownership rights over personal items. This is because some of the most important things that we give as gifts are personal items, and because it would be somewhat strange to think that we had an institution of gift-giving unless the recipient, at least, could have a set of rights more robust than rental rights over the item they have received. Although the recipient of a gift need not, *prima facie*, be able to transfer the gift to others, they would, as the practice of gift-giving is normally understood, need to be able to retain the gift permanently. Lever, however, also argues that in order to have a satisfactory practice of gift-giving, from the perspective caring for others, givers also need to be able to have robust ownership rights over personal items. Givers, of course, need to be able to transfer personal items to others – this requires something more extensive than rental rights. But people, Lever thinks, also need to be able to give gifts which are “personal in the sense of objects which had belonged to

⁸³ Lever, *On Privacy* (New York: Routledge, 2012), 80.

us, been made by us, or been used by us.”⁸⁴ This suggests that what might be thought a necessary part of a satisfactory practice of gift-giving as Lever understands it is a system which grants ownership rights over a wide range of personal items, and which consequently allows for individuals to give away items which have been modified by them, or have been in their possession long-term.

How do Lever’s arguments fit into a Rawlsian picture? It seems plausible, although I do not investigate this claim fully here, that being able to both give and receive care from others is a condition of the development and exercise of the two moral powers. For instance, it might plausibly be the case that basic psychological well-being requires receiving care from others; furthermore, the giving and receiving of care is a central aspect of many personal relationships which, in turn, might be taken to be significant for basic psychological well-being.⁸⁵ I leave these issues aside, however, to take issue with Lever’s arguments on different grounds.

What I wish to question here about Lever’s argument is as follows: first, that a practice of gift-giving must involve the exchange of owned personal items; second, that without a practice of gift-giving, people cannot care for one another. On the first claim, it might be thought that gift-giving could exist in a form which did not involve personal items – for instance, I could give my time or my labour to a loved-one, I could also buy them something which is not a personal item, such as a nice meal in a restaurant or a trip to the cinema. Furthermore, it is not clear why such gifts cannot be personal in the sense Lever outlines above. If I take someone on a trip to a place of great significance to them, for instance, this seems to be a very personal gift, which nevertheless involves no physical exchange of items. On the second claim, we can surely question the idea that without a practice of gift-giving people cannot care for

⁸⁴ Ibid., 81.

⁸⁵ For further discussion of these issues see, for instance, Eva Feder Kittay, *Love’s Labour: Essays on Women, Equality, and Dependency* (New York and London: Routledge, 1999).

one another. If the claim that Lever is making is that, in a scenario in which no gifts in the ordinary sense, physical or non-physical, were ever exchanged between family members, friends, or partners, those individuals would lack the means by which to care for one other, then this claim seems highly implausible.

Lever's justification for this claim is that those who "find themselves unable to undertake socially accepted acts that express gratitude and joy because they are too poor" experience a "sense of humiliation and loss of honour that comes with the inability to express one's respect and love."⁸⁶ However, the crucial point here is that people experience humiliation and loss of honour if they cannot "undertake *socially accepted acts* that express gratitude and joy [my italics]." In other words, humiliation follows from not being able to participate in practices that others can participate in. In the state and market rental scenarios, however, the disparity would not exist, since *ex hypothesi* no one would be able to participate in the kind of gift-giving practices that are reliant on people being able to exercise ownership rights over personal items. Consequently, I think we can dismiss Lever's argument from gift-giving.

7. Conclusion

This then concludes my initial survey of arguments for a right to own, or to be eligible to own, housing and personal items. None of the arguments considered so far establish a right to own either housing or personal items. In the next chapter, I turn to consider identity and agency – in other words, Hegelian – arguments for a right to own, or to be eligible to own, housing and personal items.

⁸⁶ Ibid.

Chapter 2: Hegelian Arguments

1. Introduction

In Chapter 1 I set out the first part of my argument for the conclusion that there is no Rawlsian basic right to own, or to be eligible to own, housing and, with certain exceptions, no Rawlsian basic right to own, or to be eligible to own, personal items. The first part of this argument consisted of showing that four significant interests could be protected even if citizens do not actually possess, or are not able to possess, ownership rights over housing and personal items. The four significant interests were self-respect, independence, privacy, and control. These interests were all taken to be necessary for the development and exercise of the two moral powers, the capacity for a conception of the good and the capacity for a sense of justice.

The aim of this chapter is to set out the second part of my argument for the conclusion set out above. The second part of the argument consists in showing that two further significant interests – interests in identity and agency – can be protected even if citizens do not actually possess, or are not able to possess, ownership rights over housing and personal items. As in the last chapter, the way that this argument will proceed is by showing that in two scenarios in which citizens exercise only rental

rights over housing and personal items, the state rental and market rental scenarios, citizens will still have these interests adequately protected. Arguments relating ownership to identity and agency are such a significant category of argument for ownership that, as I said in the last chapter, they deserve a chapter-length discussion. In this chapter, I offer such a discussion.

Having dismissed arguments for a basic right to own, or to be eligible to own, housing and personal items based in a concern about protecting interests in agency and identity, I will then conclude the arguments of Chapters 1 and 2 by, first, considering some objections to the way that my argument has proceeded so far and, second, by considering some exceptions to my claim that citizens of a Rawlsian just society should not have a basic right to own or to be eligible to own housing and personal items. Consequently the conclusion I end up endorsing at the end of this chapter is that there is no basic right to own, or to be able to own housing, and no basic right to own, or to be able to own, a significant proportion of personal items. There are, however, some personal items over which citizens must, in fact, either be able to have or actually have ownership rights.

The chapter proceeds as follows. First, I will discuss what is meant by the terms “identity” and “agency,” and explain why the protection of citizens’ interests in these things might be taken to be important for the development and exercise of the two moral powers. Second, I will look at the views of three Hegelian thinkers who want to argue that the ownership of housing and/or personal items is necessary for the development of identity and agency: Jeremy Waldron, Meir Dan-Cohen, and Margaret Jane Radin. Finally, I will consider objections and exceptions to my argument.

Before I turn to this discussion, a brief note is necessary on the source of the arguments of Jeremy Waldron, Meir Dan-Cohen, and Margaret Jane Radin, namely, the work of Hegel. Since these thinkers claim that their arguments have their roots in Hegelian thought, it might be asked why I do not consider the arguments put forward by Hegel himself. There is, however, a good reason for not considering the arguments of Hegel himself, which is as follows: either Hegel is not in his work, offering an argument for private ownership in any straightforward sense, or, if he is, his own views on property are so bound up with his metaphysics that the account would fail to fit into the theoretical framework in which this project is being carried out.¹ Hegel's own views, consequently, should not be of much interest to us, at least for the purposes of this thesis. Views, on the other hand, which adapt some of Hegel's claims into an argument for property ownership without importing any metaphysical baggage, or are inspired by a Hegelian perspective on property, do deserve significant consideration here.

2. Preliminaries

Our first task is to consider the question of what is meant by identity and agency, and how these two things are to be related to the development and exercise of the two moral powers. The focus here will be on the question of how identity and agency are related to the development and exercise of the *first* moral power, the capacity to form, revise and pursue a plan of life. This is because it is more difficult to imagine how these qualities might play a role in securing an individual's sense of justice. It seems

¹ For further discussion of these claims see Alan Ryan, *Property and Political Theory* (Basil Blackwell, 1984).

to me not too difficult to imagine ways in which identity and agency are related to this capacity. First, consider identity. The Oxford English Dictionary defines identity as

“Who or what a person or thing is; a distinct impression of a single person or thing presented to or perceived by others; a set of characteristics or a description that distinguishes a person or thing from others.”²

It seems plausible to say that a sense of one’s own identity – a sense of who or what one is, or of what distinguishes oneself from others – is important to the capacity to form, revise and pursue a plan of life. In particular, I think, it is important for one’s ability to *form* and *pursue* a plan of life. If one has no sense of who one is then one will end up having difficulty choosing a plan of life since the sense of “who one is” surely includes a sense of one’s own values and desires – the very basis upon which a choice of plan of life is made. If one is not able to register *changes* on one’s identity then one will not be able to revise one’s plan of life on this basis when it becomes appropriate. Finally, in order to properly pursue a plan of life one needs to have a *stable* sense of one’s own identity – otherwise, one may be tempted to abandon a particular plan of life when the sense of “who one is” which motivates that plan is lost. We at least, then, have a sketch of how identity is to be related to the development and exercise of one of the moral powers – a sketch which will be added to when we come to consider Hegelian views themselves in more detail.

It also seems very plausible to say that *agency* is something which is related to the development and exercise of the capacity to form, revise and pursue a conception of the good. Agency, again defined by the Oxford English Dictionary, is “the ability

² *Oxford English Dictionary Online*, s.v. “identity, n,” accessed August 22, 2014, <http://www.oed.com/view/Entry/91004?redirectedFrom=Identity>.

or capacity to act or exert power.”³ Without the ability to act on one’s plans, one lacks the capacity to pursue a conception of the good. Having set out the connection between agency and identity and the first moral power, we can now turn to particular Hegelian accounts, the first of which is that offered by Jeremy Waldron.

3. Jeremy Waldron

Waldron offers us a Hegelian argument which claims to link psychological capacities associated with agency with the ownership of property.⁴ I will state the argument at some length, as it is a complex one.

Waldron, as I have said, argues that private property in certain types of thing is required for the development of certain significant psychological capacities, associated with agency. In particular, he argues, ownership provides individuals with the capacity to commit to one particular project, and to see that project through to completion. The capacity to commit to one particular project certainly seems important for the development of the capacity to form, revise and pursue a plan of life, since if I cannot commit to a particular project, I will not have the capacity to pursue any project.

To understand the details of Waldron’s argument, it is first necessary to understand the Hegelian concept of embodiment. Waldron explains this concept as follows:

“a person’s will is embodied in an object to the extent that (1) his will has made a

³ *Oxford English Dictionary Online*, s.v. “agency, n,” accessed August 22, 2014, <http://www.oed.com/view/Entry/3851?redirectedFrom=Agency>.

⁴ Waldron in fact offers his discussion as an interpretation of Hegel, although the accuracy of the interpretation is disputed. On this see, for example, Harris, *Property and Justice*, 232-237.

difference to the object, and (2) the object, affected in this way by his will, makes a difference in turn to his willing.”⁵

Although on Hegel’s account simply grasping an object counts as a case of embodiment, Waldron is more interested in the case where “I work to bring about some physical change in the object.”⁶ He explains further:

“When the subject labours in the world, his willing is such that it cannot be understood or explained except by making reference to the external objects of his labour; and those objects once they have been worked on become such that certain aspects of them cannot be understood or explained except by making reference to the workings of his will.”⁷

Furthermore, unlike mere physical contact, which is only the temporary embodiment of an individual’s will in an object, labouring to bring about physical change in an object is a way of embodying one’s will in the object in a much more permanent fashion. As I argue below, labouring on the external world has central importance in Waldron’s understanding of Hegel, and in grounding a right to ownership of property.

What is significant about embodiment? Waldron argues the following. At a stage below full psychological development, individual mental activity is characterized by an unsatisfactory state which Waldron, following Hegel, terms “evanescence.” Evanescence, for Waldron, involves “speculative idling,” “fleetingness and whimsicality”; it is a state in which our plans and projects “swirl

⁵ Waldron, *Right to Private Property*, 370.

⁶ *Right to Private Property*, 364.

⁷ *Ibid.*, 365.

around in a cloud of indeterminacy and indecision.”⁸ The state of evanescence is obviously problematic: if individuals are not capable of committing to one particular course of action, they will never be able to carry out any particular plan or project to completion. Laboring on material objects, however, brings about a significant change in the character of individual mental activity. Waldron uses the example of making a table. If I start shaping some wood into a table, I cannot change my mind halfway through and make a chair, because the wood has been altered as a consequence of my initial intention. Thus, the act of beginning to alter some physical objects requires the imposition of what Waldron calls “a stronger discipline on our willing” by “registering the effects of willing at one point in time and forcing an individual’s willing to become consistent and stable over a period.”⁹ For Waldron, this discipline “will be felt as a liberating force as much as the agent becomes capable of planning, effort, and [consequently] tangible and permanent achievement in a way that was not possible before.”¹⁰ This is an example of how embodiment, for Hegel, involves a two-way relationship between person and resource: the individual brings about changes to a particular resource, and, in turn, the resource has significant effects on the character of his mental activity, in this case, an extremely positive effect. Private property rather than any other property regime is required for this process, Waldron suggests, because it allows individuals to have long-term exclusive control over a particular resource. Where others use and modify the resource as well, the impact of one person’s intentions will be lost, and will therefore be unavailable as constraints on her further actions.

How might this line of thought be used in an argument for a right to own housing and personal items? In Chapter 1, I treated housing and personal items

⁸ Ibid., 373.

⁹ Ibid., 372-3.

¹⁰ Ibid., 372.

separately, but here I will run the two categories together. An argument for housing and personal items from Waldron might go as follows: individuals need to be able to modify their living spaces and personal items in order to be able to achieve full agency. (It is not clear, by the way, from Waldron's arguments whether the psychological capacities which he claims are secured by physically altering objects are ones which only need to be learnt once, after which the subject remains in possession, or whether continual reinforcement of the lesson by continued modification of physical objects is what is required. We will leave this issue aside for the moment, although obviously the argument will be stronger if the latter is the case.) In order to be able to modify these things in the appropriate way, ownership rights are required.

The argument that Waldron makes here might seem to threaten my overall line of argument, since as set out in Chapter 1, the market rental and state rental scenarios do not permit individuals to exercise certain important rights over their housing and personal items. To recall, in the market and state rental scenarios individuals exercise rental rights over these items, and those who exercise rental rights over housing and personal items have a more limited set of rights and powers, with respect to these things, than someone who owns them would have. In particular, someone who exercises rental rights over, for instance, housing lacks the power to consume, destroy, or significantly alter the housing in question. An owner is normally able to both significantly and permanently alter the appearance of the interior and exterior of their home, as well as being able to make significant structural changes. A renter, on the other hand, may well be limited to moving the furniture around and other non-permanent changes. However, Waldron's argument does not, ultimately, threaten my line of argument, for the following reasons.

Firstly, we can point out that it is not clear, on Waldron's view, to what extent individuals must be able to modify their surroundings in order to gain the beneficial effects he discusses. Although I have said above that tenants, for example, are not able to physically modify their living spaces to the extent that owners can, they are certainly not without power to bring about any kind of change. If "physical modification" means simply having an impact on the appearance of one's home or the arrangement of items (for example, the furniture) in it, then it does not matter for my purposes here whether this is required for identity and agency, because tenants do have this kind of discretion over the arrangement of their living spaces. It may be that this kind of alteration is sufficient for the kind of development of agency about which Waldron is concerned.

A second more serious concern is that, as Waldron's critics have not been slow to point out, there is little empirical evidence offered to support the central psychological claim being made here.¹¹ We can make sense of the claim that a state in which individuals cannot settle on one course of action is not conducive to the realization of their plans and projects, but can we make sense of the – on Waldron's interpretation of Hegel – vital part that private property ownership plays in the process? Consider, for example, the following case. Let us say that I commit to a project that is difficult to get out for – say, for example, I agree to visit an elderly person at home and she comes to rely on my visits to the extent that I would feel a significant amount of guilt were I to leave off the visits, or something to that effect. This aspect of the interaction would seem to force a "discipline" upon my willing – having committed to one particular project, I now face substantial barriers to changing my mind. This seems directly comparable to a case in which I begin a particular

¹¹ See especially Becker, "Too Much Property."

project like building a table. In this latter case, like the case of visiting the elderly person, my early commitment to the project erects barriers to later changes of direction. In both cases changes of direction are, of course, possible – I could stop seeing the elderly person, but I could also simply abandon my table and start on something else. Neither process, then, is *sufficient* for the development of these skills. Another beneficial effect of physically modifying objects, according to Waldron, is that the results of my efforts are visible to me. However, in the case of the elderly person, the results of my intentions may well be obvious – there will be an improvement in the quality of this person’s life, and this is likely to be communicated to me either directly, through third parties, or through a change in the demeanor of the person in question. It is therefore not quite clear to me what the salient difference is between this case, in terms of the development of agency and identity, and that of building a piece of furniture from scratch, which is Waldron’s paradigm case.

The final concern, which will require more elaboration of Waldron’s theory to fully discuss, is in fact raised by Waldron himself. The conclusion that Waldron wants to draw from his defense of Hegel’s view of property is that individuals should be the owners of certain things – specifically that they should be the owners of sufficient resources to ensure that their basic needs for food, clothing and shelter are met. However, he notes that the conclusion that he wants to reach might be resisted if it is acknowledged that it is an implication of the arguments that he has so far put forward as an interpretation of Hegel that a very minimal amount of property is sufficient for securing the development of the psychological capacities essential to agency. It seems plausible, on Waldron’s account, that individuals could simply be given a single object to physically modify, and this would be sufficient for the proper development of their agency. In Waldron’s own words, every person could simply be

given “a little piece of wood on which he can work.”¹² In terms of using Waldron’s argument as an argument for the ownership of housing and personal items, this argument would not go very far – it would end up justifying the ownership of one personal item for each person. This is not, I take it, the outcome that those who might defend such a right are likely to want.

Waldron’s claim is that everyone should be entitled to own the things they require to meet their subsistence needs, which Waldron defines as needs for food, clothing, housing, land, tools and medicine.¹³ Ownership of just any item will not do. But how is this conclusion supposed to follow from the previous argument? The passage in which this is laid out in Waldron is quite obscure. I argue, however, that the additional premises Waldron includes end up supporting a different, and much less desirable conclusion than the one he intends.

The connection between private ownership and the satisfaction of subsistence needs is, on Waldron’s reading of Hegel, to be established thus. Private property,

“is justified because of the way in which a *need-laden will* must be related to objects in order to foster the ethical development of the individual. Clearly, none of the ethical benefits of property-owning... is likely to be achieved, unless the will that is reflected in objects is driven by motives that the agent takes seriously.”¹⁴

A plausible understanding of this passage might be: unless the will is motivated by something as powerful as the satisfaction of fundamental needs, the determination to embark on projects and to see them through to their completion will not be there, and individuals will not develop in the appropriate ways. This is not, as one interpretation

¹² *Right to Private Property*, 385.

¹³ *Ibid.*, 351.

¹⁴ *Ibid.*, 385.

might have it, because only the motivation of avoiding serious harm is strong enough to make individuals complete projects, since this is clearly not true; rather, it is because projects that are related to the satisfaction of basic needs are projects that agents invariably take seriously, and it is projects that agents take seriously that they are likely to complete.

The “ethical benefits” of property owning, to recall, were to be achieved through labouring on the external world. Added to this, then, is the claim that individuals must be motivated by their subsistence needs when they do so. So, Waldron’s argument fully stated is that what is necessary for the proper development of agency is something like *laboring on privately owned resources with the end of meeting subsistence needs*. To begin with, this is a different conclusion to the one Waldron wants to establish, which was the just the claim that individuals are entitled to own the means to satisfy their subsistence needs. To understand this, note that on the second understanding, owning the food, or the medicine is sufficient. On the first, I seem to need to own the *means of producing* food, medicine and so on. Waldron’s argument for a social minimum succeeds only if we conflate these two distinct claims; once they are distinguished, it is clear that he fails to establish the conclusion he wants. But is there any plausibility in the claim that he, in fact, makes?

First, what exactly is meant by the claim that labouring on privately owned material resources with the end of meeting subsistence needs is necessary for the development of agency? If this means that I must meet my subsistence needs *directly* through my labour on privately owned material resources, then only those who actually produce their own food, build their own houses and so on will qualify as having proper agency. However, the claim could plausibly be that only those who meet their subsistence needs directly or indirectly through labour on privately owned

material objects will qualify as having proper agency – so a potter who supports herself through the sale of her pottery will also qualify as having proper agency. But what about a surgeon? Certainly, they meet their subsistence needs through labour on material objects, however, it is not a material object that they can have private ownership of, since the material object is another person. Does this mean that a surgeon does not, in fact, have proper agency? Or what about someone works in the service industry? Again, this person does not make their living by working on privately owned material objects. It seems highly implausible to suggest that a large proportion of the current workforce in, say, the UK are incapable of carrying projects through to completion because they have never earned their living through a process of labouring on privately owned material objects.

It is a common objection to historical accounts of private property that what is justified relates too closely to the economic circumstances of the day.¹⁵ However, the concern raised here goes further than the objection (serious, if true) that Waldron's account is anachronistic, recommending as it does a move to an economic model based on small-scale production of material goods.¹⁶ Even if we consider Hegel's argument in the context of a nineteenth century economy, it can be pointed out that at least some individuals must have earned their living in ways other that did not involve labour on material resources they privately owned. These individuals, as Waldron reconstructs Hegel, must, like many people today, be considered to be fundamentally lacking in some of the conditions of full agency, namely the ability to carry out their plans and projects in to completion.

¹⁵ For a discussion of this issue see Andrew Reeve, "The Theory of Property: Beyond Private *versus* Common Property," in *Political Theory Today*, ed. David Held (Stanford: Stanford University Press, 1991), 91-114.

¹⁶ On this point J.W. Harris notes that Waldron himself seems to acknowledge "that the argument [for a right to private property] applies rather to the stage of bourgeois production than to the conditions of modern industry" yet does not seem to view this as a potential downside of the account. *Property and Justice*, 234.

Consequently, I think, we have ample grounds to reject Waldron's account. As a final point, however, we should note one additional grounds for rejecting this last part of Waldron's arguments. This is that if what Waldron is arguing for is that individuals should own the means of generating their own subsistence, then his argument is one for a basic right to own *productive* rather than personal property. Discussion of his views, consequently, does not in fact belong in this part of the work, but in Part 2. Since, however, I think that we can reasonably conclude that Waldron's arguments for the ownership of productive property are implausible, I will not discuss his view again later on in this work.

4. Meir Dan-Cohen

We now turn to consider a second and more recent Hegelian account of ownership, namely, that offered by Meir Dan-Cohen. Dan-Cohen's account, like all of the Hegelian accounts considered here, is a complex one. With Dan-Cohen's account in particular, however, I wish to highlight the fact that the exegesis of the account I offer here is only my best attempt to make sense of the source material.

Dan-Cohen's central claim, as I understand it, is that whilst the term "ownership" can be used to describe a particular legal relationship between an individual and some object, there is a second way in which the term "ownership" should be understood. This second way, which I will refer to, following Dan-Cohen, as "constitutive ownership," is a relationship between an individual and an object (for simplicity's sake, I will only talk of objects here) which can occur together with the legal ownership relation, but also independently of that relation. The existence of a constitutive ownership relation, Dan-Cohen claims, can ground a claim for the

establishment of or extension of (in the sense of adding additional rights to) a legal ownership relation.”¹⁷

Constitutive ownership, Dan-Cohen argues, is a relationship between a person and an object in which the “boundaries of the self” expand to include the object in question within them.¹⁸ The object, therefore, becomes a *constituent* of the self. The fact that the boundaries of the self can expand to include objects other than the individual in question is, Dan-Cohen thinks, shown by the fact that individuals often use personal pronouns to describe external objects. For example, I might say “I was hit by a car,” instead of “my car was hit by a car”; or I might say “I won the race,” instead of “my horse won the race.”¹⁹ However, Dan-Cohen thinks that there needs to be more than a simple one-time allusion in order for a relationship of constitutive ownership to exist. I may, after all, say “I was hit by a car” even if the vehicle that I am sitting in was a taxi. It does not seem right to say that a relationship of constitutive ownership existed between me and the taxi in this case. He claims that for us to consider an object genuinely part of the self, three criteria must apply, namely that the relationship with the object is *enduring, continuous, and exclusive*.²⁰ He argues:

“Ordinarily, entities endure for at least some time; they exist during that time continuously; and their existence is exclusive of other things, in the sense that some way is available at least in principle for telling them apart from other things.”²¹

¹⁷ Dan-Cohen, “The Value of Ownership,” *The Journal of Political Philosophy* 9, no. 4 (2001): 404.

¹⁸ *Ibid.*, 426.

¹⁹ *Ibid.*, 418-9.

²⁰ *Ibid.*, 428-9.

²¹ *Ibid.*, 427.

These criteria should therefore apply when it comes to the “entity” that is composed of an individual and certain parts of the external world. This is why, on Cohen’s account, a car that I have driven continuously for several years qualifies for a relationship of constitutive ownership, whilst the taxi that I was sitting in when it was hit by another car does not.

For Dan-Cohen, this account explains certain persistent puzzles associated with ownership. For example, we can now explain what is wrong with harmless trespassing – namely, that since it is an incursion into the self of the owner, it is an act akin to a violation of their bodily integrity. Dan-Cohen compares harmless trespassing to the case of taking a blood sample painlessly from a comatose patient without their consent. Even if, he claims, this person has not been harmed or wronged, they still have grounds for complaint.²²

Having sketched out the major part of Dan-Cohen’s account of constitutive ownership, I now want to explore some of the normative implications of the account, and tie the conclusions back in to our discussion of the ownership of housing and personal items. For our purposes here, there are two important normative implications of the account. Firstly, that where an individual already has legal property rights in some object, a relationship of constitutive ownership may be a reason for her to gain additional legal rights in that object. So, Dan-Cohen uses the example of Susan, who is required by law to allow the public to access a beach by crossing her land, and who is also required by law to allow ranchers to graze their cattle on her land. It would be legitimate, Dan-Cohen argues “if not always laudable, for her to protest [these legal dispensations] and try to revoke them, so as to expand

²² Ibid., 431.

her rights in the land.”²³

The legitimacy of her doing so, claims Dan-Cohen, has to do with the fact that she has a relationship of constitutive ownership with the land – the actions of the ranchers or those using her land to access the beach are in some way incursions into Susan herself, since her self, in this case, seems to extend to the land.

Secondly, he claims, where individuals have a “pure” constitutive relationship with some object – i.e. where the constitutive relationship exists independently of any legal ownership right or property rights in the object –that this can be grounds for them being given legal ownership or property rights in that object.²⁴ He claims that,

“[w]hen a constitutive relationship a person forms to an object through some facts and practices concerning his interacting with it attains a sufficient level of de facto exclusivity, duration, and permanence, so that it becomes appropriate to appeal to personalized values as applying to that person by virtue of that relationship, a successful claim can sometimes be made for the legal recognition and endorsement of this state of affairs by granting him ownership rights in that object... Law's willingness to grant ownership rights based on adverse possession can be interpreted along such lines and so provide the paradigm example.”²⁵

What are the ramifications of these normative implications for the issue at hand?

Dan-Cohen does not seem, in his arguments, to place importance on the relationship of constitutive ownership in the following sense: he does not claim that it is in some way in a person's interests for that relationship to arise. This does not mean, however,

²³ Ibid., 410.

²⁴ Ibid., 432.

²⁵ Ibid.

that his account is without implications for our discussion. One implication may be – Dan-Cohen does not discuss this issue himself so I do not attribute this view to him – that there ought to be a right to be eligible to own housing and personal items, for the following reason. Individuals may, if his arguments are right, form constitutive ownership relations with certain objects – these objects may come to be part of their selves. This, on Dan-Cohen’s account, gives strong grounds for claiming that those individuals should be able to come to have ownership rights in those objects, otherwise they will be vulnerable to troubling incursions into the self. If we view these incursions as of the same type as violations of bodily integrity (itself a basic right), then we will certainly want to take them seriously, and there is a reasonable case for suggesting that we should, as a matter of *right*, prevent them.

If we want to draw out the normative implications of Dan-Cohen’s argument in a different way, we might claim that individuals’ interest in having a *persistent identity though time* is what grounds the eligibility right, since once an object has become a constituent of their self, it may be disruptive to identity to lose possession of it. Opportunities should therefore be available, if Dan-Cohen’s account is right, to keep possession of that object. This, of course, relates to the development and exercise of the two moral powers since, as I have argued above, it may be argued that a stable sense of identity over time is required to be able to persist in the execution of a particular plan of life. Dan-Cohen’s arguments, then, offer grounds to worry about my claim that there is no eligibility right to own housing and personal items.

How can we respond to these challenges to my line of argument? What I will mainly aim to do here is to raise significant doubts regarding the plausibility of the central part of Dan-Cohen’s account. I will also briefly, as a secondary exercise, raise some concerns about the normative implications that issue from it – I suggest that

there is reason to think these counter-intuitive.

Firstly, let me outline my concerns with the account itself. The first point of concern relates to Dan-Cohen's claims about the use of personal pronouns in relation to external objects. Dan-Cohen wants to say that, just as the use of terms like "I" to describe actions that my body performs indicate that my body is, in fact, a constituent of the self, so, the use of terms like "I" to describe events that involve external objects also indicates that objects, too, can become constituents of the self. This use of the "I" to include external objects, Dan-Cohen wants to claim, is *evidence* of being the case that external objects can, in fact, become constituents of a larger self, which extends beyond the body. We may be skeptical, after all, that the process which Dan-Cohen describes in fact occurs. However, Dan-Cohen's claim that the use of personal pronouns to include external objects is evidence of the existence of a constitutive relationship is somewhat undermined by the fact that such pronouns are used in cases in which there is no constitutive ownership relationship at all.

Consider again the taxi case I mentioned some way above. If the taxi I am a passenger in is hit by a car, I am likely to report the event afterwards as follows: "I was hit by a car." Here, Dan-Cohen himself argues, there is no relationship of constitutive ownership going on because my relationship with the taxi lacks an "enduring, continuous, and exclusive basis."²⁶ But now we can ask – if the fact that individuals use "I" to refer to external objects is the *evidence* for the existence of constitutive ownership relationships, yet "I" is frequently used in cases in which there is, in fact, no constitutive relationship, can the use of "I" in reference to external objects in fact be used as evidence in the way that Dan-Cohen wants? Perhaps when I say "I was hit by a car," and I was in a vehicle that I had in fact owned for some time,

²⁶ Ibid., 428-9.

the “I” here does not, in fact signify that the boundaries of my self have expanded to include the car, just as in the case of the taxi it does not. Perhaps the fact that I say “I was hit by a car” in either case is just because of a common mode of expression which does not have any of the deeper significance that Dan-Cohen, in some cases at least, wants to attribute to it. We may be concerned, then, that Dan-Cohen postulates the existence of a particular phenomenon, namely, the expansion of the self to include objects, and yet gives us no reason why we should believe in its existence.

This relates to my second point of criticism. This concerns whether Dan-Cohen’s account does, in fact, have the explanatory power that its author wants to attribute to it. This explanatory power, Dan Cohen wants to claim, is one of the primary reasons in favour of the account – a reason to think, indeed, that there is such a thing as constitutive ownership as he describes it. Here I will consider two phenomena which Dan-Cohen claims his account is able to explain, and argue that, in these cases, his account does not in fact have the explanatory power that he attributes to it. The first is why we feel pride in our possessions. He argues that this is due to the fact that we are, in fact, proud of ourselves, since these possessions – with which we have a constitutive ownership relationship – are partly constitutive of ourselves. The second, already mentioned above, is why we feel troubled by harmless incursions into our property. This is also to be explained by the fact that our property is a constituent of us. The problem with these claims is that they are hard to square with Dan-Cohen’s other claim that in order for a constitutive ownership relationship to exist, the individual needs to have an *enduring* relationship with the object in question. But now consider the frequent phenomenon of people who take pride in possessions that they have only just acquired – new trainers, a new car, or whatever. Dan-Cohen’s account is incapable of explaining this, because my relationship with

my trainers or car is supposed to be enduring in order for the constitutive relationship to exist. Similarly, I can surely feel aggrieved by a harmless incursion into my property, even though I have only just purchased it – again, my relationship with that object is not, immediately after purchase, “enduring” – consequently, on Dan-Cohen’s account, I should not feel aggrieved. This, I think, is a significant problem with the account.

Finally, we might have concerns about some of the normative implications that issue from Dan-Cohen’s account. In particular, one worrying implication is that, where individuals develop constitutive ownership relations with objects, they therefore acquire a strong claim to those objects. This is the kind of argument that is needed, of course, if Dan-Cohen’s account is to ground an eligibility right in the way suggested above. Consider, for example, the following case: Bill steals a car from a car-rental organization, and manages to possess the car for a number of years before he is caught.²⁷ Now, in the intervening time, Bill has come to develop a relationship of constitutive ownership with the car. Bill now has a strong claim to continue to possess the car, since to take it away from him would be in some way to damage his continued identity, or be a troubling incursion into the self. There are two conclusions to draw from this example. The first is that it seems problematic to have an account that results in the conclusion that Bill should be able to keep the car. But the second, simple concern seems to be this: we might not think, in fact, that it *would* be problematic to take the car away from Bill. It is difficult to really feel the force of the conclusion, here, that doing so would be a way of seriously harming or wronging Bill, or that Bill would have any reasonable grounds for complaint.

This concludes my discussion of Dan-Cohen’s account. The next and final

²⁷ Let us assume for the purposes of this example that Bill is not stealing the car as a consequence of suffering any material disadvantage.

Hegelian account I consider, however, is that offered by Margaret Jane Radin, which raises some similar issues to those considered here.

5. Margaret Jane Radin

I now turn to consider our final Hegelian account, offered by Margaret Jane Radin. In some ways Radin's account is similar – although somewhat more straightforward – to that offered by Dan-Cohen.²⁸

Like Dan-Cohen's, Radin's view of property is what might be called a “constitutive” view. She argues that

“[m]ost people possess certain objects they feel are almost part of themselves. These objects are closely bound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world. They may be as different as people are different, but some common examples might be a wedding ring, a portrait, an heirloom, or a house.”²⁹

For Radin, evidence of such a relationship is to be found in how people *feel* about certain objects – they feel, as she states in the quotation above, that certain objects are “almost part of themselves” – and, relatedly, in how they respond or would respond to the loss of those objects. So, she argues,

“[o]ne may gauge the strength or significance of someone's relationship with an

²⁸ Although I deal with Radin's account second, Radin's account preceded, and was no doubt to some extent influential on the development of, Dan-Cohen's.

²⁹ Radin, “Property and Personhood,” *Stanford Law Review* 34, no. 5 (1982): 959.

object by the kind of pain that would be occasioned by its loss. On this view, an object is closely related to one's personhood if its loss causes pain that cannot be relieved by the object's replacement. If so, that particular object is bound up with the holder.”³⁰

Radin uses the example of a wedding ring. If a wedding ring is lost or stolen, nothing will make up for the loss of that ring – furnishing the individual in question with money to purchase a replacement will not, in Radin’s words, go very far towards restoring the status quo.³¹ This way of relating to an object is to be contrasted, Radin claims, with relating to an object for “purely instrumental” reasons – for example, the way that the owner of a shop might relate to the products that he or she sells. Here, because the objects in question can be replaced with other goods of equal market value, they are what Radin calls “fungible property.”³²

Radin wants to claim two things regarding the personhood relation. The first is that the constitutive relation can ground rights in particular objects. So, she claims

“Once we admit that a person can be bound up with an external ‘thing’ in some constitutive sense, we can argue that by virtue of this connection the person should be accorded broad liberty with respect to control over that ‘thing.’”³³

But the second seems to be that it is also desirable that individuals should come to form constitutive relations with external objects. So, Radin claims in her introduction to “Property and Personhood,”

³⁰ Ibid.

³¹ Ibid., 959.

³² Ibid., 960.

³³ Ibid.

“to achieve proper self-development – to be a *person* – an individual needs some control over resources in the external environment. The necessary assurances of control take the form of property rights.”³⁴

This seems to imply, at least, that Radin believes the constitutive relation is significant in individual self-development. Later, too, she states that “a well-developed person must invest herself to some extent in external objects.”³⁵

The details of Radin’s case that property is connected to personhood can be expressed as follows: on a number of theories of personal identity, external objects can be seen to feature significantly in what Radin calls “self-constitution.”³⁶ In Neo-Lockean theories a person is understood as “continuing self-consciousness characterized by memory.”³⁷ But memory, Radin claims, can be vested in the world of objects – photo albums, diaries, heirlooms, and homes are a few of the things people mention – consequently these objects can be considered to be part of the person in question. In a second theory of the person what is important is “a continuing character structure encompassing future projects or plans, as well as past events and feelings.”³⁸ Here, Radin argues, if property is involved in the expression of certain of my character traits, then it looks as though this property has a significant connection to my personhood. Finally, on Hegel’s view of the person, the self “has no concrete existence until ... [the will] acts on the external world.”³⁹ Consequently, “the person becomes a real self only by engaging in a property relationship with

³⁴ Ibid., 957.

³⁵ Ibid., 961.

³⁶ Ibid., 967.

³⁷ Ibid.

³⁸ Ibid., 968.

³⁹ Ibid., 972.

something external.”⁴⁰ So, on Hegel’s theory, one cannot have a self in the first place unless one has a particular type of relationship with objects in the external world – a property relationship.

Radin argues that the law should reflect the fact not just that people *do* come to have a constitutive relationship with certain objects, but also that they should be allowed to.⁴¹ Let us now consider the implications that this has for an account of basic rights to ownership. What matters from the perspective of the personhood view seems to be that individuals should be able to keep possession of items with which they have a constitutive relationship for as long as they want to. Radin talks of the natural “ebb and flow” of individuals’ relationships with objects – a wedding ring may cease to have significance for me if I then become separated from my spouse, to give just one example.⁴² Consequently constitutive relationships may be temporary rather than permanent, but it seems to be Radin’s view that it is up to each individual to decide when some object ceases to have any central importance in their lives. The consequence of this train of thought seems to be that the property rights which will be of the most importance to individuals will be rights of *control*, and that when it comes to objects that individuals are likely to develop constitutive relationships with, individuals should be able to exercise those rights of control for as long as they want. However, we may also think that certain rights of transfer and bequest become important on Radin’s account. If we accept her account, we probably want it to be the case that parents, for example, can ensure that their children continue to retain control of certain items (including, perhaps, the home in which they have lived) which have become bound up with their personhoods as a consequence of having grown up with them.

⁴⁰ Ibid., 973-3.

⁴¹ Ibid., 994.

⁴² Ibid., 977.

The normative implications of Radin's account are therefore somewhat at odds with the claim that I have made that rental rights (rights that are certainly not permanent) over housing and personal items is sufficient for the development and exercise of the two moral powers. For Radin, what is necessary for the proper development of identity, and its persistence through time, is that individuals should be able to retain control of those objects which have become "part of" them. The implication of this claim is that there should at least be a basic right to be eligible to own certain items. Furthermore, the things that Radin's account takes to be paradigm cases of items with which we have constitutive relationships include, importantly for the present discussion, homes and certain types of personal items – heirlooms, photo albums, wedding rings, etc.

How convincing, then, is Radin's account? The question is whether we should really believe Radin's claim about the close relationship between having ownership rights over certain objects and individual identity – in particular, the claim that these rights are necessary for the constitution or persistence of individuals' identity. We can, after all, grant the claim that individuals become *attached* to certain items, or view those items as important, without this having any implications for what should end up being protected as part of the scheme of basic rights and liberties. But it is this aspect of Radin's account which is not sufficiently persuasive. Indeed, this assessment of Radin's view is, in fact, critically quite well rehearsed.

John Christman, in a review essay on Radin's work, points out for example that most people move house a number of times over their lifetime without any particularly troubling loss or change of identity.⁴³ Radin's account can accommodate this fact if the changes are motivated by a sense that the place in question no longer

⁴³ Christman, review of *Reinterpreting Property* by Margaret Jane Radin, *Ethics* 106, no. 3 (1996): 649.

had a central place in that person's identity, or motivated by a *desire* for identity change, but people surely move for a host of more pragmatic reasons – because they are being evicted, because they can no longer afford to live in the same place, because they can afford to live somewhere nicer, because they have to move cities or countries for work – without this having any very damaging effect on their sense of self. If homes were indeed “bound up” with personhood wouldn't these frequent changes be experienced as more problematic?⁴⁴ Radin claims her view has a mainly intuitive basis, but here the intuition does not seem to be particularly persuasive. Christman points out here that Radin may in fact be making a substantive perfectionist argument about what individual well-being consists in. She may be arguing that even if we do not currently have our identities bound up with homes in this way, we should.⁴⁵ This view, however, is even more problematic from a Rawlsian perspective, since it is based on a particular view of human flourishing and this seems inconsistent with liberal neutrality.⁴⁶

Radin's claim that certain items are essential to the continuation of identity might seem more plausible when it comes to personal items than housing. People can be very closely attached to certain items – Radin, as we have noted, uses the example of a wedding ring, or an heirloom. However, there are two problems with this claim. The first is that being attached to something is not the same as requiring it for continued identity. The loss of a wedding ring might be extremely painful, but it is not clear that it would amount to a significant harm to identity. What Radin really needs here is to move the basis of her account from an intuitive one (it just seems to be the case that objects are bound up with identity) to an empirical one – more evidence is needed, in other words, for this claim. The second problem, highlighted

⁴⁴ Radin, “Property and Personhood,” 959.

⁴⁵ Christman, review of *Reinterpreting Property*, 649.

⁴⁶ Ibid.

by J.W. Harris, is that on Radin's account the items which it will be important for individuals to own will be a relatively small subset of what we normally consider to be an individual's personal items.⁴⁷ They are things which are of great personal significance, like, for example, a wedding ring. Even if it were to be conceded that these things must be privately owned (which I do not, for reasons given above, think it should be), the majority of an individual's personal items could still be owned by the state.

6. Objections and exceptions

This concludes my survey of Hegelian accounts. I have shown that the available accounts which aim to connect the development of agency and the development and persistence of identity with the ownership of housing and personal items fail to do so in a convincing way.

So far in this thesis, I have been arguing that Rawlsians cannot justify the inclusion of a right to own, or to be eligible to own, housing and personal items amongst the basic rights and liberties. This is because the adequate development and exercise of the two moral powers can be protected if individuals exercise a lesser set of rights, rental rights, over housing and personal items. Let me now consider, firstly, an objection to the way that my arguments have proceeded so far, and, secondly, some exceptions to the conclusion I wish to draw.

The objection to the way that my argument has proceeded is as follows: that I have not considered a number of significant lines of argument which connect ownership to the development and exercise of one of the moral powers, the capacity

⁴⁷ *Property and Justice*, 223.

for a conception of the good. There are, in fact, three lines of argument that I have neglected to discuss, to which I will now give consideration. The first is that in order to carry out conceptions of the good involving housing and personal items, individuals need reliable access to those items. This requires ownership rights. The second is that people's conceptions of the good may *involve* the ownership of housing and personal items. Both of these arguments seem to establish eligibility rights rather than actual ownership rights – only those who have conceptions of the good which require ownership of personal property items need to actually be owners of those items. Finally, it might be claimed that a right to be eligible to own housing and personal items is required because doing so ensures that the widest range of conceptions of the good is available for citizens.⁴⁸

How plausible are these arguments? Let us consider the first argument, which claims that individuals will often need reliable access to housing and personal items in order to carry out their conceptions of the good, and that ownership rights are required for this. I would accept the claim that individuals need reliable access to housing and personal items in order to carry out their conceptions of the good, but it does not seem right to say that this requires ownership rights. The access offered to goods by rental rights in the two scenarios that I have outlined *is* reliable, given a certain legislative context which, for example, fixes the rental terms on items rather than allowing these items to be recalled by their owners at the latter's discretion. The renter in this scenario knows both how long they will be in possession of the item for, and that during this time their possession will be uninterrupted. Consequently, their access to the item can be described as "reliable."

⁴⁸ Thank you to David Miller for suggesting these arguments to me.

The second argument claims that some people's conceptions of the good involve ownership of housing and personal items. This may be true, but this alone is not sufficient to establish a basic right to own these things. The basic rights and liberties, on a Rawlsian picture, are not intended to protect any one individual or group of individuals' ability to carry out their preferred conception of the good. The only exception to this, which should be noted here, is that if it is the case that it was a central aspect of worship for some religion that individuals should own a particular item or set of items, then it would be incompatible with freedom of worship not to protect as a right the ownership of those items.

The third argument is that a right to be able to own housing and personal items is required because protecting one ensures that the widest range of conceptions of the good is available for citizens. This argument makes two claims. The first asserts that Rawlsians are committed, as a consequence of their commitment to the two moral powers, to ensuring the widest range of conceptions of the good is available to citizens. The second asserts that a wider range of conceptions of the good can be realized in a society where individuals have or are able to have ownership rights over homes, personal items, and so on than in one in which citizens have or are able to have only rental rights over those items.

I will not, in fact, respond to this objection here, but instead postpone discussion of it until a later point in the thesis. This is because the objection in question is an important line of argument used by John Tomasi to try to establish that a basic right to be able to privately own *productive* property should be included amongst the set of basic rights and liberties. In the course of my discussion of Tomasi, in Chapter 4, I consider and reject this line of argument.

Having dismissed these three lines of argument, I now turn to the consideration

of three exceptions to my claim that the ownership of housing and personal items should not be protected as a basic right.

The first exception relates to freedom of worship, and has been discussed above. In essence, citizens may have a basic right to be eligible own certain items – items which, as part of a significant religious practice, must be owned – as part of their freedom of worship.

The second exception relates to items whose use involves their being consumed. Now, in order for Rawlsian citizens to carry out their conceptions of the good – as discussed in the section above, and will be discussed at much greater length in the next chapter – those citizens will need to have reliable access to a range of items. They will also – again, as discussed at length in the next chapter – need reliable access to what we might call “personal necessities”: those things required for individuals to lead a minimally decent life. However, certain types of item that count as either personal items or personal necessities are also things which are consumed when they are used. Food is an obvious example, but also a number of other things fall into this category: toiletries, cosmetics, and cleaning products, for example. With respect to these types of item, rental rights would not be sufficient, since rental rights do not include the right to consume or destroy the item in question. Rawlsian citizens, then, have a basic right to have a more extensive set of rights than rental rights over consumable items. There is a question mark here about whether the more extensive set of rights do, in fact, amount to ownership, since citizens need not, for instance, have the right to transfer the item in question to others. However, it might plausibly be claimed that such rights do, in fact, constitute ownership on a commonsense understanding of this term.

The third and final exception relates to items which are not consumable per se, but which we might think would it would be unhygienic or unsanitary to provide to people on a rental-only basis.⁴⁹ I am not entirely sure of what precisely what would fall into this category – but potentially intimate articles of clothing (say, underwear) would be candidates for inclusion, as well anything else which would raise hygiene concerns if used by more than one individual. Again, however, there is a question mark over whether the rights that individuals need to have over such items are as extensive as ownership rights – in this case individuals need not have rights of transfer over the items, nor, indeed, the power to consume, destroy, or significantly alter them. Regardless of this however, something more than rental rights is required.

As a consequence of these exceptions, the conclusion of my argument is the following: (1) The Rawlsian set of basic rights and liberties cannot justify a basic property right more extensive than a right to rent housing. (Housing does not, we should note, feature in any of the exception cases above). (2) The Rawlsian set of basic rights and liberties cannot justify a basic property right more extensive than a right to rent personal items – except in the case of religious, consumable, and unhygienic items. In the case of these items a right to have ownership rights, or something close to ownership rights, is justified. It should be noted, however, that as the argument stands at the end of this chapter, the set of personal items that citizens ought to have a right to own or be able to own is significantly narrower than has previously been thought. Furthermore, the majority of things discussed at the beginning of this chapter as being typical included in the category “personal items” – clothes, furniture, pictures, books, kitchen items, equipment and accessories for hobbies and pursuits, jewellery, computers, televisions and other electronic items –

⁴⁹ Thank you to Zofia Stemplowka for prompting me to think about this category of exception.

are not exceptions to my argument. The conclusions of this chapter and the last, then, remain substantial.

7. Conclusion

This, then, concludes my argument for the claim that Rawlsian political philosophy need not include a basic right to own housing and personal items. In fact, the conclusion reached has been that Rawlsian political philosophy need not include a basic right to own housing, and need not include a basic right to own many of the personal items which it is typically thought individuals ought to have a basic right to own, or to be able to own. I have argued, instead, that it is sufficient for individuals to exercise rental rights over these items.

The overall claim which I wish to make in Part 1 of this thesis is that the basic property right that Rawlsians should take to be included amongst the basic rights and liberties – with respect to housing, and with respect to a significant proportion of personal items – is a right to exercise rental rights. I now turn, in Chapter 3, to consider in more detail what a right to exercise rental rights over housing and personal items should be taken to consist in. I also turn to the question of whether it can be established that rental rights are, in fact, *necessary* for the development and exercise of the two moral powers. I will argue that this can be established.

Chapter 3: The Right to Rent

1. Introduction

The major purpose of the preceding chapters has been to establish the following claim: that a Rawlsian account of justice cannot justify a basic right to own housing and, with certain exceptions, a basic right to own personal items. What a Rawlsian account can justify with respect to housing and much that falls under the heading “personal items” is not more extensive than a right to have rental rights.

In order to have fully discussed the question of the Rawlsian position on housing and personal items, however, we need to establish not just what cannot be justified, but what can. This is the purpose of the present chapter. Here, I argue that a Rawlsian scheme can justify a basic right to have rental rights over housing and those personal items not identified as exceptions to the argument at the end of the last chapter.¹ The basic right to have rental rights over housing and personal items in fact consists of three rights:

1. a right to (actually) have rental rights over housing.

¹ For details of the exception cases see the previous chapter.

2. a right to (actually) have rental rights over a subset of personal items,
“personal necessities.”
3. a right to (be eligible to) have rental rights over a wide range of other personal items.

In this chapter, I will consider separately what can be said in favour of each of these rights. I will argue that the right to (actually) have rental rights over housing can be justified on the basis that this provides citizens with the *privacy* and *stability* required for the adequate development and exercise of the two moral powers. I will argue that the right to (actually) have rental rights over a subset of personal items, personal necessities, can be justified on the basis that this also provides citizens with the *privacy* and *stability* required for the adequate development and exercise of the two moral powers. Finally, I will argue that the right to (be eligible to) have rental rights over a wide range of personal items is justified by citizens’ interest in being able to pursue a wide range of conceptions of the good.

The arguments discussed in this chapter will be, to some extent, familiar ones, since we will already have encountered a number of them as potential arguments for the ownership of housing and personal items. My claim here is that these arguments, whilst inadequate for the justification of a right to *own* housing and personal items, are – if somewhat expanded and altered – successful in establishing a right to *rent* these items. In order to show that these arguments are successful in establishing rental rights, I will consider and reject the following claim: that rental rights are not *necessary* for the development and exercise of the two moral powers.

Once I have rejected this claim, I will turn to deal with a number of important residual issues. Firstly, I have claimed that the basic right to rent housing and

personal items involves a right to *actually rent* certain things. This means that, on my account, the right has distributive implications. This might be thought to be problematic from a Rawlsian perspective; I will argue that this is not the case. Secondly, I consider and dismiss a feminist challenge to my defense of rental rights. Thirdly, in previous chapters I have claimed that rental rights must operate in a certain legislative context in order for the development and exercise of the two moral powers to be properly protected. I will spell out here what that context is. Finally, I will consider the issue of state access to housing over which individuals exercise rental rights.

2. Preliminaries

Before setting out and defending the basic right to rent housing and personal items I will briefly recap some of the background – set out more fully in Chapter 1 – needed to make sense of this right and its grounds.

Firstly, on a Rawlsian scheme, the basic rights and liberties have their special status in virtue of their relationship to the two moral powers – the capacity for a conception of the good, and the capacity for a sense of justice. These are interests which are taken to be fundamental for citizenship. The basic rights and liberties are taken to have a particularly close relationship with the two moral powers such that protecting those rights and liberties are taken to be “essential for [their] adequate development and [their] full and informed exercise.”² In Chapter 1, I noted that Rawls distinguishes between two types of basic liberty – what I have called the “primary” basic liberties (such as freedom of speech, association, and the political

² Rawls, *Justice as Fairness*, 112.

liberties) and the “supporting” basic liberties (“the liberty and integrity (physical and psychological) of the person and the rights and liberties covered by the rule of law”).³

The primary basic liberties are themselves necessary for the development and exercise of the two moral powers; the supporting basic liberties are necessary if the primary basic liberties “are to be guaranteed.”⁴

I have also noted in previous chapters that when it comes to the right to personal property Rawls is not clear as to whether this is a primary or supporting basic liberty. In fact, he makes comments which suggest both. For instance – in his classification of the liberties into two different categories Rawls does not include the right amongst the primary basic liberties and most commentators have taken the right to be a supporting liberty, part of the liberty and integrity of the person.⁵ On the other hand, Rawls also claims that this right is itself necessary for the development and exercise of the two moral powers, because it protects two significant interests, personal independence and self-respect.⁶ In previous chapters I broadened the potential grounds for the right to personal property to consider a wider range of interests (interests which mediate between the right to personal property and the development and exercise of the two moral powers). These were interests in: identity and agency; self-respect; independence; privacy; and control.

Secondly, I distinguished between the right to be eligible to own some item X and the right to actually own some item X. To sum up, the distinction is as follows: if I am eligible to own some item X, I cannot be ruled out of the class of potential owners; if citizens have a right to be eligible to own some item X, therefore, none of them can be ruled out of the class of potential owners. A right to be eligible to own X

³ Ibid., 113.

⁴ Ibid., 114.

⁵ Freeman, Rawls, 48.

⁶ *Justice as Fairness*, 114.

has no distributive implications. On the other hand, a right to actually own X does have distributive implications – if citizens possess such a right, they must actually be furnished with X or with the resources to obtain X (and in the latter case X must be available for them to obtain with those resources – it is no good from the perspective of the right providing me with the money to buy a house if there are no houses on the market). This distinction will remain important for the present discussion, although we will not be interested in the difference between a right to be eligible to *own* X versus a right to actually *own* X; instead, we will be interested in the difference between a right to be eligible to *rent* X versus a right to actually *rent* X. The distinction, however, seems to work in the same way. In order for me to be furnished with a right to be eligible to rent some item X it merely needs to be the case that I am not ruled out of the class of people who can rent Xs. If we say that citizens of a Rawlsian just society have a right to be eligible to rent X, what we mean is that they cannot individually or as a group be ruled out of the class of people who can rent X. On the other hand, if citizens of a Rawlsian just society have a right to *actually* rent X, they must either be furnished with some X over which they have rental rights, or they must be furnished with the resources which would enable them to rent X (and X must be available to rent).

Third, let me set out once more what rental rights are taken to consist in. An individual has rental rights over some item X if they possess the following rights and powers over that item: *the right to possess X* – the right to have exclusive physical control over X; *the right to use X* – the right to use X at their discretion; *the right to manage X* – the right to “decide how and by whom the thing owned shall be used.” This right is limited in comparison to that of an owner, and mainly involves being able to admit or deny others access to the item, and control what others do once they

have the item (in addition the owner has powers of management that relate to the upkeep of the item in question); *the right to security* – immunity against expropriation.⁷ This right is also limited in comparison to ownership, since (a) it involves a specific length of term, and (b) there are additional grounds on which the individual can be ejected from the property in question – for instance, causing damage.

It is clear, therefore, that whilst the renter of X might have many of the same rights and powers as the owner of X, they are often more limited versions of these same rights and powers. It is also the case that the renter of X *lacks* certain rights and powers altogether. These are, in particular, the *right to the capital* – the power to alienate the item (i.e. transfer it to others) and the liberty to consume or destroy it.⁸ Although Honoré's *right to the capital* does not explicitly mention the question of *altering* the item in question (perhaps taking a right to alter to be implied by a right to consume and destroy), we can also emphasise that an owner typically has much more extensive rights than a renter to alter the item in question. Also, the set of rental rights does not include *the absence of term* – I am assuming here that tenancies are limited to at most a few years; *the incident of transmissibility* – tenants cannot bequeath X to anyone after their death; *liability to execution*; and *residuary character* – when rights in the property lapse, it is not to the *tenant* but the owner that they return. Finally, as I noted before, the renter is, by definition, in some sort of relationship with the person who has leased the item in question.

⁷ This right takes a different form when considered in the context of rental rights. I will discuss this in greater detail, below.

⁸ Although some who rent do, in actual fact, have certain modest alienation rights over rented items (someone who rents a flat may be allowed to sublet that flat), I have in this thesis not included those rights amongst the set of rental rights. This is because I wish to show that a Rawlsian scheme need not protect such a right as part of a basic property right. For the same reason I am defining rental rights in such a way as to exclude rights to permanently alter the item in question.

It should be noted that although when we talk about renting in ordinary discourse, we generally imply that money has changed hands, I do not intend it to be the case that an individual can only be said to exercise rental rights over some item if they are paying to do so. For instance, a tenant who occupies, without payment, housing owned by the state would be understood on this account as exercising rental rights over that housing, if they exercised all of the individual rights and powers specified above over that housing. The relationship that a renter is in with a landlord need not, then, involve a financial relationship.

As a final preliminary, let me emphasize once more the relevance of the discussion that follows to more than simply a Rawlsian audience – in particular, to those who discuss questions of property more broadly. In what follows I use Rawlsian premises to argue that there ought to be a basic right to rent housing and personal items. The idea that the right to *rent* is type of property right which ought to be considered morally salient when it comes to these items, however, is not one which has any prominence in the literature on property, in part because the distinction between ownership and rental is not acknowledged as important, or clearly spelled out. The contribution of this discussion, then, is the claim that it is the right to rent which should be considered morally salient when it comes to the question of what types of property rights over housing and personal items should be considered to be basic rights. Taking rental rights as basic, I think, makes sense both of our intuitions that private access to certain things is important, whilst accounting for an existing worry – particularly when it comes to housing – that basic interests can be protected without individuals possessing ownership rights.⁹ Furthermore, the discussion spells out in precise terms in what the basic right to rent consists, and the protection of

⁹ For an expression of this worry see, for instance, Cruft, “Are Property Rights?”

precisely what interests should be taken to underpin it. The use of Rawlsian premises, then, should not obscure the wider relevance of this discussion.

3. Rental versus ownership rights

I have now set out what I take rental rights to consist in, and how they should be taken to differ from ownership rights. At this point, however, the question of whether rental rights are really distinct from ownership rights might be raised.

As the reader may recall from Chapter 1, it was pointed out that, on some ways of understanding ownership, rental rights might be taken to be a class of ownership rights. Now, whether this is the case depends on what idea of ownership is adopted. As shown above, if we adopt the definition of ownership taken from Honoré, then there is a clear distinction to be drawn between rental and ownership rights. However, it might be argued that, on a definition of ownership that only captures the true “core” of what ownership consists in the difference is not so clear.

On a standard view of what the “core” idea of a concept of ownership consists in, this is in fact not true. Hugh Breakey, for instance, summarises a number of central thinkers when he offers the following characterization of the central incidents of ownership of some resource:

- (1) the duty of nonowners to exclude themselves from the resource.
- (2) the owners’ open-ended capacities to *use* the resource.
- (3) powers to *alienate* one’s ownership of the resource.¹⁰

¹⁰ Breakey, “Two Concepts of Property,” 241.

On this view, there is a clear distinction between rental rights and ownership rights, namely that rental rights include, where ownership rights do not, powers to alienate one's ownership of the resource, powers to alienate being powers to transfer one's ownership of the resource to others, or to otherwise give up one's ownership of the resource.

However, in an objection raised in Chapter 1 with respect to my attribution of a certain idea of ownership to Rawls, it was pointed out that on certain – perhaps less standard – definitions of ownership, the distinction between rental and ownership rights is not so clear. The definition discussed during this objection was that offered by J.W. Harris. On Harris's view the idea of attempting to come up with a central concept of ownership gives way to attempting to characterize a *spectrum* of "ownership interests" ranging from what Harris calls "full-blooded ownership" on the one hand, to what he calls "mere property" on the other.¹¹ Here, we are interested in the fact that at the "mere property" end of the spectrum, having an ownership interest in something comes close to having what I have called "rental rights" over that thing. This is because, for an individual to have an ownership interest in something Harris thinks two conditions need to be satisfied: firstly, that the party in question should have privileges to use and powers to control that thing which are "open-ended – that is, they cannot be concretely listed," and second that they are able to use that thing for self-seeking purposes.¹² Rental rights, as I understand them, fulfill these two conditions. Individuals have privileges to use and powers to control the thing in question which are open-ended. Those who have rental rights over resources are not constrained to use those resources for a particular purpose or purposes. Second, they can use those resources for self-seeking purposes. They cannot, of course, use it for

¹¹ *Property and Justice*, 5.

¹² *Ibid.*

commercial or income-generating purposes; however, I do not take commercial or income generating uses to exhaust Harris' category of "self-seeking." For instance, Harris includes as a self-seeking use of some item using it for "exchanged favours."¹³ So, for instance, if I let my neighbours sleep in my spare room whilst their plumbing is being repaired, on the basis that if I do so, they will let me use their garden for my children's birthday party, this counts as a "self-seeking" use of the room. Such uses are allowed by those who have rental rights over some space.

What we have shown, then, is that those who have rental rights over some item have what Harris calls an "ownership interest" in that item. Consequently, it might be thought that rental rights are simply a sub-species of ownership right, not a distinct category. This would in fact have consequences more for the framing of this discussion, rather than the substance. I would simply be arguing for the importance of one type of ownership interest – from the perspective of basic rights – rather than another. I would be arguing for the importance of a very minimal type of ownership interest – as Harris calls it a "mere property" interest – over a more "full-blooded" one.

However, I think that it would be a mistake to proceed with discussion in these terms. To use Harris' terminology in this case is, firstly, obfuscatory. When we talk about "ownership interests" we could be referring to a wide range of different sets of rights; the terminology therefore unhelpfully permits equivocation within our arguments. Secondly, to talk of "ownership" when simply rental rights are present ignores a clear ordinary language distinction between ownership rights and rental rights. Just as those who have defended the idea of a coherent notion of ownership against those who would deny that such a notion ought to be in use on the basis of

¹³ Ibid., 28.

“the clear meaning and use of the term [“ownership”] in theory and practice,”¹⁴ so too can we defend the distinction between rental and ownership on the same grounds – particularly, on grounds of the “clear meaning and use of the term... in practice.” A commonly used phrase such as “I don’t own my house, I rent it,” suggests that these terms are used as mutually exclusive; the term “rent” is not used to pick out a *species* of ownership. Finally, the arguments of this thesis aim to show that rental rights are an important *normative* category. Consequently, if we simply conduct our discussion in terms of “ownership interests” we will fail to offer a view of the normative terrain which picks out the property-relations which should be considered significant.

For these reasons, then, I take it that talk of “rental rights” as a distinct category of property right from ownership rights is appropriate.

4. Justifying the right to rent (1) – housing.

I now turn to the matter of justifying the three rights which, I claim, make up the Rawlsian basic right to rent housing and personal items. In what follows, I will set out what I take to be the *best* arguments for these rights in turn. I will not be exhaustively re-visiting all of the arguments from the previous chapters, and considering how they fare when it comes to the attempt to justify rental rights. I will, however, be claiming that at least some of the rights in question (for instance, the right to (actually have) rental rights over housing) protect more than one basic interest and that the rights considered together protect the development and exercise of the two moral powers in a number of different ways. The fact that the three rights to be defended here protect the development and exercise of the two moral powers in a

¹⁴ Breakey, “Two Concepts of Property,” 241.

number of different ways makes the basic right to rent right under consideration a significant basic right.

First, then, we consider the following right:

1. a right to (actually) have rental rights over housing

Here, I will consider the following arguments for a right to have rental rights over housing:

(1a) that citizens' interest in self-respect requires them to have rental rights over their living spaces.

(1b) that citizens' interest in personal independence requires them to have rental rights over their living spaces.

(1c) that citizens' interest in guaranteeing the primary basic liberties requires them to have rental rights over their living spaces.

(1d) that citizens' interest in *stability* requires them to have rental rights over their living spaces.

Rental rights, as I have just set out, are a bundle of rights consisting of five major rights – the right to *possess*, the right to *use*, the right to *manage* and the right to *security*, and a right to a certain minimum length of term. Not all of the arguments (1a)-(1d) will, individually, establish that citizens should have all five “sticks” in the

rental rights bundle over their living spaces. Instead, different arguments will establish that citizens should have different “sticks” with respect to their living spaces; collectively, the arguments will establish that citizens should have all five “sticks” with respect to their living spaces.

To give a brief summary of these arguments, I will claim that (1a) and (1c) can establish that citizens should have the right to *possess* and *manage* their living spaces. (1b) can establish only that citizens should have (a limited) right to *possess* their living spaces. (1d) can establish that citizens should have the right to security, and to a minimum length of term with respect to their living spaces.

As the reader will have noted, this summary of the arguments to follow omits to mention an argument which establishes that citizens should have the right to *use* their living spaces. Indeed, in the arguments that follow, I will not discuss the right to *use* in any great detail. This is for the simple reason that it should be seen as uncontroversial that citizens of a Rawlsian just society should have a basic right to use some living space. The right to use, to recall, is a license to use some space not just for a specific purpose, but for a wide range of purposes, as chosen by the user.¹⁵ In J.W. Harris’ terminology, the individual’s privileges to use the space in question are “open-ended – that is, they cannot be concretely listed.”¹⁶ It seems uncontroversial to argue that citizens of a Rawlsian just society should be able, as a matter of basic right, to have open-ended use privileges over some living space. As a matter of personal dignity, they need to have somewhere where they are housed, where they can perform the day-to-day tasks necessary for basic human existence, and where they can relax and be at leisure. Without a sense of basic dignity, individuals cannot have the sense of confidence in their way of life which, as discussed in earlier

¹⁵ This is compatible with some limits on the use to which the space can be put.

¹⁶ *Property and Justice*, 5.

chapters, is taken to be part of Rawlsian self-respect and is thus required for the development and exercise of the two moral powers. Furthermore, of course, unless individuals can carry out the tasks necessary for basic human existence, they lack a fundamental pre-requisite both for developing and exercising their conception of the good, and for developing and exercising their sense of justice.

The question which will occupy us for the duration of the discussion about housing is, then, not whether citizens should have a right to use housing, but whether the other rights in the rental rights “bundle” can be established with respect to housing. I will be arguing, of course, that they can.

a. Privacy

At least some of the arguments which follow – in particular, self-respect and personal independence arguments – might be thought to be united in having to do with the notion of privacy. Let me briefly explain here how talk of privacy might be thought to be relevant to, and will feature in, the discussion that follows.

The question of what talk of privacy is supposed to be about is in fact a rather vexed one. Judith Jarvis Thomson, for instance, famously claims that we cannot make sense of an independent concern about privacy; instead, our interest in privacy is reducible to an interest in not having ownership rights in our possessions and ownership-like rights in our bodies violated.¹⁷ Annabelle Lever rejects Thomson’s claims in this respect, but agrees with Thomson’s other claim that privacy is not, in fact, a *unified* notion. Lever identifies a number of different interests which we discuss under the heading of “privacy” – interests in “solitude and seclusion”

¹⁷ Judith Jarvis Thomson, “The Right to Privacy,” *Philosophy & Public Affairs* 4, no. 4 (1975): 295-314.

“anonymity and confidentiality” and “intimacy and family formation.”¹⁸ These interests have little in common, Lever claims, except that they can all coherently be referred to under the heading of “privacy.”

The discussion which follows is premised on the falsity of Thomson’s views, but remains neutral when it comes to the question of whether privacy is a unified concept or not.¹⁹ I must reject Thomson’s view because I will claim that interests in, for instance, confidentiality are *grounds* for having certain kinds of property rights. This argument will make little sense if we accept Thomson’s view that our interest in confidentiality can be explained by the fact that we have certain kind of property rights in, for instance, our homes and belongings. Furthermore, the kind of property rights Thomson is interested in are *ownership* rights. It will be worrying for an account such as the one put forward in this thesis – an account which downplays the importance of ownership – if we cannot account for our interest in confidentiality except in terms of ownership. On the other hand, the question of whether there is anything in common between the different privacy interests has no relevance to the discussion to follow – we need, at most, to recognise that the interests which fall under the heading “privacy” are significant ones.

How plausible are Thomson’s views? Not very, I think. As Thomas Scanlon and others have noted, ownership and privacy do seem to come apart in a way Thomson’s account does not permit. Thomson uses the example of A using an X-ray device to look inside B’s safe, in order to see a pornographic picture that B has placed there. The concern here, Thomson claims, is that the pornographic picture is *owned* by B, and ownership implies that in order to look at the picture in question, A needs

¹⁸ Lever, *On Privacy*, 71.

¹⁹ Some would disagree with Lever on this issue – I think Thomas Scanlon would count as one of these. See his “Thomson on Privacy,” *Philosophy & Public Affairs* 4, no. 4 (1975): 315-322.

B's consent.²⁰ However, Scanlon points out that it seems like some interest of B's is violated by A's actions, even if B owns neither the picture nor the safe – if B, say, has borrowed both from a friend.²¹

To return to the question of the relationship of privacy talk to the discussion that follows, this relationship is as follows. In what follows, I will claim that individuals have an interest in being able to perform certain acts without being observed or listened to, and have an interest in not having sensitive information about themselves shared with (unchosen) others. We might call these privacy interests.²² I will also discuss individual's interest in being able to be alone, and their interest in being able to be alone with chosen others. This, too, might be called a privacy interest. I will most often be talking about these interests as having instrumental importance – as being importantly related to self-respect and personal independence in particular. However, I will for the purposes of the discussion below avoid actual talk of privacy. This is because the term is too vague to be helpful in the discussion that follows. In particular, we might worry about the possibility that it makes sense (on some accounts) to use the phrases “X has privacy” and “X has the power to exclude over some space” interchangeably²³ – in other words, we might worry about the possibility of arguing that having the power to exclude *is* a privacy interest. Given this possibility, avoiding the term “privacy” will prevent accusations that the argument to follow begs the question, or at least biases the account by using a loaded term.

²⁰ Unless B has left the picture lying around, which B has not in this example. For further details of the account see Thomson “The Right to Privacy.”

²¹ Scanlon, “Thomson on Privacy,” 318. For further concerns about Thomson's account, see Lever *On Privacy*, in particular chap. 4.

²² This is, in fact, close to how Scanlon defines privacy. See Scanlon, “Thomson on Privacy.”

²³ In previous chapters, the reader will remember, I did use the term “privacy” in this sense.

In the discussion that follows, however, I will draw on various contributions to the privacy literature in order to help make sense of why we might view, for instance, confidentiality, as significant.

b. Self-respect arguments

Let us now turn to the arguments themselves. I start by considering the following argument:

(1a) citizens' interest in self-respect requires them to have rental rights over their living spaces.

I claim that citizens' interest in self-respect does require that they have certain rental rights over a living space. This is because self-respect requires that citizens are able to perform some acts without being observed or overheard, and also requires that they are able to keep sensitive information about themselves from being known by unchosen other parties. These things, I argue, require the exercise of certain rental rights.²⁴

Rawlsian self-respect has been taken in this thesis to consist of two elements: one's "self-confidence as a fully co-operating member of society...rooted in the development and exercise of the two moral powers"²⁵ and a person's "secure sense of [their] own value rooted in the conviction that [they] can carry out a worthwhile plan

²⁴ I am not, of course, claiming that rental rights are sufficient for the full protection of these interests. An interest in not having sensitive information widely shared – for instance – cannot be fully protected by rental rights for the obvious reason that such information is not all located within the place where one lives. Without rental rights, however, these interests cannot fully be protected.

²⁵ Rawls, *Political Liberalism*, 319.

of life.”²⁶ A Rawlsian just society need not, to recall, guarantee that each citizen in fact feels a sense of self-respect; instead it should put in place the social, political and economic conditions which are generally required for self-respect – in other words, the social bases of self-respect.

There are a wide range of acts that we might think people ought to be able to perform without being observed or listened to by unchosen others, and without information about those acts being known by unchosen others. Stephen Munzer, as I noted in Chapter 1, attempts to capture their range by claiming that they are acts which are “intimate, shameful, embarrassing, or just silly.”²⁷ The need for people to perform some of these acts without being observed/ listened to, or having information shared about them will not ground an argument for rental rights. These are acts like washing, changing, and sensitive aspects of personal grooming. This is because a lockable bathroom door in an otherwise entirely communal home seems sufficient for the protection of people’s ability to perform these acts without observation, and so on.

However, the need for people to perform other acts in this category can form the basis for an argument for rental rights. Such acts are for instance, having certain sorts of conversation (fights, exchanges of confidence or affection) with friends, partners, family members, and so on, having sex, expressing emotion, and many other aspects of a person’s day-to-day life.²⁸ Some acts that fall into this category are part of day-to-day life only in particular circumstances, for instance, individuals may experience some of the aspects of having a serious illness as embarrassing or

²⁶ Ibid.

²⁷ *Theory of Property*, 93.

²⁸ We should note that significant figures in the privacy literature emphasise the importance of privacy (understood as an individuals’ ability to control access to themselves, and access to information about themselves) for personal and intimate relationships. See, for instance, Charles Fried, *An Anatomy of Values: Problems of Personal and Social Choice* (Cambridge, MA: Harvard University Press, 1970); James Rachels, “Why Privacy is Important,” *Philosophy and Public Affairs* 4, no. 4 (1975): 323-333; Robert Gerstein, “Intimacy and Privacy,” *Ethics* 89, no. 1 (1978): 76-81.

shameful, individuals may at times in their lives need to perform intimate acts which they would not usually have to, for instance, breast-feeding a child, or grieving for someone who has died.

In order for our argument to get off the ground, the activities which we are interested in need to be considered either important, or unavoidable. The argument that follows claims that individuals ought to be able to perform certain acts without being observed, overheard, and so on. For this argument to be persuasive, it needs to be the case the individuals ought to be able to perform these acts at all. Many of the acts listed above, and discussed below, are of this nature. Acts related to illness, for instance, we can take to be an *unavoidable* part of everyday life for the duration of the illness. Unavoidable, too, is the expression of certain emotions – anger, grief, and so on. Acts related to intimate relationships we can take to be an *important* part of life. An interest in having intimate relationships (romantic relationships, sexual relationships, parental relationships, friendships, and so on) we can take on a Rawlsian scheme to be very significant – required if individuals are to be able to form, revise and pursue a conception of the good. Such relationships are also thought to be important for mental health.²⁹

A final category of actions we can take to count as “important” are those which are part of people’s conceptions of the good. These actions cannot be concretely listed, since they will vary from person to person. However, it seems highly likely that, for most individuals, there will be some acts that they wish to perform – connected to their life plan – that they would find shameful or embarrassing to perform in front of others, or for others to find out about.

²⁹ On this see, for instance, Mental Health Foundation, *The Lonely Society?* (2010); Sheldon Cohen and Thomas A. Willis, “Stress, Social Support, and the Buffering Hypothesis,” *Psychological Bulletin* 98, no. 2 (1985): 310-357; Peter A. Barnett and Ian H. Gotlib, “Psychosocial Functioning and Depression: Distinguishing Among Antecedents, Concomitants, and Consequences,” *Psychological Bulletin* 104, no. 1 (1988): 97-126.

Furthermore, I have talked about people “finding acts shameful or embarrassing,” but this way of phrasing things is too suggestive of the idea that the performer of these acts generates these feelings – as it were – in a vacuum. With respect to all the acts discussed here, we should be clear that individuals may well find them shameful or humiliating if performed publicly because those who observed or found out about these acts would convey to them their view that the acts *were* shameful and humiliating. If we care about individuals’ capacity for a conception of the good, then, and in particular about individuals’ ability to pursue their chosen life plan, we will want to ensure that these kinds of actions are ones that can be performed without observation, and so on, from unchosen others.

Having established the inevitability and/or importance of individuals performing certain acts, we now need to establish the importance of their performing the acts without being observed, listened to, and so on. The importance – which is really implicit in the discussion above – is as follows: if people have to perform acts that they find shameful and so on in front of others, or in the knowledge that others know or will come to know about those acts, they will experience a sense of humiliation. This is unlikely to be a controversial claim – we are familiar from the literature on privacy with the relationship between “unwelcome and enforced publicity” and “humiliating and degrading people.”³⁰ On a Rawlsian picture, experiencing such a sense of humiliation undermines one’s sense of self-respect, understood as the sense that one’s plan of life, and consequently one’s way of life, is worthwhile. We will be particularly – although not exclusively – worried here about individuals feeling a sense of humiliation with respect to acts which are of central

³⁰ Lever, *On Privacy*, 36. Lever is here talking about certain information being made *widely* available, rather than simply available to any unchosen other party. The comments come in a discussion of the outing of US Marine Oliver Sipple in the US national press. However the point still holds for the present discussion. Ruth Gavison also talks about privacy as important, among other things, because it protects individuals from “censure and ridicule.” See her “Privacy,” 448.

importance to their plan of life, since this will most directly negatively impact on the sense that this plan is worthwhile.

Does protecting citizens' self-respect by protecting their ability to perform certain acts without being overheard, observed and so on require rental rights? This is the question that will concern us for the rest of this section. I will argue that the performance of the relevant acts does require rental rights over some living space – in particular, it requires the right to possess and the right to manage. To be able to conclude this I will have to show that other arrangements – including other arrangements in which individuals have more limited property rights over some living space – are not sufficient for self-respect, or stifle the performance of certain important actions.

This is the kind of claim made by Stephen Munzer.³¹ Munzer's claim is that whilst it seems clear that we will want individuals to be able to perform certain acts without being observed, overheard, and so on, this does not require those individuals to have what he calls the power to exclude and I am calling the right to possess with respect to some living space. The ability to perform such acts is, on Munzer's view, enhanced when individuals have the power to exclude over some space, but this power is not required. Munzer's claim is that society could put in place non-property rules which would protect individuals' ability to perform such acts. He asks us to consider, as an example of such rules, the "rotation of sailor's bunks on a submarine."³² However, building on Munzer's claims, we should note that in terms of my argument here it would be concerning if some set of property rights more limited than rental rights were adequate to allow individuals to perform the acts in question.

³¹ I paraphrase Munzer's claims here in such a way as to make them consistent with the terminology of this chapter.

³² *Theory of Property*, 95.

Munzer's arguments, then, present a challenge to anyone who wishes to suggest that rental rights, or something close to them, ought to be protected on grounds that individuals ought to be able to perform certain acts without being observed, overheard, and so on. As we will see below, it will take a lengthy argument to show that Munzer's claims are not successful – both when it comes to the arguments from self-respect under consideration, and the arguments for rental rights which are to follow. Surprisingly, then, those in the privacy literature who offer a view sympathetic to my “rental rights” view when it comes to housing – Lever, for instance, stresses the particular significance of rights to “grant and refuse entry to your home”³³ – tend not to consider the type of challenge that Munzer's view poses, and consequently fail to establish in any satisfactory way that rental rights – or their equivalent – are really necessary in the way they claim.

I will dismiss Munzer's argument through consideration of the following cases. They are cases in which, it might be claimed, individual X has adequate protection of their ability to perform certain acts unobserved (and so on), but in which X does not have rental rights over the space in question. I will claim that these arrangements are either not sufficient for self-respect, or stifle the performance of certain important actions because the subject in question anticipates a humiliating or self-respect-damaging experience. The three cases are variants of communal living – in which X and a second individual Y share a living space such as a flat, including a bedroom. Let us assume that X and Y are strangers when the arrangement is set up.

i. Unscheduled absences. X and Y share a flat as described above. There is no guarantee that either individual will be alone in the flat; however, given the

³³ Lever, *On Privacy*, 50. Lever, we should note, thinks that privacy arguments support an interest in being able to have *ownership* rights when it comes to personal items. For a discussion of her argument for this, see Chapter 1.

likely fact that X and Y do not lead exactly the same type of life, each individual is likely to get some time in the flat alone. X and Y can sometimes predict when these times are likely to happen.

ii. Scheduled absences. X and Y share a flat as described above. In this case, society has implemented a set of rules which require those who live together to have differing schedules. Each party therefore gets time alone in the flat, and this time can usually be predicted.

iii. Scheduled, guaranteed absences. X and Y share a flat as described above. As in scheduled absences, society has implemented a set of rules which require those who live together to have differing schedules. Each party therefore gets time alone in the flat, and this time can usually be predicted. In addition, however, there is a rule which prevents each party from returning to the communal space during their scheduled absences (except in exceptional circumstances).

Consider the first variant of communal living, *unscheduled absences*. The first problem with this arrangement is that the ability of (for instance) X to perform certain acts non-publicly [in what follows I use “non-publicly” as a shorthand for not being observed, listened to, or having sensitive information about oneself known by or shared with others] depends on Y’s choices – if Y chooses to remain in the communal space for most of the time, then X’s ability to perform these acts is extremely limited. The second problem is that from the perspective of, say, X, Y’s absences are not predictable – Y may return to the living space unannounced. From the perspective of

X's self-respect, this is troubling. If we are concerned with X's self-respect, we will want it to be the case that X can perform intimate, etc. acts with some robust safeguard in place against intrusion, and, consequently, against humiliating encounters. In *unscheduled absences*, there is no safeguard in place; consequently, X risks a humiliating encounter with Y.

It may be argued, perhaps, that conventions would arise which are intended to protect the occupants of the space from such encounters; indeed, it might be argued that, since such conventions are mutually beneficial, they are likely to arise. However, even if these conventions did arise, they do not seem adequate for protection of citizens' self-respect, since they rely on the willingness of both parties to act in accordance with the convention. This, again, is not a robust enough protection of citizens' basic self-respect.

Now consider the second variant of communal living, *scheduled absences*. In this arrangement, society has attempted to implement communal living in such a way as to protect individuals' privacy. For instance, in order to qualify for sharing a communal space X and Y would have to have differing work schedules. Assuming that this kind of arrangement would in fact be practically feasible, would it be adequate to protect self-respect? It is an improvement from the perspective of self-respect that X can be confident that there will be times when he or she can perform certain actions non-publicly; furthermore, he or she is less at risk of humiliating encounters. However, we might still be concerned that X is not sufficiently protected against those encounters, since there is no rule to prevent Y from returning home unexpectedly, given some change in circumstances. Again, from the perspective of self-respect, we should be concerned about individuals having to perform certain acts without adequate safeguards against those acts becoming public; in other words,

without adequate safeguards against intrusion. *Scheduled absences* does not, in fact, provide those safeguards.

Finally, let us consider the third variant of communal living *scheduled, guaranteed absences*. In this scenario, each individual is *required* to be absent from the communal space for – say – several hours a day, and there is a rule preventing them from returning at any point during those hours (except, perhaps, in some exceptional circumstance). We might want to claim here that there is in fact, a property rule in place in this particular variant of communal living – we might want to say that in this case, both X and Y have a right to occupy the space alone for some period of time, and that during this time the other has a duty not to try to enter the space in question. Regardless of whether *scheduled, guaranteed absences* involves a property rule or not, the rules in place are not, I argue, sufficient to protect self-respect. The concerns I raise here apply, in fact, to all three variants of communal living.

The first concern has to do with the fact that in none of the communal living scenarios does the individual in question have *ongoing* access to a space in which their activities will not be observed, overheard, or intimate details about themselves discovered by others. This is of concern, however, if any of the activities which we might class as intimate, shameful, embarrassing, or silly are themselves either ongoing or unpredictable. In the case in which the intimate activity is itself ongoing, the individual will need ongoing access to a non-public space; in the case in which the activity is unpredictable, the individual will need to constantly been able to have access to a non-public space. Consider, for instance, someone who is going through a difficult time emotionally – for instance, they are grieving. We might think that this was an activity that was ongoing *and* unpredictable – feelings of sadness may rise up

spontaneously in this person, requiring immediate access to some non-public space; feelings of grief may be *ongoing*, unable to be restricted to the times at which the person's co-habitants are absent.

Furthermore, we should consider that X, simply by sharing a living space with Y shares personal information with Y – information about personal routines, individual eccentricities, and so on – that they experience it as humiliating to have shared. Consequently, we would be concerned that simply sharing a space with some other person, if both at points occupy it at the same time, would be humiliating in virtue of facts about oneself being known that one does not wish to be known. Either that, or individuals would cease to be able to “be themselves” in that space – something we would be concerned might undermine their capacity to form, revise and pursue a conception of the good; or perhaps simply undermine their ability to ever be at leisure. The same goes for intimate relationships. Part of what makes an intimate relationship intimate is that each member of the relationship is, on an ongoing basis, able to let their guard down with the other.³⁴ In cases in which a couple had to live communally, this couple would either experience humiliation at being observed whilst that guard is down; or, they would simply cease to let their guard down, which would mean that, really, they were unable to conduct an intimate relationship at all.

Lever makes a claim of this sort in relation to expression in an illuminating passage. She points out that being able to carry out certain conversations without being overheard or recorded,

“enables us to express ourselves in ways that would otherwise be difficult or impossible because embarrassment, self-consciousness, shyness, the desire not to

³⁴ On this see Rachels, “Why Privacy is Important,” 327.

offend, the fear of boring others, or of exposing our ignorance prevents us from trying to articulate our thoughts, feelings and experiences or from conveying them to others.”³⁵

Finally, we should consider that even if two individuals who live communally are never in the space at the same time each may still be vulnerable to the kind of humiliation that will be self-respect undermining.³⁶ If X and Y share a living space, X is likely, in virtue of sharing that space, to have access to intimate information about the other. Even if X and Y have certain property rights over their belongings – so, for instance, both have a duty not to touch or go through the belongings of the other person – it is likely that they will be able to access plenty of sensitive information by simply being frequently present in a space – such as a bedroom – where the other lives.

This concludes the argument that the three variants of communal living are inadequate to protect individuals’ self-respect and/or prevent the performance of certain important actions being stifled. How, then, does this discussion relate to the question of rental rights?

The primary rental right established by this line of argument is that individuals ought to be able to have the right to *possess* some space, and that this right should be continuous for the duration of some period of tenancy as set out in the arguments

³⁵ *On Privacy*, 36. The point is also made by Gavison who claims that “[e]ven casual observation has an inhibitive effect on most individuals that makes them more formal and uneasy.” See her “Privacy,” 447.

³⁶ Two individuals may never be in the same space at the same time in the following type of communal living arrangement: *guaranteed, non-overlapping absences*. This variant of communal living is like the *guaranteed, scheduled absences* except X and Y are required never to be in the communal space at the same time. So, for instance, it could be implemented if X worked night shifts, Y worked day shifts (with no overlap), and if X and Y were required not to return home unexpectedly. (We should of course note that this type of communal living would be almost impossible to implement, except in particular circumstances, and that implementing it across the board might well require violating other rights, for instance, freedom of occupation).

to come – for instance, one year. (Recall, here, that we have already argued that individuals ought have the right to *use* some living space). This is because if we care about individuals having the secure, ongoing, and interrupted ability to be unobserved, not listened to, and not to have sensitive personal information shared with others this would seem to require that others have a duty not to enter the living space in question, unless expressly admitted by the occupant. Without such a duty in place, individuals could not be secure in the knowledge that there would be no intrusions from others.

We can also draw from what was discussed above in order to justify individuals having a right to *manage* over the living space in question. Part of what drives the arguments above is citizens' interest in having intimate relationships. Given the importance of these relationships, we will want citizens to have not just a right to *exclude* individuals from their living space, but a right to *admit* them, too. In addition, however, we will want to allow citizens some control over what visitors do once in the living space – we will want, for instance, for the occupant of the living space to deny their visitor admission into certain rooms of the house, if they choose. This is in order to protect the occupant's ability to keep sensitive information from being known by those visitors, if they wish to do so. The right to admit visitors into one's living space, and the right to exercise certain sorts of control over their behavior once they are in the space together make up the right to manage, as it is being understood here.

c. Personal independence arguments

I now turn to consider the following argument:

(1b) citizens' interest in personal independence requires them to have rental rights over their living spaces.

I will claim that arguments from personal independence primarily establish that individuals should have a right to *possess* some space.

First, I will revisit the argument from Chapter 1 which claims that individuals require privacy (and thus, the right to possess some space) because *physical independence* is required for the development and exercise of the two moral powers. I will suggest that, on deeper investigation, this argument is in fact unconvincing. This is because it is not clear that physical independence requires the right to possess, and also because it is not, in fact, clear that physical independence is required for the development and exercise of the two moral powers. Instead, I will argue that the right to possess is needed to protect personal independence in a different sense.

In Chapter 1, we briefly considered the plausibility of the following argument: that personal independence understood as *physical independence* was required for the development and exercise of the two moral powers, and that physical independence required individuals to have the power to exclude (here, the right to *possess*) over some space. Physical independence was simply understood as the ability to be alone. This was considered to be necessary for the development and exercise of the two moral powers on the grounds that solitary reflection was required for the development of a plan of life, and of an individual's political and ethical views. Furthermore, physical independence was seen to be required for certain sorts of communication; in particular, communication in which the participants do not want to be overheard. It might be claimed that this sort of communication is important if individuals are to receive and discuss relevant information about different ways of life, and about the

ethical and political views. This sort of view, we saw in Chapter 1, is put forward by Robert S. Taylor, who claims that

“freedom of the person (including psychological and bodily integrity), as well as the right to personal property and immunity from arbitrary arrest and seizure, are necessary to create a safe and stable place for the purposes of reflection and communication, without which rationality [the capacity for a conception of the good] would be compromised if not crippled.”³⁷

In Chapter 1, I considered this as an argument for ownership rights, and granted for the sake of argument that it was a plausible argument for rental rights. Here, I reconsider this view.

The first concern here is that it does not seem as though physical independence, understood as the ability to be alone, requires individuals to have anything as extensive as rental rights over a living space. Consider again the variants of communal living discussed above. In the second variant, *scheduled absences*, each individual can be guaranteed some time alone in the living space. This, I think, is sufficient for physical independence, since it provides individuals living in the space with the ability to be alone. The concerns about interruption need not, I think, worry us here, since if an individual is interrupted during reflection or communication of the type discussed here, this is unlikely to be a humiliating experience.

Another variant of this concern claims that we do not even need to be able to occupy some *space* alone in order for reflection or communication of the relevant sort of occur. In recent empirical research, a number of different types of privacy – where

³⁷ Taylor, “Rawls’s Defense,” 261.

privacy was understood as “a boundary control process in which the individual regulates with whom contact will occur and how much and what type of interaction that will be” – were distinguished.³⁸ One type of privacy was *solitude* – defined as “placing yourself in a situation where other people cannot see or hear what you are doing, e.g. going to one’s bedroom and closing the door.”³⁹ A second was *isolation* – “using physical distance to separate oneself from others to obtain privacy. Examples given were going on a hike in the mountains by oneself, or going for a drive in a car alone.”⁴⁰ The research considered a number of different psychological functions of privacy, and the significance of the different types of privacy when it came to individuals carrying out those functions. For our purposes here, significant functions include contemplation, “confid[ing] in others I trust” (we can plausibly use this as a proxy for what I have called “communication”) and “trying out new behaviours.”⁴¹ For all these functions, isolation was found to be as important, if not more important, than solitude. This casts doubt on a physical independence argument for rental rights by suggesting that we could plausibly serve citizens’ needs for reflection and communication by enabling them to access situations of isolation, rather than situations of solitude.

The empirical research in question also provides us with our final concern, which is whether physical independence is required, at all, for reflection and communication of the sort which concerns us here. A third relevant kind of privacy identified by the research under discussion was *anonymity* – defined as “seeking privacy by going unnoticed in a crowd of strangers. Going to a concert alone or going

³⁸ Darhl M. Pedersen, “Psychological functions of Privacy,” *Journal of Environmental Psychology* 17 (1997): 147.

³⁹ *Ibid.*, 149.

⁴⁰ *Ibid.*

⁴¹ Solitude was found to be more significantly associated with what the researchers called “engag[ing] in creative activities.”

to a large shopping mall would be examples.”⁴² For the relevant psychological functions – confiding, trying out new behaviours, contemplation – anonymity was found to be just as important, and sometimes more important, than solitude. This suggests that physical independence, understood as the ability to be *alone* may not, in fact, be required for reflection and communication at all.

We should note that this kind of conclusion is to some extent reflected in the non-empirical literature on privacy.⁴³ Annabelle Lever, for instance, points out that for the purposes of reflection and communication, public parks, gardens, squares, museums, and libraries might provide a similar function to private spaces.⁴⁴ Consequently, a concern for reflection and communication might motivate us to increase citizens’ access to public spaces.

As a consequence of these kinds of concerns, we should consider whether there is another way of forging a connection between personal independence and rental rights. The claim here will be that it is plausible to think that *independence of judgment* is threatened if individuals do not have the right to *possess* some living space.

This argument draws its initial inspiration from existing arguments relating independence of judgment to the ownership of property. Waldron, in a summary of a relatively long tradition of such arguments, suggests that ownership can be considered a necessary condition of independence of judgment in the following way: there is an association, he suggests, between a “readiness to submit one’s judgment to others and relations of economic dependence.”⁴⁵ If an individual has to rely on others (say, on

⁴² Ibid., 150.

⁴³ Again, in the discussion of Lever’s work “privacy” is being used here consistent with its broader understanding, and not in my technical sense.

⁴⁴ Lever, *On Privacy*, chap. 4. Lever does, however, think that private spaces still have an important role to play in protecting privacy.

⁴⁵ *Right to Private Property*, 300.

employers) for their basic subsistence, it is argued, they will “be sensitive to the necessity of not offending and perhaps of pleasing and flattering those on whose say-so he relies.”⁴⁶ When it comes to the economic argument, there are various obvious concerns.⁴⁷ For instance, we can question the proposed relationship between employment and dependency of judgment – do we really think that those who have an employer, in virtue of that relationship, lack independence of judgment? Furthermore, in a society with reasonably generous unemployment support for those out of work citizens are not, in fact, dependent on their current employer for subsistence. Another concern with the argument is that here “property” refers to some owned thing that can provide individuals with the means of subsistence – in other words, productive property. The economic dependence argument is therefore not relevant in the justification of a right to have rental rights over some space since rental rights, as defined here, do not include rights to use the rented space for commercial or income-generating purposes.

However, I think we can relate rental rights to independence of judgment in the following way: rental rights are required because all of the variants of communal living render the occupants in question vulnerable to interactions that undermine their independence of judgment.

The first step in this argument is to set out what the relationship between independence of judgment and the development and exercise of the two moral powers is. I think the relationship is this: if it turns out to be the case that an individual’s plan of life, or their moral and political views, have been developed because the individual in question knows that the plan/views will please another, this is troubling. It is troubling because we think that the individual’s plan of life, and their moral and

⁴⁶ Ibid., 301.

⁴⁷ I draw for my discussion of these objections from Ryan, *Property and Political Theory*, 87.

political views should be in some sense – even if quite minimal – their own.⁴⁸ The same concern applies to plans of life, or moral and political views, that have been developed as a consequence of manipulative or dominating behaviour on the part of some other.

The second step in this argument is to consider the relationship between independence of judgment and rental rights. Consider the three variants of communal living, above. In each of these cases, the two occupants of the living space will share some time in the living space together, and will inevitably interact with one another a significant amount – not just this, but they will, when in their living space, be unable to avoid each other's company. The concern from the perspective of independence of judgment here is not that the presence of a second person prevents the first from engaging in reflection and communication, but that certain inter-personal dynamics might arise which results in the erosion of one person's independence of judgment. Consider the following interpersonal dynamics: X bullies Y; X manipulates Y; X threatens Y; X consistently criticizes and mocks Y's beliefs and ideas (we might think this is just a species of bullying); X's views and ideas (intellectually) intimidate Y sufficiently that Y starts to doubt the validity of his or her own beliefs and desires. All of these circumstances – and no doubt others besides – are ones in which we might be concerned that Y's independence of judgment (and action) are undermined.

Concern about individuals – particularly women – being particularly vulnerable to bullying, manipulation, domination and so on in the private sphere is of course a central concern of many feminist thinkers.⁴⁹ It is also noted by Hayek in his discussion of coercion (which relevantly for the discussion here he defines as when

⁴⁸ As Waldron puts it, we normally understand a citizen to be one “who is in a position to bring his *own* judgment to bear on political issues.” *Right to Private Property*, 300.

⁴⁹ See, in particular, Catherine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989); and Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989).

“one’s man’s actions are made to serve another man’s will”).⁵⁰ He claims that “[i]n some degree all close relationships between men, whether they are tied to one another by affection, economic necessity, or *physical circumstances* (such as on a ship or an expedition), provide opportunities for coercion.”⁵¹ Hayek notes, of course, that many people choose relationships which then turn out to be coercive – however, the important thing for the purposes of the present argument is that the relationships in question should be *chosen*. It is not the case, in a state of affairs in which there is no opportunity to live anything but communally, that the relationships that result can be said to be – in Hayek’s terms – “truly voluntary.”⁵²

One objection to this line of argument might be that we need not provide individuals with rental rights over their accommodation, so long as we provide those individuals with the ability to exit their living arrangements and enter another without too much difficulty. In response to this we can say that if the bullying and manipulative behaviour in question has the effect of reducing individuals’ independence of judgment, we might be concerned that they would not be able to take advantage of the opportunity to exit the relationship. Consequently, we will want to do as much as possible to prevent individuals becoming vulnerable to entering such a relationship – this suggests, I think, that adult persons should not have to live with others unless they have themselves chosen to.

Which of the rental rights considered above are justified by this line of argument? The primary right would seem to be the right to *possess*: I have argued that individuals need to be able to use some space exclusively in order to protect their physical independence. I also argued that there were other concerns about personal security and self-respect which would motivate the same conclusion.

⁵⁰ Hayek, “Freedom and Coercion,” 89.

⁵¹ Ibid., 94 (my italics).

⁵² Ibid.

However, the argument under consideration offers a weaker conclusion that the self-respect arguments considered above. This is because it only justifies individuals having the exclusive use of some space whilst they are in fact present in that space. To see this, consider the following example, which involves is a modification of a property rule suggested by G.A. Cohen.⁵³ X lives in a flat, and whilst X is present in the flat has the exclusive use of it. However, when X is absent from the flat, Y has the right to enter the flat, sit in the kitchen and have a cup of tea. Y is required to clear up after herself, and leave before or as soon as X returns. This situation is not, I think, worrying from the perspective of personal independence, since X and Y have no interaction. It does, however, mean that what the personal independence argument justifies is not a right to *continuous* possession of some living space, which is what we might think rental rights ought to typically involve.

d. The right to rent housing as a supporting basic liberty

Let me now consider the following argument:

(1c) citizens' interest in guaranteeing the primary basic liberties requires them to have rental rights over their living spaces.

I will argue that we can construct a successful argument along these lines for the right to *possess*, and the right to *manage*.

To recall, Rawlsians distinguish between two types of basic liberty, what I have called the “primary” and “supporting” basic liberties. The primary basic

⁵³ Cohen, *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy*, ed. Michael Otsuka (Princeton: Princeton University Press, 2001), chap. 7. Cohen suggests the rule in relation to the use of tools between neighbours.

liberties are those necessary for the development and exercise of the two moral powers; the supporting basic liberties are those necessary if the primary basic liberties are to be protected. So far, we have been considering the basic right to rent housing as a primary basic liberty – it is necessary for self-respect and personal independence, both of which are necessary for the development and exercise of the two moral powers. Here, we consider the claim that certain rental rights are required to protect some of the primary basic liberties. This claim should not, however, trouble the reader since there is no reason to think that the two categories of basic liberty ought to be mutually exclusive.

Here, I am going to set out the following argument: certain rights from the bundle of rental rights are required in order to guarantee freedom of association.

According to Larry Alexander, freedom of association

“refers to the liberty a person possesses to enter into relationships with others – for any and all purposes, for a momentary or long-term duration, by contract, consent, or acquiescence. It likewise refers to the liberty to refuse to enter into such relationships, or to terminate them when not otherwise compelled by one’s voluntary assumption of obligation to maintain the relationship.”⁵⁴

Freedom of association, so understood, can be abridged in two ways: “by prohibiting individuals from associating with those with whom they would otherwise choose to associate, or by forcing individuals to associate with those with whom they would otherwise choose not to associate.”⁵⁵

⁵⁴ Alexander, “What Is Freedom of Association, and What Is Its Denial?,” *Social Philosophy and Policy* 25, no. 2 (2008): 1.

⁵⁵ Ibid.

Here, we are concerned with the second way in which freedom of association can be abridged, namely, by forcing individuals to associate with those with whom they would otherwise choose not to associate. Now, one significant type of association considered in discussions of freedom of association is what is sometimes called “intimate association.”⁵⁶ This refers to the liberty of the individual to choose those with whom they are to have intimate relationships of various sorts – friendships, marriages, sexual relationships and so on. Examples of abridgments of freedom of intimate association might be the following: if the government selected citizens’ spouses for them; if the government prevented certain groups of people from marrying one another, for example blue-eyed people and black-haired people.⁵⁷ However, it also seems to be the case that freedom of association would be abridged if individuals did not live alone – this is because sharing a living space with another person can surely be counted as a form of physical intimacy with that person.⁵⁸ Consequently, if an individual were required to live with other parties, and they did not wish to live with those parties, this looks like an abridgment of their freedom of association – the individual in question is being forced into a type of intimate association with others. More generally, if an individual does not have the power to exclude over their living space, they are consistently vulnerable to forced physical intimacy, in the sense of the forced sharing of a space, with other unchosen persons. Consequently, it looks like the power to exclude, at least, is closely related to, and required by, citizens’ freedom of association. It might be said that an individual’s having the power to exclude over some living space “guarantees” freedom of intimate

⁵⁶ Stuart White, “Freedom of Association and the Right to Exclude,” *Journal of Political Philosophy* 5, no. 4 (1997): 381.

⁵⁷ Alexander, “What is Freedom of Association?,” 1-2.

⁵⁸ This was taken from Hayek’s suggestion that certain forms of physical association counted as a close relationship. See his “Freedom and Coercion,” 94.

association for that individual, since it protects the individual's ability to *not* associate intimately with certain others.

It might be pointed out, in response to such an argument, that the question of when individuals and groups ought to be able to refuse to associate with others is a vexed one. For instance, Stuart White points out a number of grounds on which we might think there is a *pro tanto* reason for us to be able to abridge freedom of association, one of these being when a rule excluding certain people from a group can “reasonably be seen as stigmatizing to those excluded.”⁵⁹ Might not the case in question plausibly be a case in which we think exclusion is unjustified?

There is a good reason to think this is not the case, which is the following: that we do not normally think that freedom of *intimate* association is one which can readily be abridged. White, for instance, talks of a “special right of intimate exclusion.”⁶⁰ White uses the example of someone organizing a birthday party for their friend. The friend in question is a militant atheist, and strongly dislikes Christians, so the friend does not invite any. In this case we think that the friend is justified in the exclusion. This is because, White points out, there is

“a sphere of intimate association in which it is permissible for people to practice whatever pattern of exclusion they like. The basic intuition is clear and forceful. We should all be free to decide and control who our friends and lovers will be (or, more exactly, who they will not be.”⁶¹

He goes on:

⁵⁹ White, “Freedom of Association,” 384.

⁶⁰ Ibid., 386.

⁶¹ Ibid.

“our interest in freedom of intimate association, so understood, is arguably so basic to the free development and expression of ethical personality that exclusion rules which protect this interest have a strong presumption of legitimacy even if they also damage other people's opportunity interests.”⁶²

To this, I would add, that the argument surely applies to other forms of intimacy, in particular, physical intimacy.

I have said, above, that freedom of association arguments also justify individuals having the right to *manage* over some space. In fact, they justify individuals having the right to *admit* others into their living space. This is just the flip side of the arguments already considered: individuals should be free *to* engage in intimate association with others – and many important types of intimate association (as discussed in the self-respect section above) take place within a living space.

Finally, do the arguments we have just considered justify a *continuous* right to possess, or do they justify a right to exclusive use and to admit others which the individual in question only has whilst actually occupying the space? Consider again the example from above in which Y is allowed to enter X's living space whilst X is out in order to have cup of tea. On the one hand, we might think that so long as X and Y do not encounter one another (or only fleetingly), there is no problem from the perspective of freedom of association – X and Y are not really “associating.” On the other hand, however, we might think that someone else being in one's living space, even if one is not there oneself, is a kind of “intimate association,” and if we should get to control who our friends and lovers are, we should also get to control who comes

⁶² Ibid. ‘Ethical personality’ here is defined as “the cluster of commitments philosophical, religious, affective which represent the individual's personal response to fundamental questions of value and meaning and which thereby give his/her life its basic normative shape and direction.” Ibid., 378. As such, it seems closely related to the capacity for a conception of the good.

into our living spaces. This is not because our living spaces are “part of us” in the sense that some of the Hegelians want to argue. Instead the arrangement, and contents of our living spaces often reveal intimate details about ourselves to others, and to have intimate details about ourselves known by others *is* to have a relationship of a certain sort with that person.⁶³ Consequently, I think, considerations relating to freedom of association *do* justify a continuous right to possess.

e. Stability arguments

I now turn to the consideration of the final argument:

(1d) citizens’ interest in *stability* requires them to have rental rights over their living spaces.

So far, I have shown that three of the four rental rights can be established by claiming that they are required to protect self-respect, personal independence, and freedom of association. Now we turn to the question of how a right to *security* and a particular *length of term* for the possession of the other rental rights might be established.

First, let me briefly say something more about these aspects of the right to rent housing. Firstly, the right to security. When considered in the context of a bundle of ownership rights, the right to security is – following Honoré’s definition – an immunity against expropriation. The right to security allows the owner to “be able to look forward to remaining owner indefinitely if he so chooses and remains solvent.”⁶⁴ A right to security is compatible, on Honoré’s account, with the state having the

⁶³ On this point see Rachels, “Why Privacy Is Important.”

⁶⁴ *Making Law Bind*, 171.

power to expropriate the property, but in these cases those who have had their property expropriated must be paid compensation.⁶⁵

When it comes to rental rights, a right to security is not an immunity against expropriation – one cannot have one's property expropriated if one does not own it – but should be understood as a right not to be ejected from the rented housing during the period of tenancy, except as a consequence of the tenant's violation of the terms of the tenancy agreement (I include here failing to pay rent where it is due in cases where rent is paid), or in the case when the owner of the property which is rented out has that property expropriated, for instance as a consequence of bankruptcy. So, the tenant should be able, to modify Honoré's wording, to look forward to remaining a tenant for the duration of the tenancy. In addition, I want to suggest that the same interests which underpin the right to security also suggest that individuals should be able to access tenancies of a minimum term – of around a year. The right to a minimum term of this duration would be violated if citizens were not able to rent property for less than a year although, of course, it is not incompatible with the existence of places with shorter leases.

What, then, is this interest in stability? My claim here is that individuals have an interest in not being compelled to change their place of habitation too frequently, because they have an interest in maintaining a stable personal environment. On a Rawlsian account, citizens have an interest in being able to form, revise and pursue a conception of the good. However, if individuals are subject to significant and repeated disruptions in their personal (living) environment, it seems reasonable to think that they will be prevented from either achieving the appropriate state of mind in which to reflect on their life plan (or, indeed on political and ethical matters), and

⁶⁵ Ibid.

will be unable to devote the kind of mental attention needed to be able to carry out this plan successfully – the mental attention will, instead, be focused on negotiating continual changes in personal environment. Hence, I think, we can in fact endorse part of Taylor’s claim above, namely that without a stable personal living environment, “rationality ... would be compromised if not crippled.”⁶⁶ The thought is that individuals need to be able to sometimes allow the question of their living environment fade into the background if they are to focus on other things.

Other property theorists have argued that individuals have an interest in maintaining the same home environment for a decent amount of time – Margaret Jane Radin, for instance, has argued for rent control and eviction control on the basis that they “foster stability and continuity of residential tenure.”⁶⁷ She claims this based on her own account, summarised in Chapter 2, of the importance of an unchanging personal environment to the development of individual identity, and to sustaining this identity. My argument differs from Radin’s in two ways: firstly, on my view the length of tenancy can be significantly shorter than I think Radin would tolerate; secondly, I reject Radin’s basis for claiming that individuals should have some measure of stability – namely, her views about the relationship between an individual’s home and their identity.⁶⁸

The selection of a year, as the minimum period of tenancy is, of course, somewhat arbitrary. It may be that some want to argue that if it were the case that if individuals moved more often we would still be able to say that they had sufficient stability in their lives; it may also be that some want to claim that individuals need to move less often in order to have sufficient stability in their lives. I do, however, want

⁶⁶ Taylor, “Rawls’s Defense,” 261.

⁶⁷ Radin, *Reinterpreting Property* (Chicago: University of Chicago Press, 1993), 21. For the full statement of her view see *Reinterpreting Property*, chap. 2.

⁶⁸ Again, see *Reinterpreting Property*, chap. 2 for a detailed discussion of Radin’s views.

to resist the claim that individuals need very long tenancies (tenancies, say, of more than a few years) in order to have the kind of personal environment required for the development and exercise of the two moral powers. This claim simply seems to be at odds with our considered judgments.

This, then, concludes my arguments for a right to security and a minimum term length; and thus concludes my arguments for citizens having rental rights over some living space. Before moving on to consider the question of personal items, however, we need to clarify what this “right to have rental rights” consists in.

What I take to have been established in the course of the arguments above is that citizens of a Rawlsian just society should have a right to *actually* have the rental rights above over housing, rather than a right to *be eligible* to have these rights. This is because it seems clear to me that what is required to protect the interests in question is that citizens should actually be in possession of such rights, and not simply that they should be eligible to possess them. So, consider the self-respect argument for the right to possess some living space. The argument here is that unless individuals have a right to possess some living space, they will risk humiliating encounters with others, because they will risk being observed or overheard when they perform certain actions that they find – or others view – as shameful, embarrassing, and so on. Here, it seems clear that merely furnishing individuals with a right to be eligible to rent a living space is unsatisfactory. If individuals are unable to take advantage of this right; if, for instance, they have – for financial reasons – to share a bedroom with someone who they do not count as an intimate friend, a family member or partner, then the social bases of their self-respect will fail to be guaranteed. Only if individuals actually *exercise* rental rights over some space can these be guaranteed. The same kind of line of reasoning, I think, would also apply to the other arguments for rental rights over

living spaces set out above. Consequently, the right to rent living spaces is a right to actually rent them.⁶⁹

5. Justifying the right to rent – (2) personal items

We now turn to the matter of justifying a right to have rental rights over what I am here calling “personal items.” In what follows, I argue that citizens should have two rights relating to personal items:

2. a right to (actually) have rental rights over a subset of personal items, “personal necessities.”
3. a right to (be eligible to) have rental rights over a wide range of other personal items.

Once more, the rental rights in question are the right to *possess*, the right to *use*, the right to *manage*, and the right to *security*. I will also claim that these rights should be possessed by citizens for a particular *term*. The rights in question should be understood as applying to personal items in much the same way they applied to housing, with the exception of the right to manage. This right, when considered in relation to personal items, does not relate to the individuals’ right to admit others into a space, and to exercise certain sorts of control over them once in the space; instead, it relates to the right to allow others to use the item in question, and to exercise certain

⁶⁹ I here remain neutral when it comes to the question of whether this means that citizens should be furnished with a living space itself, or simply with the resources with which to obtain one.

sorts of control over them if they use it. We should note that the right to manage does not, here, imply the right to loan the item in question to others.

Again, we might think that it is not particularly controversial to claim that individuals should have a right to *use* the personal items under discussion. Let us briefly outline the case for claiming this.

Personal necessities. As a matter of personal dignity, individuals will need to have the use of certain items – clothes, cookware, crockery and cutlery, a bed, cupboards, table and chairs, and so on. These items I will refer to as “personal necessities.” As we noted with respect to the use of living spaces, unless individuals can carry out the basic tasks required to live, they will lack a sense of basic dignity; without such a sense, they will lack self-respect. Furthermore, as was argued when it came to living spaces, unless individuals can carry out the tasks necessary for basic human existence, they lack a fundamental pre-requisite both for developing and exercising their conception of the good, and for developing and exercising their sense of justice.

Protecting individuals’ interest in being able to carry out the most basic tasks involved in day-to-day existence requires that they ought to *actually* have the use of these items, rather than simply being eligible to use them. It also seems clear that individuals should not simply have a license to use the items in question for a specific purpose; instead they should have a general *right to use* those items. Again, in J.W. Harris’ terminology, the individual’s privileges to use the object should “open-ended – that is, they cannot be concretely listed.”⁷⁰ This is because even the most basic day-to-day existence involves multiple uses of household items in ways that cannot be

⁷⁰ *Property and Justice*, 5.

specified in advance. Consider, for instance, the number of different ways we might use a table, or a bed in the course of a day, or a week.

Other personal items. Individuals also require a right to be able to use a wide range of other personal items. This is connected to their capacity to form, revise, and pursue a conception of the good. Commitment to the development and exercise of this capacity requires that there be an adequate range of options for individuals to choose from when it comes to choosing a conception of the good. Since a great number of conceptions of the good involve using what we are calling “personal items” of one sort or another, it looks as though a commitment to providing citizens with this range of options requires that we provide them with the ability to use a wide range of these personal items. Again, we would think that individuals ought to be able, for the most part, to have a right to use these items, rather than simply a license to use them in a particular way. This is because it makes sense, from the perspective of a concern for individuals being able to pursue their chosen conception of the good, to permit individuals to use the items in question in a variety of ways, so long as they do not damage it.

However, the right to use a wide range of personal items is a right to be eligible to use these items, not a right to actually use them. This is because it is not a requirement of Rawlsian theory that citizens can, in fact, actually carry out their chosen conception of the good, whatever it is. Just because my idea of a good life involves playing tennis and playing tennis requires the use of a racquet and tennis ball, it does not follow that my rights are being violated if I do not, in fact, actually have access to the use of a racquet and ball.

Having claimed that individuals should have rights to use personal necessities and other personal items, I will now turn to argue that citizens should have other

rental rights over these things. In what follows, I will consider the following arguments:

(2a) that citizens' interest in being able to carry out a conception of the good requires them to have rental rights over personal necessities.

(2b) that citizens' interest in self-respect and freedom of association requires them to have rental rights over personal necessities.

(2c) that citizens' interest in *stability* requires them to have rental rights over personal necessities.

(3a) that citizens' interest in being able to carry out a conception of the good requires them to have rental rights over other personal items.

(3b) that citizens' interest in self-respect and freedom of association requires them to have rental rights over other personal items.

(3c) that citizens' interest in *stability* requires them to have rental rights over other personal items.

Consideration of these arguments will not be very lengthy, as much of the argumentative groundwork has already been laid in the course of the discussion of housing.

a. Personal necessities

i. Capacity for a conception of the good arguments

First I consider

(2a) citizens' interest in being able to carry out a conception of the good requires them to have rental rights over personal necessities.

Arguments from the capacity for a conception of the good can show that individuals ought to be able to have a right to *possess* personal necessities.

Individuals should, at least, be able to have the exclusive use of some item for the duration of their use of it. I will not be able to eat my cereal from the cereal bowl I have the right to use, if someone else can take it from me at any point. What we might think is more difficult to show is that individuals should have a right to possess items even when they are not using them. In fact, however, I think we can also justify this. Consider the following example: *communal bowls*. A number of bowls are kept in a communal cupboard of an apartment building; when a resident takes a bowl, they have the right to possess that bowl for the duration of their use of it. After this point, they must return it, or another resident has license to take it. In this case, our concern is simply that individuals have no reliable access to the stuff they require for the basic tasks of everyday living – all the bowls may be missing when they try to get one.

Consequently, we might think that individuals need to have a right to possess the item in question even when they are not using it, to ensure this reliable access.⁷¹

ii. Self-respect and freedom of association arguments

Second I consider:

(2b) citizens' interest in self-respect and freedom of association requires them to have rental rights over personal necessities.

The right to manage is the right to permit others to use the item in question, and to exercise some control over how they use the items in question. Here, I argue, individuals' interest (discussed above) in having personal relationships, grounded in the right to freedom of association (as well as the thought, set out above, that intimate relationships are significant for mental health) justifies the right to manage. This is because we will want it to be the case that individuals can share certain sorts of object-involving activities with others, for instance eating, sleeping and so on. However, individual's interest in self-respect would also would seem to require that they are able to exercise some controls over the way others use the items in question. This is because self-respect, as shown above, is related to an interest in keeping sensitive information about themselves out of the hands of others. We do not want visitors to be able to have a license to go through a person's cupboards.

⁷¹ The points made in this paragraph have been a way of stating what John T. Sanders calls the "standard observation that activity typically requires objects, tools, and stability of expectation in regard to their use." "Projects and Property," in *Robert Nozick*, ed. David Schmidtz (Cambridge: Cambridge University Press, 2002), 52.

Consequently, individuals should be able both to allow others to use objects, and to control their behaviour with respect to those objects.

iii. Stability arguments

Finally, I consider:

(2c) citizens' interest in *stability* requires them to have rental rights over personal necessities.

Here, I argue that the right to security and a particular length of term for possession of personal items can be justified on the same grounds – namely, grounds of stability.

The right to security, to recall, is an immunity against expropriation, in the case of rental rights, this lasts for the length of the rental term. Individuals, as I have said before, have some interest in stability of environment, on the basis that it will distract from their pursuit of a particular plan of life if they are subject to constantly changing circumstances. When it comes to personal necessities, I suggest, therefore, that the length of term be approximately the same length of time as the length of term for housing (at least a year), to prevent individuals having to ensure significant disruption in their personal environment too frequently. For the same reason, individuals should have a right to security for the whole of this period.

b. Other personal items

We now turn to other personal items. I have claimed that individuals need to have a right to be eligible to use a range of personal items, on the basis that this is a

requirement of providing them with the capacity to form, revise, and pursue a conception of the good. Can we justify the claim that individuals should have other rental rights over these items?

i. Capacity for a conception of the good arguments

First, I consider:

(3a) that citizens' interest in being able to carry out a conception of the good requires them to have rental rights over other personal items.

Individuals, I argue, have a right to possess the items in question for much the same reasons that they have a right to possess personal necessities. The justification for a right to use these items is that individuals should be able to carry out a range of conceptions of the good, and for many conceptions of the good, items are involved. However, individuals will not successfully be able to use the items in question to carry out their conceptions of the good if others are able to use them simultaneously. Consequently, individuals need to have, at least, the right to exclusively use the items in question whilst they are using it. But, again if others can use the item in question so long as I am not in possession of it, I will have no reliable access to that item, significantly diminishing my ability to use it in order to carry out my conception of the good. Consequently, individuals should have the right to possess some item.

ii. Self-respect and freedom of association arguments

Second, I consider:

(3b) that citizens' interest in self-respect and freedom of association requires them to have rental rights over other personal items.

The right to manage, too, seems to be justified on the same grounds as it was for personal necessities. Individuals have an interest in shared activities; consequently, they should be able to allow others to use the item in question. Finally, they should also have some control over what others do with those items, mainly so that they can prevent damage, and so on.

iii. Stability arguments

Finally, I consider:

(3b) that citizens' interest in *stability* requires them to have rental rights over other personal items.

What, then, of the right to security, and the length of term? In this case, I think the right to security is best justified on the same grounds as the right to possess – that individuals have an interest in reliable access to some item, if they are to use it for carrying out their conception of the good. When it comes to length of term, I think what we say depends on the item in question. Some items, especially, for instance, furnishings, pictures, and so on which form part of an individual's "personal environment," yet are not, strictly, necessities, should have a similar length of term to

personal necessities; however, I think that, in fact, individuals' interest in stability means that for the majority of items a reasonably long length of term ought to be available since individuals' interest in stability requires that they are not constantly in the process of exchanging their personal items.

This, then, concludes not just the arguments for a basic right to rent personal items and, in addition, the arguments for the three different rights which make up the Rawlsian basic right to rent housing and personal items.

I will now turn to the matter of resolving a number of issues. Firstly, can we render the fact that the basic right to rent I defend has distributive consequences compatible with the Rawlsian position on the basic liberties? Two, to what extent have I underemphasized the dangers of having a living space over which one has rights of exclusion? I consider the feminist challenges to the kinds of arguments I have endorsed here. Three, what other legislation needs to be in place around rental rights, in order to ensure that citizens are well-protected from various threats to their stability, self-respect, and so on? I will outline this. Four, are the rights as set out above compatible with the necessary levels of state access to individuals' homes and personal items – access, for instance, by child services, or the police, and so on? It will be worrying if the right I have justified is too strong to permit this.

6. The right to actually rent

One major concern about the account set out above relates to the fact that the right to rent housing and personal items I defend includes rights to *actually have* rental rights over housing and a subset of personal items, rather than simply rights to be eligible to have such rights. The concerns relating to this aspect of the account are twofold.

Firstly, this might be thought to be contrary to the claims of an orthodox Rawlsian account of property according to which the basic property right, whatever its content, is only a right to eligibility. Secondly, the distributive implications of a right to actually rent certain items might be thought to be problematic. Let me explore these concerns.

Major critics of Rawls's account of the basic liberties – particularly H.L.A. Hart – highlight the ambiguities of his account with respect to the basic right to personal property. In particular, Hart points out that if this is a basic right to *actually own* personal property then the right has some problematic implications. Given that Rawls claims that each citizen of a Rawlsian just society is entitled to “an equal right to the most extensive system of *equal* basic liberties compatible with a similar system of liberty for all,”⁷² the inclusion of a basic right to hold property might well have strong egalitarian requirements. This is because, Stephen Munzer, who raises a similar issue, claims, we might understand an equal right to actually own property as a right to actually own an equal amount of property.⁷³ Munzer points out that how dramatic we take the implications of such a right to be depends on what we take the term “personal property” to be referring to. The fact that Rawls excludes productive property from counting as “personal property” means that the first principle does not mandate that this, at least, has to be equally distributed. In Munzer's view, however, the implications of understanding the basic right to property in such a way “would be philosophically implausible unless “personal property” covers very little.”⁷⁴

Hart points out that Rawls evades these kinds of concerns by distinguishing between the guaranteeing the basic liberties, and guaranteeing their fair value. Only the political liberties – Rawls claims – ought to be guaranteed their fair value. On

⁷² Rawls, quoted by Hart, “Rawls on Liberty,” 358 (my italics).

⁷³ Munzer, *Theory of Property*, 235.

⁷⁴ *Ibid.*, 237.

Rawls's view, then, Hart claims "the rules governing the acquisition, disposition, and scope of property rights should be the same for all."⁷⁵ However, there is no requirement that the extent of individuals' holdings of personal property should be equal. Only a requirement that the fair value of the right to personal property be guaranteed would imply this. Or, in other words, Rawls defends a right to be eligible to own personal property, and not a right to actually own it.

It does not matter here that I have in fact departed from Rawls's own views on the matter of personal property. I can simply claim that Rawls did not gather the implications of his own views; a claim which is lent credence by the total absence of discussion in his works about the right to personal property. However, what does require discussion is the question of what the distributive implications of the right to rent are, and whether these are in some way troubling for a Rawlsian account of justice. I will claim they are not.

First, what are the distributive implications of the right to rent? Let me in fact flesh out two ways of understanding what those implications are. First, we might claim that on a Rawlsian account individuals who have a right to actually rent housing and certain personal items should not just be furnished with those items, but with items of the same extent, value, or amount. On this understanding, it is not clear what the distributive implications in fact are. For instance, if I have a right to actually rent housing, do I have a right to rent housing which is the same *value* as those rented by others, or the same *size*, or that is the same on some other metric of evaluation? Furthermore, the distributive implications are worrying. Would any society be able to ensure that all occupied housing of equal value, or equal size?

⁷⁵ Hart, "Rawls on Liberty," 540.

I do not think, however, that this is the right way of understanding what the implications of the right to actually rent are.

In setting out the right way, let me take as my starting point Rawls's discussion of what it would mean to guarantee the "equal worth" of religious liberty.⁷⁶ Rawls claims that this would involve, in fact, ensuring that each individual had the resources required to fulfill their religious needs.⁷⁷ These needs vary – some need to go on expensive pilgrimages, others do not. For Rawls, providing citizens with religious liberty of "equal worth" means providing resources to each sufficient to meet their needs. Since needs differ, the resources citizens require will differ.

Ensuring that the "equal worth" of a liberty is protected, then, may simply involve ensuring citizens' needs are met to the same extent. So, what needs are being protected by the right to rent? I have argued above that they are, in fact, various.

Let us start with the right to rent housing. I have claimed that this right protects (a) citizens' need to be unobserved, not listened to, and not to have sensitive information about themselves shared without permission; (b) citizens' need for personal independence; (b) citizens' freedom of intimate association. What is important about these needs is that there does not seem to be any clear relationship between the *value* or *size* of the space in question and the extent to which these needs are satisfied. Consequently, we might think that it was not a violation of citizens' equal basic right to rent housing that they inhabited flats of different value, or different size, so long as the relevant needs were being equally met by their housing.

What, it might be claimed, does matter is other features of the housing. Consider, for instance, the difference between living in a thin-walled apartment, and a detached house. These living spaces, we might think, do not protect need (a) to the

⁷⁶ Note that Rawls discusses this in the course of arguing that we should *not* guarantee the equal worth of religious liberty. His comments are, nevertheless, illuminating.

⁷⁷ *Political Liberalism*, 329.

same extent. I am much more likely to be overheard in the thin-walled apartment.⁷⁸

Does this mean that the right to rent requires that all citizens in a Rawlsian just society should face the same likelihood of being overheard? This would also have other implications such as: the louder someone is, the better soundproofing they should be furnished with in their apartment.

Let me respond to this by clarifying the needs at stake. What matters, to recall our earlier discussion, is not that all individuals should be overheard (or observed, etc.) to the same extent, but, ultimately, that no one should be overheard to the extent that should be taken to be a threat to their self-respect, or their ability to carry out intimate relationships. On a Rawlsian scheme, however, we care only about what might be taken as *reasonable* threats to self-respect (and, by parity of reasoning, we might think only *reasonable* threats to carrying out an intimate relationship). These needs can be met – equally – by ensuring some minimum standard of – say, soundproofing – is in place in all housing.⁷⁹ Variation in the extent to which one is overheard is, here, compatible with everyone being equally well protected against *reasonable* threats to self-respect and to carrying out intimate relationships.

My claim, then, has been that because of the nature of the interests underpinning the basic right to rent, ensuring the “equal worth” of this right does not, in fact, require that citizens have housing of equal size or value, or that citizens are equally likely to be overheard, observed and so on in that housing. It does require, however, that some threshold be reached when it comes to the quality of the housing.

Nor is this a troubling implication for a Rawlsian theory. It is understandable that Munzer and indeed Rawls himself would claim that a basic right to property that

⁷⁸ Munzer and Lever both highlight the relationship between “privacy” as they use the term and one’s living environment.

⁷⁹ I am happy to accept that the right may be a demanding one in this respect, although I do not explore this issue in detail here.

implied strict equality in the division of income and wealth would be troubling because, for instance, it means that we cannot take into account any efficiency requirements.⁸⁰ The requirement that all can actually rent housing of some minimum standard certainly has distributive consequences, but they are not troubling in this way. Nor, as we have seen above, do they have the impracticable consequence that we have to provide all with housing that is of equal value (and so on). Consequently, I conclude that the right to rent housing is not just mandated by the basic interests Rawlsians are concerned with, but is an unproblematic one for a Rawlsian theory to include.

What of a basic right to rent personal necessities? I have claimed that all citizens have a basic right to actually rent certain personal necessities, since this protects their ability to have secure reliable access to the items they need for day-to-day life. Although this right has distributive consequences, they are quite minimal, and therefore unproblematic from the perspective of a Rawlsian account in this respect. Does the fact that the right is supposed to have – in Rawls’s terminology – “equal worth” have any problematic consequences? Again, I do not think so. All citizens have an equal claim to have reliable access to the personal necessities for everyday life, under some reasonable conception of what an everyday life is. So long as this claim is met for all, we can say that – following the reasoning used above for the right to rent housing – citizens have equal rights to actually rent personal necessities.

7. Vulnerability and private space

⁸⁰ See, for instance, Rawls, *Political Liberalism*, 329.

I now turn to consider whether I have so far underemphasized the dangers of having a living space over which one has rights of exclusion.

There is a powerful feminist challenge to liberal concerns about privacy, which has to do with the extent to which women, in particular, are vulnerable when privacy is protected – vulnerable to violence, domination, and so on.⁸¹ Indeed, the more we protect the ability of the individual, the couple, and the family to be unobserved and not overheard, the more we do to create an environment in which one party may inflict violence on or dominate others without any external parties coming to know about it.

The problem is exacerbated if we couple protections for private space with bestowing parents and husbands with extensive powers to act as they see fit with respect to their children and wives. This, however, is not an implication of my arguments above. The problem is also exacerbated if we see the arguments I have made as ruling out the possibility of state interventions – for instance, by the police, or child protection agencies – in the home. I argue below that the right I have set out is compatible with such protections. Given these clarifications, how serious is the feminist concern?

There might be two proposed alternatives to individuals having rental rights over a living space. The first alternative is some form of communal living, for instance one of the communal arrangements discussed above. The second is that private space should be made more visible to outsiders – for instance, ensuring that everyone lives in thin-walled, big-windowed homes, or installing state surveillance in all homes, or mandating frequent visits from various state agencies – then this also seems problematic.

⁸¹ Again, see MacKinnon, *Feminist Theory* and Susan Moller Okin, *Justice, Gender*.

The problem with both of these options, however, is that if the reason we wish to protect vulnerable parties is to ensure that they can carry out their conception of the good without fear or violence, then it seems self-defeating to ensure their security only at the cost of jeopardizing everyone's capacity to carry out their conception of the good. For, as I have argued at length above, the ultimate point of protecting citizens' ability to be unobserved, not overheard and to not have sensitive information about themselves shared (which is undermined by both the communal arrangement and the increased visibility arrangement) *is* the protection of this capacity.

Consequently, the appropriate response to the feminist critique, is not to reject the idea that individuals should have a basic right to exercise rental rights over their housing, but to ensure that rental rights operate in a context that otherwise ensures that women are protected from domination and violence – a context, which, for instance, takes domestic violence and gender equality more broadly seriously.

8. Legislation

Next, I should briefly set out the legislative context in which the right to rent must exist, if it is to adequately protect citizens' basic interests. Note I here aim to set out the most important aspects of the legislative context only.

This topic takes us back to the discussion in Chapters 1 and 2, and, in particular, to the concern that rental rights are not sufficient to protect citizens' basic interests. My claim there was that these rights were, in fact, sufficient, so long as a particular legislative environment existed.

The most important part of the legislative environment to discuss here is the behaviour of the landlord. To recall, a worry was raised in Chapter 1 relating to the

idea that the problem with renting housing had to do with the potential for landlords to be too intrusive, subjecting their tenants to multiple inspections, imposing certain rules on their behavior, and so. The concern was that excessive monitoring on the part of the landlord would convey a lack of respect for the way of life of the tenant which would, in turn, undermine the tenant's self-respect. The response I gave in Chapter 1 was that we could simply specify what constituted acceptable behaviour on the part of the landlord, and make it a requirement that landlords complied with these specifications. The first part of the legislative environment we can specify, then, is that there should be rules protecting tenants against intrusive landlords – in particular, rules requiring that visits from landlords should be kept to a minimum.

A second relevant legislative requirement concerns the fact that landlords' visits ought to be scheduled in advance. This is to prevent humiliating encounters of the sort discussed in the "self-respect" section, above, and also to protect citizens' from having sensitive personal information about themselves discovered by the landlord, as a consequence of an unexpected visit.

A third legislative requirement has to do with the power of the landlord to expel the occupant of the housing in question. Because of citizens' interests in stability, the landlord typically has no power to expel their tenants during the normal course of the rental term. The exception to this rule is that the landlord *does* have the power to expel the tenant if they are engaging in behaviour which is in violation of the terms of their tenancy – for instance, very destructive behaviour. Here we should note that because of citizens' interest in stability, it should be rendered, legislatively, very difficult to expel citizens from their rented property for poor behavior.⁸²

⁸² We could imagine that other punishments – e.g. fines – could be imposed on poorly behaved tenants to deter such behaviour.

The fourth and final legislative requirement relates to the concern that landlords will refuse to consider certain citizens as candidates for tenancy, based on their race, gender, religion, ethnicity, disability, sexual orientation, political affiliation or activities, or because of certain aspects of their lifestyle.⁸³ This concern was initially raised in relation to the views of Charles Reich, and the worry that in the US, government largess has historically been withdrawn as a consequence of the perceived “immoral” behavior on the part of recipients.⁸⁴ Above I have suggested that it should be very difficult to expel tenants from their housing during the period of the tenancy; here, however, the concern is that individuals will not be able to find a tenancy in the first place. The appropriate legislative response here would be to require that individuals could keep certain details about themselves private when applying for tenancy, and, furthermore, that it should be unlawful to refuse tenancy on grounds of considerations such as the ones given above. This is because refusing tenancy on such grounds is deeply disrespectful, conveying as it does a disdain for particular individuals, groups and ways of life.

This concludes my discussion of the appropriate legislative environment for rental rights over housing. The arguments here can be taken to apply equally to rental rights over personal items.

9. State access

The final concern to address is whether the right to rent, as I have described it, rules out the kind of state access to individuals’ homes that we might think is, in certain circumstances, required. The concern is that rental rights over living spaces are too

⁸³ One significant question which I have unfortunately been unable to address here is what is owed to individuals with a disability in terms of housing and personal items.

⁸⁴ Reich, “The New Property.”

robust, and might rule out the possibility that state agencies like the police, or child protection services, are able to have access to those living spaces. This concern can be dealt with briefly.

Underpinning the right to rent living spaces, as we have said, are a number of basic interests. The robustness of the rental rights in question – here, I think, the most relevant rights are the right to possess (in particular, the right to refuse to admit others to the property) and the right to manage – is related to the basic interests they protect. I have suggested, above, that the rights which form part of the basic right to rent are not sufficiently robust as to exclude entry into living spaces by various state agencies. This is because the interests which underpin these rights are in a number of ways importantly protected by the ability of state agencies to enter citizens' living spaces, given the right circumstances.

So take, for instance, cases of child abuse or neglect. Even in cases where the child's life is not at risk, abuse and neglect threaten to severely injure the mental health and self-respect of the child and, in turn, their moral powers. Consequently, it looks like the protection of these interests requires that there be safeguards in place to prevent such neglect and abuse occurring, and to identify it when it does occur. One important safeguard will be that state agencies can enter the child's living space if they suspect neglect or abuse, in order to monitor the situation. Consequently, the right to possess and the right to manage which the child's parents or guardians can have over the living space in question must be "permeable" to such agencies.

It is true, of course, that here we encounter a trade-off of the interests of children versus the interests of individuals in, for instance, freedom of intimate association and not having certain personal details about their lives known to others. However, since these interests which are at stake, with respect to the child, are so

much more significantly undermined by denying state entry to the home, I think that we can rightly justify rental rights that are “permeable” in this respect.

The same argument, I think, holds for a wider range of state entries into the home. For instance, we might think that citizens’ fundamental interest in having a basic level of security, without which the carrying out of almost any plan of life is impossible, is sufficiently important to require that the rental rights in question are “permeable” to the police on a wide range of grounds.

Consequently, I think we can dismiss the concern that the basic right to rent I have argued for is too robust to permit the normal state interventions into individuals’ living spaces.

10. Conclusion

This concludes my discussion and defense of the right to rent housing and personal items. The discussion of the present chapter and those that have preceded it have been confined to the discussion of two types of item: housing, and personal items. These are items which, when owned, are sometimes collectively referred to – in the political theory literature, at least – as “personal property.” In the next chapter, I move on to consider the question of whether individuals ought to have a basic right to own productive property.

PART 2 The Right to Productive Property

Chapter 4: Powerful and Limited Rights to Productive Property

1. Introduction

The first part of this thesis considered the question of whether Rawlsian justice could justify a basic right to personal property. I argued that, with respect to the two major categories of item that are normally taken to fall under a right to personal property – housing and personal items – a basic right to exercise ownership rights could not, with certain exceptions, be justified. Instead, I argued, what can be justified on a Rawlsian account of justice is a right for citizens to have rental rights over these things.

In the second part of this thesis, I turn to consider productive property. In this chapter, I focus on the question of whether the Rawlsian set of basic rights and liberties ought to include a basic right to privately own productive property. My claim will be that there is no justification for the inclusion of such a right in the Rawlsian set of basic rights and liberties. Considerations raised in the course of the discussion will, however, lead me to argue that citizens should have one right with respect to *non-productive* property, although not a right that has to do with housing or

personal possessions. Instead, I will argue that citizens should be eligible to have individual savings accounts.

When it came to the question of a Rawlsian basic right to hold personal property, I noted that there was almost no literature attempting to detail and defend this right. When it comes to productive property, however, things are different: the question of whether the Rawlsian view should include a basic right to privately own productive property has already been discussed extensively. Consequently, we can proceed by examining existing arguments, rather than by constructing new ones.

These arguments fall, broadly, into three camps. The first are arguments generated by the view known as right-wing Rawlsianism, a view associated primarily with John Tomasi. Right-wing Rawlsians want to claim that Rawlsians should include basic rights to privately own productive property within the set of basic liberties; that these rights should be rights to be (legally) eligible to privately own productive property, rather than to actually own it; and that these rights should be what I call, following Tomasi, “powerful” rights.¹ The second are arguments from certain critics of the right-wing Rawlsian position, whose view is in fact very close to that of the right-wing Rawlsians themselves. These critics claim that Rawlsians should include basic rights to privately own productive property within the set of basic liberties, and that these rights should be rights to be eligible to own productive property. However, they wish to defend limited rather than powerful rights to productive property. Finally, there are those who argue for basic rights to productive property of a different sort. These are thinkers who want to claim that there ought to be a basic right for individuals to actually own certain forms of productive property. In this chapter I will consider, and reject, all three sets of arguments.

¹ *Free Market Fairness*, xxvi.

2. Preliminaries

Before discussion of whether the set of Rawlsian basic rights and liberties should include a right to productive property can begin, we must clarify what such a right should be taken to consist in.

In what follows, a right to productive property will be understood as a right to have, or be eligible to have, private ownership rights over certain items (or non-physical entities), and for those private ownership rights to include the right to use the item for commercial purposes, and to retain the income generated from doing so.² Let me set out the different aspects of this right.

a. Private ownership

In Part 1 of this thesis, the Rawlsian right to personal property was construed as a right to privately own, or be eligible to privately own, housing and personal items. In the context of this right, “private ownership” was understood in a limited sense – a sense which excluded the right to use the item for commercial purposes, and to retain the income from doing so.

Here, the term “private ownership” will not be used in this limited sense. The rights and powers held by a private owner are taken to include a right to use the item for commercial purposes, and to retain the income from doing so. The understanding of “private ownership” deployed in this chapter (and in the two chapters that follow it), will therefore be consistent with Honoré’s full characterization of the standard

² I should make clear that Tomasi explicitly specifies that the right to productive property he defends is a right to “the private ownership of productive property.” Ibid.

incidents of ownership.³ To recall, on this characterization, the rights and powers involved in ownership are as follows:

(1) *The right to possess*. The right to have exclusive physical control over some thing. (2) *The right to use*. The right to use the thing at one's discretion. (3) *The right to manage*. The right to "decide how and by whom the thing owned shall be used."⁴ (4) *The right to the income*. (5) *The right to the capital*. "[T]he power to alienate the thing and the liberty to consume, waste or destroy the whole or part of it."⁵ (6) *The right to security*. The right to "look forward to remaining owner indefinitely" if the owner so chooses and they "remain solvent."⁶ The right to security is essentially an immunity against expropriation.⁷ (7) *The incident of transmissibility*. The power to transmit the item to others after one's death. (8) *The absence of term*. The lack of term imposed on the owner's rights in the thing. (9) *The duty to prevent harm*. The owner's duty not to use the owned thing to harm others, and a responsibility to ensure that the thing is not used in a harmful way by others. (10) *Liability to execution*. The liability that certain judgments against the owner may fall on the owned thing. (11) *Residuary character*. The owner's residuary right to the thing owned, i.e. the right that once the rights others may have in the owned thing have lapsed (for example, a tenant's lease ends), those rights return to the owner.

Why is it the case that private ownership is understood in a limited sense in the context of a right to personal property, but is not understood in this limited sense in the context of a right to productive property? The reason for this difference is that, as discussed in Chapter 1, the difference between personal and productive property is not a difference that has to do with types of item; it is a difference that has to do with

³ Honoré, *Making Law Bind*.

⁴ *Ibid.*, 168.

⁵ *Ibid.*, 170.

⁶ *Ibid.*, 171.

⁷ *Ibid.*

what a particular item is being used for. So, for instance, a car which I use solely to drive my family around in counts as personal property, whereas a car which I rent out to others or use to ferry paying customers around in counts as productive property. On this definition, any type of item can theoretically be considered productive property so long as it is being used in a particular way: specifically, being used to generate income. If, for instance, I charge someone £5 to read my copy of *A Theory of Justice*, this copy is productive property. Because of this, a right to personal property protects an individuals' right to own items, but does not protect productive uses of the owned items – therefore, rights to use the item commercially and retain the income from doing so are not present. A right to productive property, on the other hand, protects a right to own items which includes a right to productive use. Consequently, rights to use the item commercially and retain the income from doing so must be present.

At this point, something more must be said about how the term “income” is being understood here. In particular, it should be emphasized that “income” is being understood in a narrow sense to mean “monetary benefit.” The term “income” can be understood in a much more expansive sense to mean any benefit gained from the use of the item. Honoré, for instance, points out that “[t]o use or occupy a thing may be regarded as the simplest way of deriving an income from it.”⁸ The problem with understanding income to mean any benefit is that this would erase the distinction between productive and personal property, since to merely use an item would count as generating income from it. Since, on my view, an item is productive property if it is being used for income generating purposes, if I watch my television, the television would count as productive property, because I am deriving income (in the sense of some benefit) from it. Understanding income to mean “monetary benefit” on the other

⁸ Ibid., 169.

hand, allows us to draw a clear distinction between personal and productive property. Furthermore, it allows us to draw a distinction between personal and productive property which captures what participants in the debate over whether Rawlsian accounts ought to include a right to privately own productive property in addition to a right to personal property take to be at stake. In the debates currently under consideration, what is taken to be at stake is the ability of individuals to engage or participate in income-generating activity, where “income-generating” means “monetary-benefit-generating.” Consequently, it makes sense to understand “income” in the way I propose.

b. What falls under a right to productive property?

Above, I defined a right to productive property as a right to have, or be eligible to have, private ownership rights over certain items (or non-physical entities). Having clarified how the term “private ownership” is to be understood, I now turn to the question of what the items (and non-physical entities) that are taken to fall under the right are.

We cannot, in fact, specify at the outset of discussion what items (or non-physical entities) should be taken to fall under a right to productive property, since different authors take different items (or non-physical entities) to fall under this right. However, we can, here, offer a sense of the range of items which are typically taken to fall under this right.

One way of understanding what falls under a right to productive property is that a wide range of items should do so. Someone who argues for a right to productive property might simply be arguing that individuals should be able to privately own a wide range of items and be able to use those items to generate

income. Such items might include housing and personal items – a right to productive property might, for instance, be taken protect my ability to rent out a room of my house, or to sell my old clothes on eBay. As I will argue below, Tomasi’s right to productive property should be understood a right which protects individuals’ eligibility to use a wide range of items for productive purposes.

However, those who defend a right to productive property (including Tomasi) often also specify that certain important types of item or non-physical entity should fall under this right – and sometimes, as we will see below, want to restrict what falls under this right to just these important types of item or non-physical entity. One important category of item here is natural resources. A second is the man-made items which go into industrial production (for instance, factories). A third is money – we will be considering, in this chapter, the importance of individuals being able to use the money they possess productively, to generate income for themselves. A fourth is businesses, and shares in them. Right-wing Rawlsians, for instance, tend to want to argue that being eligible to start and run a business should be protected as a basic right. We will also consider the importance of individuals having basic rights to own shares in businesses. Left-wing Rawlsians, for instance, have wanted to argue that citizens ought to have a basic right to own shares in society’s major businesses, in order that they should be able to exercise some measure of control over those businesses.⁹

c. Eligibility versus actual ownership

⁹ We should note that protecting a basic right to use some of these important types of item productively may imply that other items must also be used productively. My right to start and run a restaurant, for instance, will be undermined if I am forbidden from using any indoor spaces or furniture for commercial purposes.

We should now turn to distinguish once more between two types of basic right to privately own some item X. These two types are (a) a right to be eligible to own some item X; and (b) a right to actually own some item X. To recall, if I am eligible to own some item X, I cannot be ruled out of the class of potential owners; if citizens have a right to be eligible to own some item X, therefore, none of them can be ruled out of the class of potential owners. An eligibility right, therefore, has no distributive implications. A right to actually own X, on the other hand, does have distributive implications – if citizens possess a right to actually own X, they must actually be furnished with X or with the resources to obtain X (and, in the latter case, X must be available to obtain).

In what follows, the plausibility of both an eligibility right to productive property, and a right to actually own productive property will be considered. An eligibility right to productive property is understood as a right to be eligible to have private ownership rights over certain items (or non-physical entities), where “private ownership” is being understood to imply the relevant rights to income and commercial use. A right to actually own productive property is a right to actually have private ownership rights over certain items (or non-physical entities), where “private ownership” is being understood to imply the relevant rights to income and commercial use.

d. Powerful versus limited rights

It was stated in the introduction to this chapter that the right-wing Rawlsian literature yields two proposed rights to productive property: a powerful right to productive property, and a limited right to productive property. What the distinction between

these two rights consists in is best addressed in the context of the discussion of right-wing Rawlsianism below. Consequently, I will leave the issue here.

e. The right to productively lease

Those who wish to argue for the inclusion of a right to productive property amongst the Rawlsian basic rights and liberties argue for a right to privately own certain items (or non-physical entities), where “private ownership” is being understood to imply the relevant rights to income and commercial use. However, in light of the discussion in Part 1 of the thesis, it is clear that protecting individuals’ productive activities at the level basic right need not involve protecting a right to *privately own* productive property. With respect to certain types of item typically used productively such as natural resources, man-made items that go into production, and other physical items that are not consumed in use, citizens could instead be granted a right to *productively lease* them. To have productive lease rights over some item would be to have rights similar to the right to rent discussed in earlier chapters. Important additional ownership incidents that productive lease rights would involve, however, would be the right to the income, and a right to use the item commercially – otherwise the lease would not be “productive” at all.

It might be thought that, in light of the arguments of Part 1, I would in this chapter defend a right to productively lease certain types of thing.¹⁰ However, although defending such a right would secure a pleasing symmetry for this thesis, I will not in fact argue in this way. This is because I do not think that such a right is defensible: when it comes to productive property, the inclusion of a right to rent within the set of basic rights and liberties cannot be justified.

¹⁰ A view of this kind is defended by James O. Grunebaum. See his *Private Ownership* (London: Routledge & Kegan Paul, 1987).

This concludes the preliminary comments. We can now turn to the evaluation of arguments for a right to productive property, starting with the arguments of right-wing Rawlsians.

3. Right-wing Rawlsian arguments

First, then, we consider right-wing Rawlsian arguments for a basic right to privately own productive property. Under this heading I will be considering two types of argument. Firstly, I will be considering John Tomasi's arguments for a "powerful" basic right to productive property. Secondly, I will be considering arguments from critics of the right-wing Rawlsian position who nevertheless want to claim that a limited right to be eligible to privately own productive property should be included amongst the basic liberties. Although Tomasi's own arguments have been subject to quite extensive criticism, the same cannot be said of those of his critics.¹¹

John Tomasi's arguments about productive property are embedded in a broader critique of the Rawlsian position on the protection of economic freedom at the level of the basic rights and liberties. Consequently, we should say something briefly about this broader critique.

On a traditional Rawlsian picture just two of what Tomasi calls economic freedoms or liberties are included amongst the set of basic rights and liberties. Economic liberties or freedoms, we should note, are understood by Tomasi as

¹¹ For the critical literature on Tomasi, see, for example, Elizabeth Anderson, review of *Free Market Fairness* by John Tomasi, *Political Theory* 41, no. 1 (2013): 163–66; C.M. Melenovsky and Justin Bernstein "Why Free Market Rights Are Not Basic Liberties," *The Journal of Value Inquiry* 49 (2014): 47–67; Jeppe von Platz "Are Economic Liberties Basic Rights?," *Politics, Philosophy & Economics* 13, no. 1 (2014): 23–44; Steven Wall "Self-Government, Market Democracy, and Economic Liberty," *Social Theory and Practice* 39, no. 3 (2013): 522–34; Colin Bird "Why Not Marx?," *Critical Review* 26, no. 3–4 (2014): 259–82; Richard Penny, "Self-Respect or Self-Delusion? Tomasi and Rawls on the Basic Liberties," *Res Publica* 21, no. 4 (2015): 397–411.

liberties protecting some form of private economic activity.¹² The two basic economic freedoms which Rawlsians typically endorse are the right to personal property, which has been the subject of extensive discussion in the first part of this thesis, and “freedom of occupation against a background of diverse opportunities.”¹³ Furthermore, as we noted in the discussion of earlier chapters, Rawls explicitly excludes one economic liberty from the set of basic rights, arguing that “the right to private property in natural resources and means of production generally” is not “necessary for the adequate development and full exercise of the moral powers.”¹⁴

Tomasi’s claim is that Rawlsians are guilty of what he calls “economic exceptionalism... according to which economic liberties are singled out [in comparison to political and other liberties] for relegation to a lower level of protection.”¹⁵ This economic exceptionalism is, of course, unjustified in Tomasi’s view. It is unjustified because, he claims, the very grounds which Rawlsians use to establish that freedom of occupation and the right to personal property should be basic rights can be used to establish that a number of other economic liberties should also be basic rights.¹⁶ These grounds are a commitment to the development and exercise of the two moral powers. The economic liberties that Tomasi argues should get basic rights protection include the right to own productive property Rawls leaves out, as well as the freedom to negotiate the terms of one’s employment contract, and the rights associated with an individual’s management of his or her financial affairs – for rights protecting the ability of an individual to make his or her own decisions about how much to spend in retirement, healthcare, and so on.¹⁷

¹² Tomasi, “Democratic Legitimacy,” 56.

¹³ Rawls, *Political Liberalism*, 308.

¹⁴ Rawls, *Justice as Fairness*, 114.

¹⁵ Tomasi, “Democratic Legitimacy,” 58.

¹⁶ Tomasi, *Free Market Fairness*, 76.

¹⁷ *Ibid.*, 23-4.

The consequences of recognizing these economic liberties as basic are significant for the Rawlsian picture traditionally conceived. In Tomasi's words, they "significantly limit the scope of regulatory and legislative activity in economic affairs... [leaving] little room for the legislative programs by which social democratic regimes typically pursue social justice: aggressively redistributive taxation, state-based social service programs, extensive public regulation of the workplace."¹⁸

Elsewhere this claim is yet more strongly worded: as a consequence of defending "a wide-ranging right to economic freedom as amongst the weightiest rights of citizens," the type of Rawlsian regime Tomasi defends "strictly limit[s] the scope of legislative authority in economic affairs."¹⁹ The precise implications of protecting, specifically, a powerful basic right to privately own productive property will be discussed below.

In contrast to Tomasi's position is one adopted by some of his most central critics. Underpinning what Tomasi sees as the misguided Rawlsian position of economic exceptionalism is, he claims, a profound failure to understand the significance of private economic activities.²⁰ These critics argue that to some extent Tomasi is right in leveling this accusation at Rawlsian theory. It seems clear, however, that one could accept some of the force of Tomasi's critique of Rawlsian theory's neglect of private economic activity without necessarily signing up to the set of economic liberties that Tomasi himself would wish to see included amongst the Rawlsian basic rights. In other words, it is possible to reject the orthodox Rawlsian

¹⁸ Ibid., 216.

¹⁹ Ibid., 87.

²⁰ This is not a failure of which, he claims, ordinary people are guilty. Tomasi argues that, with the growth in prosperity of western societies in the last hundred years, "people increasingly seem to find personal meaning in economic decision-making." *Free Market Fairness*, 61.

position without necessarily endorsing the full-blown version of classical liberalism that Tomasi recommends.

The potential advantage of holding such a position ought to be clear. It is a kind of “best of both worlds” position comparable with luck egalitarianism. The latter position takes a persuasive idea (of the significance of personal responsibility) associated with political thinking in the right, and incorporates it into a version of distributive egalitarianism. Consequently, distributive egalitarianism is protected from a powerful charge, from the right, that it ignores the importance of personal responsibility.²¹ Similarly, the “best of both worlds” position currently under consideration takes another persuasive idea associated with political thinking on the right – the idea of the importance of protecting individuals’ ability to engage in private economic activity – and incorporates this idea into a version of distributive egalitarianism. Consequently, distributive egalitarianism is protected from a powerful charge, from the right, that it ignores the importance of private economic activity.

Versions of such a position have been proposed by several of Tomasi’s critics. So, for instance, Joseph Carens expresses sympathy with Tomasi’s attempt to encourage “more conversation” between left-liberals and libertarians, on the grounds that the market “contributes in important ways to human freedom.”²² Carens suggests, in particular, that owning a small business is a significant form of economic activity, and that “an economic order that values freedom will have to make that sort of opportunity available to those who want to undertake it.”²³ Anna Stilz argues that

²¹ This insight about luck egalitarianism is, of course, set out in G.A. Cohen’s famous remark that Ronald Dworkin had “in effect, performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility.” See G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99, no. 4 (1989): 933.

²² Carens, “Invitation to a Dialogue,” *Critical Review: A Journal of Politics and Society* 26, no. 3–4 (2014): 283.

²³ *Ibid.*, 288.

the two moral powers *do* seem to ground a wider range of economic liberties than the traditional Rawlsian picture accepts, and she too offers the right to start a business as an example of such an economic liberty. Citizens, she claims “have weighty interests in entrepreneurial activities that engage their talents and temperament and provide them an important sense of independence, responsibility, and self-respect.”²⁴

Finally, Alan Patten also seems to endorse the expansion of the traditional Rawlsian set of basic economic liberties, arguing that “freedom of occupational choice is already recognized as a basic liberty by many liberals, and the right to start a business is plausibly regarded as an aspect of this freedom.”²⁵ What is notable about all three of these positions is that the central right which is cited by all three critics – the right to start and run a business – is not taken by those critics to have any very significant implications for the rest of the Rawlsian picture. Stilz, for instance, speculates that whilst such a basic liberty might rule out liberal socialism, it still allows for a Rawlsian society to embrace property owning democracy, or a welfare state.²⁶ These are economic regimes which involve a significant amount of state intervention into the economic sphere, of the sort Tomasi wants to rule out.

My arguments here will reject both Tomasi’s original view and this “best of both worlds” position. Most private economic activity is simply not significant in the way that Tomasi wants to claim – that is, significant enough to merit protection at the level of basic rights. The traditional Rawlsian position on this issue, then, does not unjustifiably neglect the importance of such activity; instead, it offers what is close to an accurate expression of its importance. In order to do this, we first need to spell out in more detail what the difference between a powerful and a limited right to productive property consists in.

²⁴ Stilz, “Is The Free Market Fair?,” *Critical Review* 26, no. 3–4 (2014): 426.

²⁵ Patten, “Are The Economic Liberties Basic?,” *Critical Review* 26, no. 3–4 (2014): 364.

²⁶ “Is The Free Market Fair?,” 426.

a. Powerful and limited rights revisited

Tomasi does not, in fact, fully specify in *Free Market Fairness* or elsewhere what he takes a right to productive property to consist in. However, we can from the remarks he does make, and the context of his wider theory, be fairly confident in offering a characterization of such a right he would accept.

A right to productive property, as I set it out above, is as a right to have, or be eligible to have, private ownership rights over certain items (or non-physical entities). The private ownership rights in question are taken to be those consistent with Honoré's full characterization of the standard incidents of ownership.

Whilst Tomasi specifies that the right to productive property he wishes to see included amongst the basic liberties is a right to "the private ownership of" productive property, he does not specify what he takes private ownership to consist in.²⁷ Since, however, Honoré's characterization of the standard incidents of ownership is a widely used and commonsense one, it can be assumed that this would be acceptable to him. It can also be assumed that Tomasi would accept my characterization of his right to productive property as a right to *be eligible* to own certain items, rather than to actually own them. This is because a view which, like his, aims to defend limited government would be unlikely to want to include amongst the basic liberties a right to productive property the protection of which would require substantial state redistribution.

As we have noted above, Tomasi wants to argue for the inclusion of a "powerful" right to productive property amongst the basic rights and liberties.²⁸ What should we take a "powerful" right to productive property to consist in? Again,

²⁷ *Free Market Fairness*, xxxvi.

²⁸ *Ibid.*, xxvi.

Tomasi does not fully specify what he means by “powerful.” From his wider discussion, however, we can conclude the following.

Tomasi’s epithet “powerful” might be thought to refer to two aspects of the kind of right to productive property he defends. The first aspect has to do with the kinds of thing which are taken to fall under this right. The right to productive property defended by Tomasi is “powerful” in the sense that it is taken, according to Tomasi, to have “wide scope,” that is, a wide range of things are taken to fall under the right.²⁹ Tomasi himself specifies that a right to productive property implies that individuals should be “free to start a small business, join large capital ventures with others, and generally to establish economic entities of a great variety of kinds.”³⁰ Later Tomasi mentions “savings in the form of stocks and bonds” as another important class of thing falling under the right.³¹ We can also presume, given Tomasi’s comments about the “wide scope” of the economic liberties he favours, that a right to productive property should also protect the right to own a wide range of items and use them for income-generating purposes.³² For instance, it would protect my rights to rent my copy of *A Theory of Justice* for a profit.³³

Secondly, a powerful right to privately own productive property is taken to involve a robust conception of private ownership. What is meant by a “robust” conception of ownership? A robust conception of ownership involves all of the incidents set out in Honoré’s definition set out above, but, furthermore, implies that there is a strong presumption against external (particularly state) interference with an owner’s ability to exercise the rights and powers associated with ownership. A

²⁹ Tomasi, “Democratic Legitimacy,” 57.

³⁰ *Free Market Fairness*, 23.

³¹ *Ibid.*, 78.

³² Tomasi, “Democratic Legitimacy,” 57.

³³ Tomasi does not discuss whether his views on productive property allow the sale of organs, blood, or other controversial items. I exclude discussion of these items here.

“robust” conception of ownership is the kind of conception of ownership endorsed by libertarian thinkers – with whom, on this subject of ownership at least, Tomasi has a stated affinity.³⁴ A libertarian view of ownership protects above all the owner’s ability to do what they want with the owned item without interference from others.³⁵ This means that external interferences (including state interferences) with the owner’s decision with respect to the use, transfer, and so on of the item are considered to be deeply morally problematic. The same goes for interferences with the owner’s right to the income to be generated from the use or sale of the item. We should note, however, that Tomasi’s view does allow for some interferences with the owner’s rights over the owned item. He is, for instance, happy to allow governments the power to break up monopolies, and some powers of eminent domain.³⁶ This reflects the difference between Tomasi and the libertarian, which he is quick to point out: libertarians take a basic right to property to be *more* important than the other basic liberties; Tomasi rejects this claim.³⁷

What we have, then, is a specification of what “powerful” (as Tomasi calls them) rights to the private ownership of productive property consist in. The consequences of protecting such a right as basic are significant: interventions by the state into the economic sphere are ruled out when this means interfering with people’s ownership rights in productive property, unless these interferences are meant to secure the exercise of other basic rights. In particular, states cannot interfere with individuals’ rights to income from their productive property (for instance, their businesses) for the purposes of redistributive taxation, nor interfere with individuals’

³⁴ *Free Market Fairness*, xi-xii.

³⁵ Nozick, for instance, claims that the “central core of the notion of a property rights in *X*, relative to which the other parts of the notion are to be explained, is the right to determine what shall be done with *X*.” *Anarchy, State, and Utopia*, 171.

³⁶ *Free Market Fairness*, 24.

³⁷ *Ibid.*, xvi-xvii.

control rights over their productive property for the purposes of regulating, say, businesses.

Having spelled out what a “powerful” right to productive property consists in, what about the limited right defended by Tomasi’s critics? This right is, like Tomasi’s, a right to be eligible to privately own certain items. However, it differs in two important ways from Tomasi’s right.

Firstly, Tomasi’s critics defend a right that is limited in scope compared to Tomasi’s. That is, fewer items are taken to fall under it. Carens, Stilz, and Patten all propose that the private ownership of only one type of productive property, businesses, ought to be protected by a basic right.³⁸ In the case of Carens, it is specified that the right in question is to create, own and operate a *small* business and not a “large corporation.”³⁹

Restricting the scope of the right to privately own productive property is one way of ensuring that such a right compatible with a Rawlsian project of redistribution and regulation of the economic sphere. This is because even if individuals have rights to income and rights of control over *small* businesses which imply a presumption against interference with those rights, those who own *large* businesses will lack such rights. Consequently, the state will still be able to tax and regulate where the larger profits and greater numbers of employees are to be found.

A second way of understanding how a right to privately own productive property could be limited is as follows: such a right could involve incidents of ownership with respect to which there is a much weaker presumption against external (particularly state) interference.⁴⁰ Such a right to privately own productive property

³⁸ See Stilz, “Is The Free Market Fair?,” 426; Patten, “Are the Economic Liberties Basic?,” 364; Carens, “Invitation to a Dialogue,” 288.

³⁹ Carens, “Invitation to a Dialogue,” 288.

⁴⁰ Patten for instance, suggests this. See his “Are the Economic Liberties Basic?,” 364.

would then be compatible, in a way in which Tomasi's powerful right clearly is not, with state taxation and interference. Consequently, a "best of both worlds" position would be achievable.

b. Evaluating the arguments

I now turn to evaluate the arguments offered by Tomasi and his critics for the inclusion of, respectively, powerful and limited rights to be eligible to privately own productive property amongst the basic liberties.

Tomasi offers his reader two types of argument for establishing the economic liberties as basic: general arguments, which aim to establish that a broad range of economic liberties should be basic, and specific arguments, which aim to establish that a single economic liberty should be basic.

General arguments. The most important general argument Tomasi offers for his claim that his chosen economic liberties should be basic is that a commitment to the development and exercise of the two Rawlsian moral powers requires that these liberties have special protection. This argument is made in a number of ways. He argues that in order to enable citizens to pursue an *adequate range* of conceptions of the good, the economic liberties must be protected. He also argues that certain sorts of economic activity are *special* and therefore (like religious activities) require protection as a basic economic liberty. Finally, he argues that insofar as we recognise citizens as "responsible self-authors," we should protect the economic liberties as basic.

Specific arguments. Tomasi also offers specific arguments for the inclusion of a powerful basic right to own productive property amongst the basic liberties. These are: that such rights provide *security* and *independence*, since they allow individuals

to hold financial assets; and that such rights are connected with *identity* – people identify themselves with their productive assets, particularly their businesses.

In evaluating these arguments, my strategy will be as follows. I will frame my discussion around consideration of the question of whether Rawlsians ought to accept a powerful basic right to privately own productive property. I will divide my consideration of such arguments into two sections. Firstly, I will consider arguments for such a claim that, I suggest, can be dismissed outright. Secondly, I will consider arguments for such a claim that, whilst failing to establish a powerful right to privately own productive property, might at least be considered candidates for establishing a *limited* right to privately own productive property. I will then suggest that whilst there is some initial plausibility to arguments for a limited right, in fact these arguments fail.

c. Arguments that can be dismissed outright

i. Private economic activity is special

The different strands of argument Tomasi uses to make his case are sometimes difficult to identify. One argument which seems to be present (as identified by Patten, for instance) is the following general argument: a wide range of economic liberties should be protected as basic rights, because many people view private economic activity as particularly meaningful or valuable.⁴¹ Such an argument, as Patten points out, is not very clearly stated, but certainly seems to be present throughout central chapters of Tomasi's *Free Market Fairness*.

⁴¹ Patten, "Are the Economic Liberties Basic?," 367.

As Patten points out, such an argument cannot be very persuasive on a Rawlsian picture. Basic rights gain their status from their relationship to the two moral powers, not because people view the activities they protect as special or meaningful.⁴² Furthermore, including basic rights because they protect activities that are viewed as meaningful or valuable would massively expand the set of basic rights, weakening the significance of those rights.⁴³ Finally, we might construe Tomasi's arguments in another way: as a claim that economic activities require special protection because they are intrinsically valuable activities. This, however, is a perfectionist view inconsistent with Rawlsian thought.⁴⁴ Consequently, we can quickly dismiss outright the argument that because people view economic activities as meaningful or special, we should protect such activities at the level of basic rights.

Whilst some of Tomasi's text suggests the line of argument Patten identifies, other parts of his discussion of the special nature of economic activity suggest a different train of thought. Tomasi makes claims about the methodology of political philosophy, namely, that if it is widely thought amongst the general population that some sort of activity is special – or, as Tomasi sometimes says, has “moral value” – then this should lead political philosophers to seriously investigate the question of whether such activity does, indeed, have moral value.⁴⁵ Tomasi argues that in the case of economic activity, popular opinion suggests that economic activity of the sort his chosen liberties protect *is* special. Popular opinion suggests, he argues, that such activity does have great meaning for many people.⁴⁶ Consequently, political philosophers should reconsider the question of whether economic activities *should* be considered as basic rights. In particular, they should reconsider the question of the

⁴² Ibid., 370-1.

⁴³ Ibid., 368.

⁴⁴ Ibid., 373.

⁴⁵ *Free Market Fairness*, 66-67.

⁴⁶ Ibid., 67.

relationship between the two moral powers and the economic liberties. This is perhaps what Tomasi is suggesting political philosophers should do when he asks them to “go back and check their moral premises.”⁴⁷ Understood this way, Tomasi’s claims about how meaningful people find certain types of economic activity is not an argument in itself, but a prelude to the arguments that follow. It is these arguments that I will now consider.

ii. Self-authorship

The second (general) argument we can dismiss outright is Tomasi’s claim that protecting a wide range of economic liberties as basic is required to protect self-authorship.

One of the most complicated aspects of Tomasi’s thought is his commitment to the importance of individual self-authorship. When Tomasi comes to discuss the two Rawlsian moral powers, he does so not using the standard Rawlsian terminology of a capacity for a conception of the good and a capacity for a sense of justice. Instead, he describes those possessing the first of these moral powers as “responsible self-authors,” and those possessing the second of these moral powers as having the “capacity... to recognize their fellow citizens as responsible self-authors too.”⁴⁸ Initially, Tomasi seems to spell out self-authorship in such a way as to suggest a terminological dispute with the typical Rawlsian picture. He says, for instance, that a self-author has “the capacity to make a realistic assessment of the life options before them, and, in light of that assessment, to choose to pursue some course of life of their own” – a capacity which sounds a lot like the capacity for a conception of the good.⁴⁹

⁴⁷ Ibid.

⁴⁸ Ibid., 74.

⁴⁹ Ibid.

However, when he uses the idea of self-authorship in arguments aiming to establish that the economic liberties should be basic, it becomes less clear that a capacity for self-authorship and a capacity for a conception of the good are the same thing.

Take, for instance, the following aspects of self-authorship that Tomasi highlights. One is being the “central cause” of one’s life.⁵⁰ To illustrate this idea Tomasi uses the example of a janitor who provides for a family who would, without the financial support his janitorial work provides them with, fall into severe poverty. Here, the janitor is the “central cause” of his family’s well-being. A second aspect is overcoming obstacles during one’s life.⁵¹ Here, Tomasi follows Charles Murray in bemoaning welfare systems that “take the trouble out of life.”⁵² Finally, Tomasi discusses a third aspect of self-authorship: people’s ability to make decisions themselves about those “matters that affect them intimately,” especially under what terms they work, and how they spend their personal finances.⁵³

None of these aspects seem to be emphasized in the traditional Rawlsian idea of a capacity for a conception of the good, “the capacity to have, to revise, and rationally to pursue a conception of the good,” where a conception of the good is “an ordered family of final ends and aims, which specifies a person’s conception of what is ... regarded as a fully worthwhile life.”⁵⁴ It therefore seems – as Jeppe von Platz points out – that a major objection to Tomasi’s argument from self-authorship is simply that, from the Rawlsian perspective, there seems to be no good reason to accept its premises.⁵⁵ Consequently, since this thesis does adopt a Rawlsian perspective, the argument can be dismissed.

⁵⁰ Ibid., 184.

⁵¹ This aspect is identified by Melenovsky and Bernstein in their “Why Free Market Rights,” 57-8.

⁵² *Free Market Fairness*, 80.

⁵³ Ibid., 77.

⁵⁴ Rawls, *Justice as Fairness*, 19.

⁵⁵ Von Platz, “Economic Liberties.”

It may be responded here that Tomasi's arguments about self-authorship could be construed in another way, which does make them relevant to the Rawlsian picture. This is that we can see Tomasi as claiming that seeing oneself as a self-author is a requirement of self-respect.⁵⁶ Self-respect, to recall from earlier chapters, is a condition of the development and exercise of the two moral powers. Consequently, if self-authorship is a requirement of self-respect, it is a requirement of the development and exercise of these two powers. Tomasi links self-authorship to self-respect in two ways. Firstly, that understanding oneself as a *central cause* of one's life is a requirement of self-respect; secondly, that facing and overcoming obstacles in one's life is a requirement of self-respect.⁵⁷

Although more relevant to the Rawlsian picture, neither of these arguments are convincing grounds for taking Tomasi's chosen economic liberties (or limited versions of them) as basic. Take understanding oneself as a central cause of one's life first. We can claim here that Tomasi is simply mistaken in his claim about the relationship between understanding oneself as the central cause of one's life, and self-respect. Tomasi seems to think that understanding oneself as a central cause of some event – like, for instance, the fact that one's family is supported – is linked to self-respect because we can only understand ourselves as *agents* if we are central causes. However, as Alan Patten points out,

“in other contexts, we do not tend to think that the fact that a certain outcome would have happened anyway is a reason for thinking that some person's bringing about that outcome should not be considered an exercise of her agency.”⁵⁸

⁵⁶ See, especially, *Free Market Fairness*, 80.

⁵⁷ *Ibid.*, 80-81.

⁵⁸ “Are the Economic Liberties Basic?,” 372.

Patten goes on to say that a parent should not feel that his care of his children is any less valuable, just because someone else (his co-parent) would have cared for the children had he failed to do so.⁵⁹ Our self-respect, then, does not seem to be tied to being the only one who can ensure that a good outcome (like care of a child, for instance) occurs in the way that Tomasi wants to argue it does.

What about Tomasi's claim that facing and overcoming obstacles is a requirement of self-respect? The problems with this as an argument for taking the economic liberties as basic are as follows. Firstly, as Melenovsky and Bernstein point out, economic activity is not unique in providing obstacles: almost any activity will do this.⁶⁰ Consequently, even if we think overcoming obstacles is important for self-respect, we do not need to protect the economic liberties as basic. Secondly, as Melenovsky and Bernstein also point out, taxation and regulation can themselves be construed *as* obstacles – it is, for instance, harder to accumulate resources the more severely one is being taxed, and ruling out certain taxes – for instance inheritance taxes – allows some (those who inherit large sums of money) to evade obstacles such as the risk of severe poverty altogether.⁶¹ Consequently, if we accept the importance of obstacles we will not necessarily want to protect as basic economic liberties which rule out redistributive taxation.

Consequently, we can dismiss these arguments for establishing the economic liberties as basic.

d. Arguments for establishing a limited right to productive property

⁵⁹ Ibid.

⁶⁰ Melenovsky and Bernstein, "Why Free Market Rights," 58.

⁶¹ Ibid.

i. Productive property and identity

One of Tomasi's central specific arguments for a basic right to privately own productive property has to do with identity. A right to *personal* property, he notes, may be defended on the grounds that the items it protects "serve as an expression of identity."⁶² He continues: "the things one lives with and attends to on a daily basis help provide moorings to people, providing a kind of stability of life experience through time."⁶³ A right to productive property, he thinks, can be defended on the same grounds, since individuals frequently have what he calls "identity-casting relationships" with productive property too.⁶⁴

In Chapter 2 of this thesis, I devoted considerable attention to the arguments of those who connect identity to the ownership of personal property. In that chapter, I considered at least two versions of the following argument: that in order for individuals to be able to have a persistent identity through time, they must be able to own certain types of thing. These versions were from Radin and Dan-Cohen. Having a persistent identity through time was taken to be significant from the perspective of the development and exercise of the two moral powers, because one cannot carry out a conception of the good which has any long-term aspects if one does not have a persistent sense of who one is, and what one wants. Tomasi's claim that productive as well as personal property provides individuals with "a kind of stability of life experience through time" fits him neatly into the category of those who offer such arguments for property ownership.

In earlier chapters, I considered identity arguments with reference to housing and personal items. Tomasi's claim is that if we accept such arguments with respect to

⁶² *Free Market Fairness*, 78.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

these kind of things, we should also accept them with respect to productive property. How convincing is this claim? Tomasi, in fact, offers a plausible argument here: *if* we accept identity arguments with respect to housing and personal items, we should accept them with respect to productive property items.

To see this, first take Dan-Cohen's arguments. Dan-Cohen, to recall, argues that individuals can under certain circumstances form relationships with objects which he calls relationships of "constitutive ownership."⁶⁵ When this relationship is formed, the object in question becomes a "constituent of the self."⁶⁶ Such a relationship, Dan-Cohen claims, can be the grounds for a claim that the individual in question should be able to come to have legal ownership rights over the object. The normative implications of the account are not spelled out by Dan-Cohen himself. However, in Chapter 2 I suggested one way we could spell out these implications would be to argue that there should be a basic right to be eligible to own certain types of item based on a concern about individuals' ability to have a persistent identity through time. Once an object becomes part of the self, it may be disruptive to identity to lose control of it. Consequently, we should ensure that the types of item which individuals are likely to form constitutive relationships with are those items which they have a basic right to be legally eligible to own.

There seems no reason why the kind of items that individuals are likely to form constitutive relationships with should only be non-productive. A gardener, for instance, may form a constitutive relationship with her tools, both in cases where she uses the tools to grow plants she sells, and where gardening is simply a hobby. Consequently, if we accept Dan-Cohen's arguments, we should accept a basic right to

⁶⁵ Dan-Cohen, "Value of Ownership," 412.

⁶⁶ *Ibid.*, 430.

own certain sorts of productive items – the kinds of productive items individuals are likely to form relationships with.

A different version of an identity argument is offered by Radin, but the argument still extends to productive property. Radin, to recall, claims that

“[m]ost people possess certain objects they feel are almost part of themselves. These objects are closely bound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world. They may be as different as people are different, but some common examples might be a wedding ring, a portrait, an heirloom, or a house.”⁶⁷

So, certain objects become, in Radin’s terminology, “bound up” with personhood, or identity. Consequently, we might infer, if we were to lose control of those objects we would end up disrupting that identity, and undermining our ability to have an identity which persists through time. In the extract above, Radin wants to claim, I think, not just that people *do* become “bound up” with certain items with which they have significant interaction (for instance, their living spaces), but also that they *ought to* become bound up with such objects. Here, her argument differs to Dan-Cohen’s, who only claims the former. On Radin’s view, for most people, we may damage our ability to have a persistent identity through time if we never become “bound up” with objects in the way she suggests. Tomasi’s argument, too, seems to be of this latter sort. He claims that the “the things one lives with and attends to on a daily basis help provide moorings to people, providing a kind of stability of life experience through time.”⁶⁸

⁶⁷ “Property and Personhood,” 959.

⁶⁸ Tomasi, “Democratic Legitimacy,” 68.

The implications of Radin's argument, then, are slightly different than those of Dan-Cohen's: not just that individuals should be eligible to own those things they are *likely* to form constitutive relationships with (for instance, because they come regularly into contact with those things), but that individuals should positively be given opportunities to become "bound up" with items (in Radin's terminology), to use items as "moorings." These opportunities should be provided in the form of protection of the individual's eligibility to privately own a wide range of items. If we think of the types of thing which typically act as such moorings to people, we will include not just houses and heirlooms, but also productive property such as the gardener's productive tools (see above), and also many sorts of commercial enterprise. Consequently, Radin's view, too, extends to cover productive property.⁶⁹

Despite the plausibility of extending identity arguments to productive property, we might be concerned that such arguments cannot support Tomasi's powerful right to privately own productive property. Critics instead claim that only a more a limited right can be established. Carens, who defends a right to privately own a small business, objects that "the modern corporation is not just an extension of the individuals who own it, but a distinct legal entity with special privileges (limited liability)."⁷⁰ If individuals do not closely identify with large corporations, then an identity argument simply cannot establish a basic right to productively own these. For the defender of the "best of both worlds" position, this means that state interference with respect to large corporations is not ruled out at the basic rights level.

Defenders of a limited right may well also argue that, from the perspective of an identity argument, a basic right to productive property can permit certain sorts of

⁶⁹ Radin would seem to endorse the claim that productive property can become "bound up" with identity. For instance she thinks that a "long-term family business personally maintained by its members" counts as a type of commercial property with which individuals can have identity relations. *Reinterpreting Property*, 80.

⁷⁰ Carens, "Invitation to a Dialogue," 288.

regulation of (even small) businesses, as well as the taxation of their profits. Take, for instance, Tomasi's example of Amy's pet grooming business, Amy's Pup-in-the-Tub.⁷¹ It might be argued that it is not clear how Amy's identification with this business is going to be undermined if she is being subject to, say, corporation tax, or if she is required to pay employees minimum wage, or implement health and safety regulations. Amy may of course wish that she could have more control over her business, but the lack of this control does not, I think, undermine the ability of that business to be a "mooring," or anchor for her sense of self.

This, then, is a brief summary of a defense of a limited, rather than a powerful right to productive property. The argument for a limited right could be extended to cover other small-scale income-generating activities that are not strictly businesses. It is perhaps less likely to be extendable to cover stocks and shares, unless it can be argued that people tend to have close relationships of identification with their stock portfolios.⁷² I leave these details aside, however, to offer some general objections to the limited position.

The first objection is that the limited right position is unstable. Firstly, consider the Carens position that identity arguments can be used to establish a right to own a small business, but not a large corporation. This argument does not seem to be particularly persuasive. Consider the possibility that Amy's Pup in the Tub is wildly successful, and expands rapidly to become a nationwide chain of pet grooming stores. Why wouldn't Amy continue to feel that her identity was bound up with this business? It is of course true that many large corporations are not run by their founders (although if they are run by family members or descendants of the founders, the identity argument is still likely to hold), but the fact that they sometimes are

⁷¹ *Free Market Fairness*, 66; *Ibid.*, 78.

⁷² Although Tomasi, we should note, does seem to think that you can have such a relationship with your stock portfolio. *Ibid.*, 79.

means that we cannot rule out large corporations from protection by a basic right. Otherwise we would fail to protect people from the significant identity-disruption of losing control of their businesses when those businesses reached a certain size.

Secondly, and perhaps more importantly, if we are grounding a basic right on the basis of recognizing the vital significance of the identity-constituting relationship between person and productive property, then we will surely want to ensure that this relationship can persist. This means a commitment at basic rights level to creating an environment which makes it easy for businesses to flourish. Arguably, however, a business-friendly environment is one that lacks significant taxation and regulation of businesses, since these forms of intervention in the economic sphere impose additional costs on business owners. Consequently, protecting a basic right to start and run a business on identity grounds may well involve endorsing something closer to Tomasi's original view.

The second objection is that identity arguments are simply not very plausible. I will not here repeat the critiques of individual identity arguments set out in some detail in previous chapters – instead I will give a brief summary of the general line these critiques take. The central problem with identity arguments is that we can question how important a continued relationship with certain objects or entities really is to the persistence of identity. One reason we might question the importance of such a relationship is that we typically think that people can tolerate the loss of items which they take to be of great significance to themselves without deeply damaging consequences when it comes to identity. This is what critics of Radin such as John Christman have claimed.⁷³ This conclusion would seem to extend to items of productive property – the failure of an individual's business may be something which

⁷³ Christman, review of *Reinterpreting Property*.

causes feelings of loss and so on, but we might doubt that it causes the kind of deep damages to the individuals' identity that would genuinely undermine the capacity to form, revise and pursue a conception of the good.

This concludes my discussion of how identity arguments might fit into a project to establish a powerful, or limited, basic right to privately own productive property. Such arguments, I have argued, cannot be used to establish either a limited, or a powerful, version of this right.

ii. Productive property and the range of available projects

The next argument I will consider as a candidate for establishing a powerful or limited right to privately own productive property is Tomasi's claim that Rawlsians should protect such a right amongst the basic liberties because this will "increase the range of projects... that are available to citizens."⁷⁴

Tomasi does not discuss why he thinks Rawlsians should care about increasing the range of projects available to citizens. However, we may construct a case along the following lines.⁷⁵ The basic liberties gain their special status from their relationship to the development and exercise of the two moral powers. When it comes to citizens' capacity for a conception of the good, one of the things that matters

⁷⁴ *Free Market Fairness*, 79.

⁷⁵ The importance of increasing the range of projects may be accounted for in a different way to the one I set out here. As Melenovsky and Bernstein set out Tomasi's arguments, this is that increasing the range of projects serves to – in Tomasi's terms – "broaden the evaluative horizons of citizens." The argument is that citizens need to be able to survey a wide range of different ways of life in order to be able to develop and exercise the capacity to form, revise and pursue a conception of the good. In a society in which free market ways of life are not projected, citizens cannot survey those ways of life, and consequently their capacity for a conception of the good is stunted. As Melenovsky and Bernstein point out, however, this argument is not very persuasive as an argument for protecting economic liberties as basic, since it fails show that liberal societies protecting freedom of speech, conscience and association do not do enough to protect citizens' evaluative horizons. Consequently, I do not discuss the evaluative horizons argument in what follows, but instead consider what I take to be a more plausible (though still ultimately unconvincing) line of argument. Melenovsky and Bernstein, "Why Free Market Rights," 55-56; Tomasi, *Free Market Fairness*, 79.

is that citizens should have the capacity to pursue their conception of the good. Recognition of the importance of this capacity means ensuring that a wide range of conceptions of the good – a wide range of projects – are available for citizens to pursue. Furthermore, Rawlsian thought suggests that part of the function of specially protecting the basic liberties is to ensure that citizens are offered a wide range of projects to pursue: Rawls, for instance, claims that the basic liberties are “indispensable for the protection of a wide range of determinate conceptions of the good (within the limits of justice).”⁷⁶ Based on a commitment to furnishing citizens with a wide range of projects to pursue at the level of basic rights, we might think that Tomasi is at least right in arguing that where adding extra basic rights and liberties increases the range of projects available, this is justification for adding those basic rights and liberties. All that needs to be established for his argument to go through, then, is that a right to privately own productive property does indeed increase the range of projects available to citizens.

Tomasi’s claim that we should add basic liberties if they increase the range of projects available echoes arguments by other right-wing Rawlsians. Daniel Shapiro, for instance, claims that a right should be included amongst the basic liberties if

“the recognition of the right allows a greater diversity of (permissible) conceptions of the good than would exist were the right not recognized.”⁷⁷

Shapiro argues that powerful rights to own and acquire the means of production and natural resources should be included amongst the basic liberties on this basis. Shapiro offers a different reason why Rawlsians should support such a principle to the one I

⁷⁶ *Political Liberalism*, 308.

⁷⁷ Shapiro, “Why Rawlsian Liberals Should Support Free Market Capitalism,” *The Journal of Political Philosophy* 3, no. 1 (1995): 63.

have given above. His claim is that all things being equal we ought to prefer the set of basic liberties that protects the wider range of conceptions of the good, because this means a broader overlapping consensus and a more stable just society.⁷⁸ On this view, the more conceptions of the good are constitutionally protected, the fewer people feel alienated from the just society on the basis that their conception of the good is unavailable, and the more support there is for that society. There will also be fewer political conflicts, as fewer individuals try to use the political process to try to make their conception of the good available.

Despite the initial appeal of these lines of argument, there are good reasons for Rawlsians to reject them. This has to do with the unsatisfactory nature of the principle “add basic liberties to the set when these increase the range of projects available.” There are at least two reasons why this principle might be seen as unacceptable. Firstly, echoing Patten’s concern about the “add liberties when they protect activities people find meaningful” argument, we might be concerned that such a principle would expand the set of basic liberties too much, and consequently that these liberties would lose their significance. Certainly it seems likely that accepting a principle such as “add basic liberties to the set when these increase the range of projects available” would significantly expand the set of basic liberties.⁷⁹

Secondly, and more importantly, we might think the principle “add basic liberties to the set when these increase the range of projects available” ought to be rejected because it would prove too difficult to know when such a principle was satisfied. Consider for instance Tomasi’s claim that we should include a powerful basic right to privately own productive property in the set of basic rights and liberties, because this will increase the range of projects available to citizens. Now consider

⁷⁸ Ibid., 63-4.

⁷⁹ Patten, “Are the Economic Liberties Basic?,” 368.

that there is another candidate right, say the critics' limited basic right to privately own productive property, which advocates of the right claim will also increase the range of projects available. Which right should we include? If we are concerned about a commitment to citizens pursuing their conceptions of the good, or creating the broadest overlapping consensus, we will have to include the right which *most* increases the range of projects or conceptions of the good available. But how are we to evaluate which of these rights most increases the range of conceptions of the good available? The principle "add basic liberties to the set when these increase the range of projects available" seems to commit us to having to make these sorts of evaluations, yet it is not clear that they can satisfactorily be made.⁸⁰

Furthermore, the significant difficulties to be encountered when making such evaluations lands us in trouble from the perspective of Shapiro's overlapping consensus argument. In particular, it is unlikely that a stable consensus can be formed around any set of basic liberties, if it is extremely difficult for citizens to know whether such a set of basic liberties does, in fact, protect the widest range of conceptions of the good. Consequently, citizens will be unable to give wholehearted support to the set of basic liberties which have constitutional protection in the society in which they live. It will be, in particular, difficult for those whose conceptions of the good are made difficult to achieve, or perhaps totally ruled out, by some set of basic liberties to support them, if they constantly suspect that some other set of basic liberties might have protected a wider range of conceptions of the good, including their own.

⁸⁰ We may also be concerned that a diversity principle of the sort under consideration is indeterminate. So, for instance, there may be two rival sets of basic liberties which protect equally wide but different ranges of conceptions of the good, and also ensure the adequate development and exercise of the two moral powers. The diversity principle gives us no reason to choose one of these sets of basic liberties over the other.

In addition, because it is so difficult to make evaluations about which set of basic liberties protects the widest range of conceptions of the good, a principle “include basic liberties where they protect a wider range of conceptions of the good” falls afoul of the publicity condition for Rawlsian principles of justice. Rawlsian theory requires that the justification for the governing principles of justice should be publicly available to citizens.⁸¹ One implication of this is that the justification for governing principles of justice should “appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science that are not controversial.”⁸² The concern about liberties which are taken to be basic on the grounds that they allow a wider range of conceptions of the good to exist than would otherwise exist, is that the justification for their inclusion will in many cases not be “available” to citizens.

Given the difficulties with this principle, we would be better off following the implication of Rawls’s own comment that the basic liberties are those rights and liberties “indispensable for the protection of a wide range of determinate conceptions of the good (within the limits of justice).”⁸³ If we consider this comment, we can see that Rawls does not commit himself to adding basic liberties when they increase the range of conceptions of the good; instead, he affirms that the basic liberties as he originally enumerates them (that is, with only two economic liberties) ensure the protection of a wide range of determinate conceptions of the good. Here, Rawls seems to suggest that what matters from the perspective of citizens’ capacity for a conception of the good is simply that some adequate “wide” range of projects be available to citizens.

⁸¹ *Political Liberalism*, 67.

⁸² *Ibid.*, 224.

⁸³ *Ibid.*, 308.

Consequently, I think we can dismiss this argument for a powerful right to privately own productive property. This, however, does not mark the end of the discussion of this section, since it seems clear that one might argue that the range of projects available is, in fact, in some important way inadequate if a right to productive property is not included amongst the basic liberties. This is not what Tomasi argues, but it is what some of the critics under discussion here – particularly Patten – want to claim with respect to the limited right to productive property they defend. Let us consider these arguments here.

Patten’s argument for a limited right to privately own productive property focuses on freedom of occupation. He claims that a limited right to privately own productive property, and in a particular, a right to start a business should be protected as a basic right because “freedom of occupational choice is already recognized as a basic liberty by many liberals, and the right to start a business is plausibly regarded as an aspect of this freedom.”⁸⁴

The traditional Rawlsian position on freedom of occupation is that a just society should protect “freedom of occupation against a background of diverse opportunities.”⁸⁵ Freedom of occupation, for Rawls, seems to be a basic right, forming part of the liberty and integrity of the person.⁸⁶

How might a right to privately own productive property be thought to be necessary for the protection of freedom of occupation? The most plausible argument along these lines would be that such rights were essential to ensuring a “background of diverse opportunities.” This would be one way of arguing that a right to productive property ought to be included as a basic right because it ensures that a “wide range of

⁸⁴ “Are the Economic Liberties Basic?,” 364.

⁸⁵ *Political Liberalism*, 308.

⁸⁶ This is the view that Freeman takes in *Rawls*, 48.

projects” is available to citizens. Here, however, the projects we are interested in are the projects citizens can pursue in the course of their occupations.

It might be argued that we are not really free to choose our profession unless we have the opportunity to create employment options for ourselves, and creating employment options for ourselves requires the ability to start a business or use items for commercial purposes. However, this seems wrong. A society in which there were a wide range of different careers available, catering to different interests and skills, but in which citizens were prevented from privately owning productive property would seem to adequately protect citizens’ freedom to choose a job.⁸⁷ The question is whether we can reasonably expect a wide range of careers – a “background of diverse opportunities” – to be available in a society which does *not* permit citizens to start businesses and use items for commercial purposes.

The argument might be that it is the exercise of the right to privately own productive property, particularly in starting up businesses, which does much to create employment opportunities for others, ensuring that those others face a wide range of such opportunities. We should note that such an argument only seems to support a *limited* right to privately own productive property, since people are clearly able to start and run businesses, creating employment opportunities for others, in an economic environment in which businesses are taxed and subject to regulation.

However, it is not clear to me that the argument under consideration can establish even a limited right to privately own productive property. In particular, it is not clear that a commitment to allowing new enterprises to emerge requires the protection of a right to *privately own* productive property. Consider, for instance, a regime that was market socialist “all the way down” (if the state, in Stilz’s words,

⁸⁷ It might be argued that there is some special importance to permitting citizens to be self-employed, but I’m not sure how protecting a right to productive property on this basis wouldn’t just be establishing a basic right to protect one particular conception of the good.

“enforced highly collectivized productive arrangements”); in other words, required all businesses, even small ones, to be co-operatives.⁸⁸ Plausibly, this is a regime which allows for the emergence of new types of employment (since new businesses can be started) without protecting the “capitalist” right for individuals to start and own a business under consideration. The existence of this option suggests why Rawls himself, for instance, did not support any basic right “to private property in ... means of production generally.”⁸⁹

Consequently, it does not seem as though arguments from ensuring that a satisfactory range of projects are available to citizens can establish a limited or powerful right to privately own productive property.

iii. Productive property, security, and independence

A second major argument that Tomasi uses to establish a basic right to privately own productive property is that such property can provide individuals with security, independence, and protection from domination.⁹⁰ Individuals have financial security, because productive property (especially, stocks and so on) is an asset, and, furthermore an income-generating one. This means that if things go wrong, they will be provided for. Individuals have independence from the state and its agents, presumably because if they possess income-generating assets, they do not have to rely on the state if things go wrong.⁹¹ Tomasi does not spell out how assets protect individuals from domination, but we can assume that this is because it prevents them

⁸⁸ Stilz, “Is The Free Market Fair?,” 426.

⁸⁹ *Justice as Fairness*, 114.

⁹⁰ *Free Market Fairness*, 78.

⁹¹ *Ibid.*, 78.

from ever being in a situation where lack of subsistence places them at the mercy of another.

Defenders of a limited right to privately own productive property may here say two things. Firstly, that productive property can still provide security even if it is being taxed. This is particularly true when we consider taxing individuals with large holdings of productive wealth. The second is that it seems odd that Tomasi would defend an independence, security or non-domination argument for a right to productive property, since such arguments clearly seem to support a right to *actually hold* productive property of the relevant sort, not just to have the legal eligibility to own it.⁹² This is because a right to have the legal ability to hold productive property does not ensure citizens are secure, independent, and free from domination. Only actual (as it were) money in the bank will do that. However, since a right to actually own productive property requires significant redistribution, it is one that Tomasi will want to reject.

How plausible, then, are Tomasi's arguments when considered as arguments for a limited right to actually hold productive property? There are two reasons to think that they are not very plausible. Firstly, arguments that claim that productive holdings provide security and independence tend to overestimate the security and independence such holdings can provide, and ignore the fact that such holdings can be risky.⁹³ Secondly, and more importantly, such arguments neglect the welfare state as

⁹² Critics have argued that other arguments Tomasi offers also seem to issue in much more left-wing basic rights than he intends. So, for instance, Elizabeth Anderson argues that Tomasi's claim that people should be able to negotiate the conditions of their workplace seems to support a claim for individuals to be able to collectively decide the conditions of their workplaces, i.e. a claim for more economic democracy. Anderson, "Recharting the Map of Social and Political Theory: Where is Government? Where is Conservatism?," *Bleeding Heart Libertarians* (blog), June 12, 2012, <http://bleedingheartlibertarians.com/2012/06/recharting-the-map-of-social-and-political-theory-where-is-government-where-is-conservatism/>.

⁹³ On this see Ben Jackson, "Property-Owning Democracy: A Short History," in *Property-Owning Democracy: Rawls and Beyond*, ed. Martin O'Neill and Thad Williamson (Chichester, UK: Wiley-Blackwell, 2012), 48.

a source of protection from domination and a sense of security. Tomasi's arguments reject the state as a source of support when individuals face, say, periods of financial difficulty, since he expressly mentions independence from the state and its agents as one of the important goods that holdings of productive property are meant to provide.⁹⁴ But he does nothing to justify the claim that citizens ought to be independent from the state.

One potential justification is that state agents may dominate vulnerable people. To this, however, we can respond, drawing on similar arguments from Chapter 1, that if welfare rights are constitutionally entrenched this protects individuals from such domination. A second, more compelling justification, is that state support is stigmatizing and because of this it is self-respect-undermining for individuals to have to take advantage of it. Holdings of productive property are therefore a superior source of security and better protection from domination.

Self-respect arguments against state support are also defended by supporters of productive property holdings from the left.⁹⁵ Much has to be done, however, before they can be persuasively established. The main concern about such arguments is the well-worn one that they rest on an empirical claim about the likelihood of unjustified stigmatization of those who receive welfare benefits, even in a just Rawlsian state. We can suggest that this empirical claim might be false: whether those in receipt of welfare benefits will be stigmatized depends on the prevailing attitudes towards those on welfare – for instance, whether those on welfare are viewed as being *entitled* to their benefits. In a Rawlsian just society, however, where citizens possessed of a sense of justice understand that those out of work through no fault of their own are entitled to support, it seems unlikely that there would be such

⁹⁴ *Free Market Fairness*, 78.

⁹⁵ See, for instance, O'Neill, "Free (and Fair) Markets."

stigmatization. However, the better response is simply to say that a self-respect argument involves too many unknowns to be much use to either side of this debate.

We have now rejected the plausibility of a limited right to privately own productive property based on Tomasi's arguments for security, independence, and non-domination. However, there is one more argument along these lines to explore.

Some of Tomasi's arguments suggest that what is important is that citizens should have a right to be eligible to *save*. He claims that a state which simply permits citizens to "hoard cash" would not adequately protect this right.⁹⁶ He then goes on to equate being eligible to save with being eligible to hold "stocks and other securities."⁹⁷ And, of course, he grounds the right to save in arguments about citizens need for security, independence, and non-domination.

My arguments with respect to a right to privately own productive property have been strictly negative: my position is simply that no right should be included amongst the basic liberties; nor do I wish to defend some lesser rights of private control over productive items, such as a right to lease them. This is because, as I have said above, I do not think that private control over productive items of this sort is necessary to protect the development and exercise of the two moral powers. However, consideration of Tomasi's arguments from independence, domination and security does lead me to claim something positive about what the content of citizens' basic rights should be with respect to *non-productive* property. This positive proposal does not revise any of the claims made in earlier chapters with respect to housing and personal possessions; instead, it considers a new category of non-productive property: savings. My claim here is that citizens should have a basic right to be eligible to save, and that Rawlsian justice has so far neglected to include such a right amongst the

⁹⁶ *Free Market Fairness*, 79.

⁹⁷ *Ibid.*

basic rights and liberties. Tomasi, consequently, does Rawlsian theory a service by drawing attention to the importance of such a right.

Tomasi, as I noted above, argues that citizens should have a right to save, and understands this right as a right to be eligible to hold *productive* property. This is because he seems to understand a right to save mostly in terms of a right to hold “stocks and other securities,” which are productive. However, it is not clear why, even on Tomasi’s own grounds, a right to save has to be a right to hold productive property. Consider, for instance, someone who has a savings account containing £10,000 which pays a rate of interest in line with inflation. Tomasi’s concerns about only allowing citizens to “hoard cash” are, presumably, that a hoard of cash will lose its value over time. Citizens, therefore, lose out by saving rather than by spending their income immediately. This is not the case, however, in the savings system I discuss here. In such a system, the person who has £10, 000 in the bank preserves the value of this asset, and this asset provides him or her with the security, independence, and protection from domination Tomasi is interested in. The asset, however, is non-productive, as no income is being earned on it; the interest paid is simply maintaining the value of the original holding. Consequently, even on Tomasi’s views, a right to save need only be a right to hold *non-productive* property.

My claim is that citizens should have such a right, but on different grounds to those that Tomasi sets out. My claim is that a right to save is justified on grounds of a commitment to citizens being able to form, revise, and pursue a conception of the good. This is because the pursuit of a very wide range of conceptions of the good require individuals to be able to accumulate resources. For any given individual, if the pursuit of their conception of the good requires expenditure greater than their monthly income minus living expenses, then they will need to be able to accumulate

money. However, hoarding cash is not an acceptable way for them to do this, for two reasons. Firstly, and most importantly, it is not a secure way to accumulate such resources. Secondly, because if, under common economic conditions, such a hoard diminishes in value, citizens will not be able to accumulate such resources in a way that preserves their value. Consequently, in a scenario in which citizens can only hoard cash, a very wide range of conceptions of the good (any conception of the good that involves such accumulation) will not be adequately protected.

Is there a Rawlsian commitment to the protection of citizens' ability to pursue conceptions of the good? As was discussed above, Rawlsian justice includes a commitment to the protection of a wide range of options for citizens when it comes to the pursuit of conceptions of the good. This commitment is one that occurs at the level of basic rights. So Rawls, as we saw above, claims that part of the importance of the basic liberties is that they are "indispensable for the protection of a wide range of determinate conceptions of the good (within the limits of justice)."⁹⁸ The set of basic rights, I claim here, cannot protect an adequate range of conceptions of the good, unless there is a basic right to save (and, of course, to withdraw one's savings), as set out above.

One final thing to note about such a right is that it need only be a right for individuals to *be eligible* to save, not a right to have actual savings. This is because Rawlsian justice does not protect the ability of any individual citizen to actually be able to carry out their conception of the good; it only provides a framework which secures for citizens the ability to pursue of a wide range of conceptions of the good. This is what a right for individuals to be eligible to save provides.

⁹⁸ *Political Liberalism*, 308.

This concludes my discussion of right-wing Rawlsian arguments for a basic right to be eligible to privately own productive property. I have argued that such arguments cannot establish either a powerful or – as some of Tomasi’s critics have wanted to claim – a limited basic right of this sort. I have argued, however, that Tomasi’s comments about the importance of savings ought to lead Rawlsians to include a basic right to save amongst the basic liberties. Such a right, however, is not a right to *productive property*; it is a right to be able to have non-productive holdings. Consequently, my claim that we should reject a “best of both worlds” position which expands the economic liberties protecting as part of the basic rights and liberties to include rights to productive property has not been undermined.

In what remains of this chapter I will move on to consider a different set of arguments for a basic right to productive property. These come not from right-wing Rawlsians, but from those who argue that Rawlsian theory should include a commitment to citizens having *actual holdings* of productive property amongst the basic liberties.

4. The right to actually own productive property

I now turn to consider arguments that Rawlsians should include a basic right to actually privately own productive property amongst the basic liberties.

It is perhaps misleading to suggest that this question has not already been under consideration in the course of this chapter. In particular, I noted above that we might think that Tomasi’s arguments from security, independence, and non-domination supported a right to actually own, rather than a right to be eligible to own productive property. The idea that such arguments might support a right to actually

own productive property was then dismissed by implication: I argued that state support could provide individuals with security and protection from domination, whilst claims that citizens ought on a Rawlsian picture to be independent from such state support were dismissed.

More accurately, then, I now consider in its own right the question of whether Rawlsians should include a basic right to actually privately own productive property amongst the basic liberties. Specifically, I consider two arguments of this sort: one that claims that citizens cannot have the capacity to form, revise, and pursue a conception of the good unless they can command productive assets; one that claims that citizens cannot develop a sense of justice unless they can command productive assets. Both of these arguments are implausible.

a. Capacity for a conception of the good arguments

The first argument to consider comes from Gavin Kerr. Kerr argues that Rawlsians are mistaken not to include certain “socio-economic rights” amongst the basic liberties, including (it seems – more on this below) rights to hold productive property.⁹⁹

Kerr’s argument goes as follows. Rawlsians, as we know, justify the priority of the basic liberties on grounds of their connection to the two moral powers. These powers are sometimes termed by Rawls “highest-order interests.” One of these moral powers is the capacity to form, revise and pursue a conception of the good, which has been the subject of much discussion of the course of this thesis. What is not considered on the traditional Rawlsian picture to be a highest-order interest, is the individual’s interest in *advancing* their conception of the good or plan of life. Not

⁹⁹ Kerr, “Property-Owning Democracy and the Priority of Liberty,” *Analyse & Kritik* 35, no. 1 (2013): 71-92.

being classed as a highest-order interest, this interest is not protected by the basic rights and liberties, but is instead protected by the second principle, particularly the difference principle.

Kerr's claim is that Rawlsians cannot justify taking citizens' interest in advancing a conception of the good to be less important than their interest in developing the capacity to form, revise and pursue a conception of the good. His argument for this claim is briefly stated, but can nevertheless be spelled out along the following lines. For Kerr, protecting citizens' interest in advancing a conception of the good is *necessary* to protect their capacity to form and revise a conception of the good.¹⁰⁰ This is because when citizens advance a particular conception of the good, they gain a deeper understanding of the "practical implications and significance" of these values and commitments involved in this conception of the good, and this deeper understanding can lead them to revise these fundamental values and commitments.¹⁰¹

If we want to protect citizens' interest in advancing a conception of the good at basic rights level, then, Kerr argues we will want to protect citizens' claim to "fair opportunity to pursue a reasonable conception of the good" as part of a Rawlsian first principle of justice. This will mean protecting social and economic rights as basic. Precisely what these rights are is, unfortunately, not spelled out in any great detail by Kerr, but he certainly seems to take it that such social and economic rights will involve "access to productive resources."¹⁰² Access to productive resources, we can assume, provide citizens with the "material resources necessary for the advancement of a rational plan of life."¹⁰³ Furthermore, this "access" is not merely taken to involve

¹⁰⁰ Ibid., 82.

¹⁰¹ Ibid., 82-3.

¹⁰² Ibid., 84.

¹⁰³ Ibid.

the *legal ability* to privately own productive assets, since Kerr takes it that the kind of policies which would ensure citizens access to productive resources would be the “pre-distributive asset-based policies” commonly associated with advocates of property-owning democracies.¹⁰⁴

We do not, however, need to spell out the precise content of Kerr’s proposal in order to undermine its motivating argument. This is Kerr’s claim that citizens’ interest in the advancement of a particular conception of the good should be considered as important as the development and exercise of their capacity to “form and revise” a conception of the good, because the one is “practically inseparable” from the other.¹⁰⁵

Kerr’s support for this claim seems to be that citizens cannot gain a proper understanding of a conception of the good unless they have actually carried out that conception of the good. But this is surely implausible. Citizens can gain a satisfactory level of knowledge about the content of a particular conception of the good simply by exercising the basic liberties traditionally associated with that moral power: specifically liberty of conscience and association.¹⁰⁶ Such liberties allow for the exchange of ideas, the exposure to different ways of life, and the reflection that seem an adequate basis for citizens to understand a particular conception of the good, and, based on such an understanding, to either choose to pursue such a conception of the good, or choose to revise it.

Indeed, if we revisit Kerr’s own argument, it seems that all Kerr himself wants to commit himself to is the claim that advancing a particular conception of the good will “deepen” our understanding of that conception of the good. This is not the same as saying that we cannot develop an understanding of a conception of the good

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., 82.

¹⁰⁶ On this see Rawls, *Justice as Fairness*, 113.

sufficient to have an “adequate” ability to choose to pursue it.¹⁰⁷ Consequently, we can dismiss Kerr’s arguments for a basic right to actually own productive property.

Having considered Kerr’s argument, I now turn to consider another line of argument which holds that a commitment to a capacity for a conception of the good – or something like it – ought to imply that all are furnished with holdings of productive property.

The line of argument I consider here is most closely associated with Bruce Ackerman and Anne Alstott.¹⁰⁸ The view claims that all citizens ought to receive, when they reach adulthood, a capital grant – a substantial capital sum, which can be used as those citizens see fit.¹⁰⁹ Ackerman and Alstott original proposal was that the sum would be \$80,000.¹¹⁰

The central argument that Ackerman and Alstott put forward for this grant centers on the value of autonomy. “If a liberal society is to vindicate the value of individual autonomy,” they claim, “it must consider carefully the conditions under which young adults confront basic choices.”¹¹¹ The “basic choices” that are being referred to here are the choices about what one is to do with one’s life. The concern is that at present in liberal societies, the conditions are not in place for individuals to be able to make these “basic choices” in a satisfactory way. One of the conditions which is lacking in many young people’s lives is access to substantial sums of money.¹¹²

But such sums are important, claim Ackerman and Alstott, for a number of reasons.

¹⁰⁷ Ibid., 112.

¹⁰⁸ Bruce A. Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven, CT: Yale University Press, 2008), ProQuest ebrary e-book. For a discussion of the historical origins of the view see John Cunliffe and Guido Erreygers, “Basic Income? Basic Capital! Origins and Issues of a Debate,” *The Journal of Political Philosophy* 11, no. 1 (2003): 89-110.

¹⁰⁹ I take this characterization of the view from Stuart White’s discussion of Ackerman and Alstott. White, “Basic Capital in the Egalitarian Toolkit?,” *Journal of Applied Philosophy* 32, no. 4 (2015): 417-431. Note that Ackerman and Alstott do not explicitly frame their arguments in terms of basic rights. I am simply considering whether their views can be marshaled in support of a basic right.

¹¹⁰ Ackerman and Alstott, *The Stakeholder Society*, 3.

¹¹¹ Ibid., 34-5.

¹¹² Ibid., 35-56.

Firstly, they allow young adults to embark on projects which cannot be accomplished without access to this kind of sum – in particular, projects which require significant higher education to be carried out, but also starting a business, or a family.¹¹³

Secondly, they allow young adults the opportunity to reflect on what their goals are by releasing them from the immediate pressure of having to support themselves.¹¹⁴

In a recent analysis of Ackerman and Alstott's view, Stuart White suggests that we can best understand this view by seeing Ackerman and Alstott as committed to the protection of citizens' interest in "adequate opportunity for ambition-formation," that is, their interest in being able to think about what they want to do with their lives in a context which is conducive rather than hostile to the development of ambition.¹¹⁵ White argues that, on Ackerman and Alstott's view, "a lack of assets in early adulthood compromises one's opportunity for ambition-formation."¹¹⁶ It does this in two ways. Firstly, it *distracts* people. Because young people are immediately focused on having to make ends meet, they do not have the opportunity for serious reflection about how they want to lead their life. Secondly, it *narrows people's horizons*. Since young people know they will not be able to access the resources they need for certain projects, they will not think to pursue them.¹¹⁷

However persuasive this case might be, one important concern for the purposes of the present discussion is whether Ackerman and Alstott's argument can be reconciled with a Rawlsian perspective. White suggests that, in fact, it can.

¹¹³ Ibid., 35.

¹¹⁴ Ibid., 35. There is a question here about whether what Ackerman and Alstott's argument can be understood as an argument that all young people should own *productive* property, as the term is being understood in this thesis. In cases where the significance of the grant is justified on the basis that young people should have this money to spend, then it does not look as though it is important for those young people to be able to exercise rights to use the money to generate income. In cases where the significance of the grant is justified on the basis that young people should be able to, for instance, start a business, then it is important for young people to be able to exercise rights to use the money to generate income.

¹¹⁵ White, "Basic Capital," 424.

¹¹⁶ Ibid.

¹¹⁷ Ibid., 425.

Rawlsian political philosophy is committed to the development and exercise of a capacity for the conception of the good; ambition-formation, argues White, can be seen as “integral to the framing (and perhaps also, to some degree, revising) of one’s conception of the good life.”¹¹⁸ We cannot, therefore, say that the conditions are in place for the adequate development and exercise of the capacity for a conception of the good unless the conditions are also in place for ambition-formation of the appropriate sort. In particular, individuals cannot be properly said to have the conditions in place to *form* their conception of the good if they are either distracted from the task of conception-of-the-good formation, or if they consider only a very limited range of plans of life as accessible to them.

Since the claim is that the adequate development and exercise of the capacity for a conception of the good is not possible without capital grants, then it also looks as though the argument here is for a basic right to a capital grant.¹¹⁹ Consequently, we can see the arguments of Ackerman and Alstott as highly relevant to the present discussion.

Having set out Ackerman and Alstott’s view, we can now turn to consider how plausible this view, in fact, is. In my view it is not, in fact, particularly plausible.

To see this let us consider in turn the two ways in which a lack of access to a significant sum of money is taken to undermine the capacity for a conception of the good.

The first way, to recall, is that without the means by which to support themselves without taking on work, young people are distracted from the task of contemplating what they will do with their lives. It certainly seems correct to say that the absence of sufficient opportunity for contemplation would seriously undermine

¹¹⁸ Ibid.

¹¹⁹ White does not claim this, although it seems to be an implication of his arguments.

one's ability to form a conception of the good that was in any real sense one's own. However, what does not seem to be correct is to say that a substantial capital sum would be required to offer young people this opportunity for contemplation. White, for instance, notes that the receipt of an unconditional basic income would support the kind of "reflection and experimentation" that Alstott and Ackerman take to be of such importance.¹²⁰ Indeed, if the opportunity for individuals to receive this kind of income was available to all for some period of time in early adulthood (say, a year or two years), this would seem sufficient to ensure the appropriate opportunity for "reflection and experimentation." Consequently, it looks as though a capital grant is *not* necessary.

The second way in which a lack of access to a significant sum of money is taken to undermine the capacity for a conception of the good is in limiting individual's horizons. In particular, the claim is that if individuals do not see it as likely that they will be able to access a large capital sum, they will not be interested in pursuing "ambitious" life plans.

One problem with this argument has to do with the issue of whether it is really true that individuals will not develop an interest in pursuing "ambitious" life plans if they do not anticipate that they will have access to a large capital sum.¹²¹ As a general claim, this doesn't seem to be right. For instance, it seems very ambitious for one's life plan to involve becoming a world-leading research scientist; however, this life plan does not seem to require for its success the possession of a large capital sum.

What Alstott and Ackerman seem to be arguing is that if individuals do not see it as likely that they will be able to access a large capital sum, they will not be interested in pursuing the kind of life-plans that require access to such a sum. But it is

¹²⁰ White, "Basic Capital," 426.

¹²¹ White makes this point. Ibid.

not immediately clear to me why a commitment to the development and exercise of a capacity for a conception of the good implies a commitment to all individuals being able to develop plans to pursue projects that involve access to a large capital sum. As I have discussed at earlier points in this thesis, a commitment to a capacity for a conception of the good does not imply that an individual should be able to pursue any plan they happen to want to pursue, regardless of what that plan is; instead, individuals should face the option of pursuing a wide range of different plans. Similarly, it presumably does not matter, from the perspective of a commitment to the development and exercise of the two moral powers, whether the conditions are hostile when it comes to individuals developing an interest in pursuing some specific plan or set of plans; what matters is that the conditions should be in place to ensure that individuals could in theory develop an interest in pursuing a wide range of different plans.

Consequently, I think we can dismiss Ackerman and Alstott's arguments for a basic right to actually own productive property.

b. Capacity for a sense of justice arguments

The final argument we should consider is that a basic right to actually privately own productive property is a requirement of the development and exercise of citizens' sense of justice.

I will not spend a great deal of time considering this argument, for two reasons. The first is that others have already dismissed it, for sensible reasons.¹²² The second is that it is not straightforwardly an argument for a basic right to privately own productive property, but rather is an argument for a basic right to participation in

¹²² See, for instance, Martin O'Neill, "Three Rawlsian Routes towards Economic Democracy," *Revue De Philosophie Economique* 8, no. 2 (2008): 29-55.

economic decision-making in the workplace. The argument only therefore stands on the basis that a case can be made for saying that protecting a right to privately own productive property in one's workplace is the best or only way to protect citizens' participation in economic decision-making in that workplace. Although there might be some *prima facie* plausible arguments here, they are by no means conclusive.

The argument under consideration proceeds as follows. (I consider Martin O'Neill's views here, although a very similar view has also been put forward by Waheed Hussain.)¹²³ The capacity for a sense of justice, to recall, is the capacity to "understand, to apply, and to act from (and not merely in accordance with) the principles of political justice that specify the fair terms of social cooperation."¹²⁴ Rawls outlines a "fundamental case" in which such a power is to be used: in the application of the principles of justice to the basic structure and its social policies.¹²⁵ O'Neill's claim is that, on a Rawlsian picture, the proper exercise of the sense of justice involves a capacity for "democratic deliberation at the national level."¹²⁶ Yet unless citizens have already gained experience of such deliberation in a smaller-scale forum, they will not be able to participate effectively in national-level deliberation. Consequently, they cannot be said to have properly developed their sense of justice. If, on the other hand, all citizens participate in democratic decision-making in the workplace, they will be furnished with the appropriate skills to deliberate on a national level.¹²⁷ Furthermore, it might be claimed, participation in a democratic

¹²³ Waheed Hussain, "Nurturing the Sense of Justice: the Rawlsian Argument for Democratic Corporatism," in *Property-Owning Democracy: Rawls and Beyond*, ed. Martin O'Neill and Thad Williamson (Wiley-Blackwell, 2012), 180-200.

¹²⁴ Rawls, *Justice as Fairness*, 18-19.

¹²⁵ *Ibid.*, 112-3.

¹²⁶ O'Neill, "Three Rawlsian Routes," 35.

¹²⁷ *Ibid.*

workplace inculcates a sense of justice more effectively than other activities because of the significant amount of time people spend at work.¹²⁸

There are two objections that can be made to this argument. Firstly, the argument relies on the workplace being the only place in which citizens can develop a sense of justice; yet it seems clear that this is not the case. As O'Neill himself admits, such an argument "may well not be decisive" on the grounds that venues in civil society and in private associations may be sufficient for citizens to develop the sense of justice.¹²⁹ In addition we should note that the education system of a just society may well suffice to develop a sense of justice.

The second objection raises a concern about the extent to which workplace democracy encourages wider democratic participation. Can we be sure that this would be the effect? What if citizens simply chose to engage democratically in the workplace *instead* of getting involved in democracy on a national level? What if it encouraged workers to think more broadly about the good of their organization, but not about the common good? The familiar, "commonsense" position that democracy in the workplace leads to better citizens needs, I think, to be better established.

5. Conclusion

This concludes my survey of arguments for the claim that a basic right to privately own productive property should be included amongst the basic liberties. I have argued that no arguments offered ought to convince us that the Rawlsian picture should include such a right. I have, however, argued that considerations raised by

¹²⁸ Ibid., 46.

¹²⁹ Ibid., 41.

some of those who would argue for a basic right to be eligible to own productive property should lead us to specify that included amongst the basic rights and liberties is a basic right to be eligible to save. This, as I have argued above, is not a right to productive property, but a right to non-productive property.

This also concludes my discussion of Rawlsian basic property rights. I now turn, in Chapters 5 and 6, to consider the question of whether Rawlsian justice considered more broadly requires all citizens to have, in some sense, a stake in the means of production.

PART 3 Ownership of the Means of Production

Chapter 5: Ownership of the Means of Production (1)

1. Introduction

Part 2 of the thesis addressed the question of whether Rawlsian justice should include a basic right to privately own productive property. In Part 3 of this thesis, I continue to consider the subject of productive property, but move on from the issue of basic rights to consider other what implications other aspects of Rawlsian justice have for the question of how productive property should be owned and distributed. I will also be narrowing the focus of the inquiry to consider a specific type of productive property, namely the major firms operating in society. I will refer to this type of productive property as “the means of production.”¹ The question that will concern me in this chapter and the next is whether Rawlsian justice requires that all citizens have, in some sense, a stake in the means of production. My answer will be that Rawlsian justice does not require that citizens have such a stake.

In his introduction to the revised edition of *A Theory of Justice* Rawls states that if he were writing that work again, he would “distinguish more sharply the idea

¹ This term is sometimes understood more broadly; the present understanding reflects the term’s usage in the debates under consideration.

of a property-owning democracy ... from the idea of a welfare state.”² The institutions of a welfare state, Rawls claims, are incompatible with justice as fairness, which he takes to be best realized by a property-owning democracy or a market socialist (in his terminology “liberal” socialist) regime.³ One of the important deficiencies of welfare state capitalism compared to a property-owning democracy or market socialist regime is that the former fails to ensure “the widespread ownership of productive assets and human capital.”⁴ For Rawls himself, then, Rawlsian justice does require that citizens have, in some sense, a stake in the means of production.

Commentators have, over the last few years, paid a significant amount of attention to these, previously somewhat neglected, views of Rawls’s. Whilst these commentators might not agree with everything that Rawls has to say on the subject of the respective merits of welfare state capitalism, market socialism and property-owning democracy, a great many are persuaded by Rawls’s claims that justice requires a citizen stake in the means of production.⁵ Consequently, lines of debate on this subject have tended to revolve around (a) what the proper justification of a citizen stake is, and (b) the question of what this stake should consist in, rather than the question of whether justice does, in fact, require that citizens have such a stake. Those who reject Rawls’s claim about a citizen stake in the means of production have often tended to do so from a right-wing Rawlsian perspective, claiming that a strong basic right to own the means of production makes it illegitimate to redistribute individuals’ holdings to achieve the desired “widespread ownership.”⁶ My claim will

² *Theory of Justice*, xiv.

³ The choice between these two regimes is, for Rawls, “left to be settled by historical conditions and the traditions, institutions, and social forces of each country.” *Ibid.*, xv –xvi. Some commentators would disagree with Rawls’s claim here, and argue that there is, instead, a principled choice to be made between regimes. I will briefly discuss these issues later in this chapter.

⁴ *Ibid.*, xv.

⁵ See, in particular, the contributions to O’Neill and Williamson, *Property-Owning Democracy*.

⁶ See, for example, Tomasi, *Free Market Fairness*. Some criticism is now starting to come through from other perspectives. See for example, Kevin Vallier, “A moral and economic critique of the new

be that we can reject the idea of a citizen stake on different grounds: instead of claiming that Rawlsian justice rules out widespread ownership, we can simply claim that properly understood, it does not require it.

In this chapter and the next my aim is to support this claim by rejecting the main arguments made by Rawls and supporters of his position. They are as follows: that welfare state capitalism, in virtue of failing to disperse ownership of the means of production, (i) & (ii) cannot satisfy the difference principle (I consider two versions of this argument); (iii) & (iv) cannot guarantee the fair value of the political liberties (again, I consider two versions of this argument); (v) cannot guarantee fair equality of opportunity; (vi) cannot guarantee stability.

The present chapter will be concerned with arguments (i) and (ii), which are bracketed together under the heading “the difference principle.” To recall, the difference principle states that,

“social and economic inequalities ... are to be to the greatest benefit of the least-advantaged members of society.”⁷

What is distributed by this principle is not just income and wealth, but also the primary good of “powers and prerogatives of offices and positions of authority and responsibility in the political and economic institutions of the basic structure.”⁸

Argument (ii) claims that a regime which does not disperse ownership of the means of production allows too much inequality in the distribution of this primary good.

property-owning democrats: on behalf of a Rawlsian welfare state,” *Philosophical Studies* 172, no. 2 (2015): 283-304 and Michael Schefczyk “Background Justice Over Time: Property-Owning Democracy versus a Realistically Utopian Welfare State,” *Analyse & Kritik* 35, no. 1 (2013): 193-212. My aim here is to contribute the perspective developed in these papers.

⁷ *Justice as Fairness*, 42-43.

⁸ *Political Liberalism*, 181.

Argument (i), on the other hand, looks to Rawls's further comments in *Justice as Fairness* on *why* social and economic inequalities are to be regulated. The conclusion is that regimes which fail to ensure widespread ownership of the means of production permit inequalities in economic decision-making power, which are associated with troubling status hierarchies and relations of domination. Both arguments raise important and neglected issues (neglected in Rawlsian thought but perhaps also in mainstream liberal egalitarian thought more broadly) about the importance of citizen control over the economic sphere and about what form this control can take.

In this chapter, I reject both of these arguments. Consequently, my view emerges as one which does not consider citizen control over the economic sphere, beyond the familiar forms of democratic control, to be of much importance. I argue, against (ii) that we can cast significant doubt on the inclusion of powers and prerogatives of offices and positions of authority and responsibility amongst the primary goods; and against (i) that failing to ensure widespread ownership of the means of production does *not*, in fact, allow troubling relations of domination and troubling status hierarchies to arise.

As the greater space accorded to arguments (i) and, particularly, (ii) suggests, I take these to be the most challenging arguments from the perspective of my defense of regimes that do not ensure widespread ownership of the means of production. However, it is still important to consider the plausibility of arguments (iii) & (iv), (v), and (vi) – particularly arguments (iii) & (iv). I will do this in the next chapter.

2. The economic regimes

First, I will outline the central features of the three economic regimes mentioned in the introduction – property owning democracy, welfare state capitalism, and market socialism. In this chapter, I will only be comparing these regimes along one dimension – namely, their respective arrangements for organizing the ownership of the means of production. Consequently, this chapter should not be read as an overall vindication of welfare state capitalism, but only a vindication of one of its central features.

Before I outline these features it is also worth emphasizing that the definitions of these regimes is subject to significant variation – not to mention lack of clarity – in the literature, and consequently the characterizations I have given are likely to be disputed by some. This, unfortunately, is unavoidable. I hope, however, that these definitions will be acceptable to a broad range of readers.

Welfare state capitalist regimes are ones which have the following features: First, the means of production is, for the most part privately owned. Businesses are started by one or more private individuals, and then, if they go public, they are owned by many private individuals – the shareholders. Importantly, individuals are only shareholders of businesses by choice, and significant inequalities may arise when it comes to the extent to which individuals are shareholders in businesses – some may have significant assets in this respect, others may have little or none. Second, the production and allocation of goods is organised by markets; this is something welfare state capitalism has in common with both other regimes under consideration. Third, redistribution in welfare state capitalism takes the form of taxation of income and wealth and is used (a) to provide the kind of services associated with welfare states – unemployment insurance, education, medical provision, and so on, and (b) to “top up” the income of those who are worst off. Importantly, this tax yield is *not* redistributed

to citizens in such a way as to provide them with, or in order to provide them with a stake in the means of production of that society.

There is one important thing to note about the type of welfare state capitalism under discussion in what follows. Rawls, notoriously, characterizes welfare state capitalism as a type of regime which provides individuals with only a “decent social minimum covering the basic needs” as well as other basic forms of welfare provision.⁹ In such a regime, Rawls claims “a principle of reciprocity to regulate economic and social inequalities is not recognised.”¹⁰ Now, this characterization of welfare state capitalism is not the one being used in what follows, and, furthermore, has been subject to significant amount of criticism.¹¹ The criticism has been based on the claims that the welfare state capitalism Rawls describes does not match existing welfare states, and that the welfare state capitalism Rawls describes does not match up with a plausible “ideal type” characterization of a welfare state.¹² In particular, these critics have noted, we can plausibly associate welfare state capitalism not just with US style “un-ambitious and in-egalitarian” welfare states, but with Scandinavian style “ambitious and egalitarian” welfare states, which pursue a wide range of egalitarian redistributive policies.¹³

It is important to note, then, that whilst I do not give a full characterization or full defense of welfare state capitalism here, I am in agreement with Rawls’s critics both about the possibility of an “egalitarian” welfare state, and the need to reject

⁹ *Justice as Fairness*, 138.

¹⁰ *Justice as Fairness*, 138. According to Freeman, Rawls understands welfare state capitalism in this way because he sees it as closely connected to the acceptance of a “liberalism of happiness” focused on the promotion of economic growth. See Freeman, *Justice and the Social Contract* (Oxford and New York: Oxford University Press, 2007), ProQuest ebrary e-book, 108.

¹¹ See, in particular, Martin O’Neill “Free (and Fair) Markets”; Gavin Kerr “Property-Owning Democracy”; Albert Weale, “The Property-Owning Democracy versus the Welfare State,” *Analyse & Kritik* 35, no. 1 (2013): 37-54; Christian Schemmel, “How (Not) to Criticise the Welfare State,” *Journal of Applied Philosophy* 32, no. 4 (2015): 393-409.

¹² See, for instance, Kerr, “Property-Owning Democracy” on the first and O’Neill, “Free (and Fair) Markets” on the second.

¹³ Kerr, “Property-Owning Democracy,” 75. On this see also, Schemmel, “Welfare State.”

Rawls's own distinction between property-owning democracy and welfare state capitalism as, in Gavin Kerr's words, "positively misleading."¹⁴

A property owning democracy, construed broadly, is a market regime in which all citizens have non-negligible holdings of private property. "Property" here might refer to a broad range of objects, both personal and productive – for example, homes, land, and wealth. However, the arguments which will be the main focus of the present chapter are concerned with the relationship between Rawlsian justice and property-owning democracy understood in a narrower sense as a market regime in which all citizens have non-negligible holdings of the means of production.¹⁵ Let us consider this form of property-owning democracy in more detail. Firstly, property-owning democracies share with welfare state capitalist regimes the following features: they are both market regimes, and they are both regimes in which the means of production is privately owned. So, businesses are started by one or more private individuals, and then, if they go public, they are owned by many private individuals – the shareholders. In a property owning democracy, however, *all* citizens are shareholders, and all can be expected to possess substantial holdings of shares – this is in contrast with welfare state capitalist regimes in which many citizens may not be the owners of any productive property and inequalities are likely to arise in the size of different citizens' holdings. Furthermore, property-owning democracies may have measures in place to prevent citizens from alienating their shares – for example, by permitting them to trade but not sell a certain proportion of them.¹⁶

¹⁴ Ibid.

¹⁵ In understanding property owning democracy in this way I am in agreement with, for instance, Martin O'Neill in "Free (and Fair) Markets" and Tom Malleson in his "Rawls, Property-Owning Democracy, and Democratic Socialism," *Journal of Social Philosophy* 45, no. 2 (2014): 228-251.

¹⁶ Malleson, for instance, claims that "it would make sense that these shares could be publicly traded (and new ones could be issued to raise finance), but not sold for cash—so as to prevent people from losing their social inheritance." See his "Rawls, Property-Owning Democracy," 230.

Such an institutional set-up, we should note, is not incompatible with policies typically pursued by welfare state capitalist regimes – for example, the provision of various sorts of welfare support such as unemployment insurance.

We now turn to the characterization of market socialist regimes. We have seen above that there is some significant variation in what the central features of a property-owning democracy might be taken to be. The same can certainly be said of a market socialist regime – there are a number of different institutional arrangements that might be said to come under the heading of “market socialism.”¹⁷ Here, I will do my best to offer an acceptable characterization. Market socialism shares with property-owning democracies and welfare state capitalist regimes the fact that markets are employed to co-ordinate the production and allocation of goods. With respect to ownership of the means of production, however, market socialism is very different. Major firms are either owned by their employees, or funded by state investment and consequently owned by citizens collectively. In both of these forms of market socialism there tends to be more worker running of firms. For example, employees might elect representatives who will be responsible for the overall running of the firm, elect managers, and perhaps participate in the decision-making when it comes to major firm decisions.¹⁸

As with property-owning democracy, market socialism is not incompatible with policies typically pursued by welfare state capitalist regimes.

As a final preliminary note, the question of the economic dimension of this debate should be raised. It will not have escaped the reader’s notice, for instance, that

¹⁷ For a helpful overview of these see Jon Elster, “From Here to There; or, If Cooperative Ownership Is So Desirable, Why Are There So Few Cooperatives?,” *Social Philosophy & Policy* 6, no. 2 (1989): 93-111. See also, Drew Christie, “Recent Calls for Economic Democracy,” *Ethics* 95, no. 1 (1984): 112-128; and Julian Le Grand and Saul Estrin, *Market Socialism* (Oxford: Clarendon Press, 1989).

¹⁸ Property-owning democracy is compatible with worker-run firms, and some proponents of this regime would want to include this as a central feature.

one way of comparatively evaluating the three regimes in question is by asking which of the three is the most *productive*. This matters to the debate about which regime best realizes justice as fairness for at least two reasons. One, because one of the goods distributed by the difference principle is income and wealth and we will want to know which regime leaves the worst off group best off with respect to this primary good. How productive the regime in question is has significant bearing on this question. Two, because we will want to know that the regimes in question are, to put it bluntly, basically workable, and will not deliver weak economies which fail to provide citizens with even minimum levels of the important primary goods.¹⁹ These are important questions, which need to be addressed. They are not, however, questions best addressed here, in a work of political philosophy.²⁰ Consequently, my focus here will not be on assessing the relative merits of the regimes in question based on issues that have to do with productivity, but, as outlined in the introduction, based on other dimensions of evaluation. What this means is that I can only supply an incomplete vindication of regimes, like welfare state capitalism, which do not aim at wide dispersal of the means of production. A full vindication rests on the outcome of an economic inquiry.

3. Status hierarchy and domination

First, then, I defend welfare state capitalism against argument (i), that, in virtue of failing to ensure dispersed ownership of the means of production, it permits troubling

¹⁹ This point is made by Vallier in “New Property-owning Democrats.”

²⁰ Some political philosophers have, in spite of this, addressed these questions. See again Vallier, “New Property-owning Democrats.”

relations of domination and troubling status hierarchies to arise, troubling, as we will see, because they deprive citizens of the social bases of their self-respect.

The major proponent of this argument is Martin O'Neill, although O'Neill, we should be aware, takes himself to be expanding on and offering a defense of remarks of Rawls's.

According to O'Neill, welfare state capitalism is incompatible with Rawlsian egalitarianism for the following reason: it permits certain significant disparities in economic decision-making power, which come about in virtue of the disparities that exist in holdings of the means of production: many citizens lack a significant ownership stake in the means of production, or even a stake at all, others may have very large stakes. Property-owning democracy and market socialism, in contrast, ensure that all citizens have a significant stake in the means of production, either by widely dispersing private ownership or adopting forms social ownership. Consequently, it is argued, they involve significantly less inequality in the relevant forms of economic decision-making power.

O'Neill's own statement of the decision-making inequalities involved in welfare state capitalism is as follows. Welfare state capitalism, he claims, permits a situation in which

“society is structured in such a way that all decisions about economic investment and production are made by a small, high status group who constitute something like a ruling class or economic elite. The dominant class get to decide to a considerable degree how society is to be structured, and what the variety of jobs and social roles within that society is likely to be.”²¹

²¹ Martin O'Neill, “Free (and Fair) Markets,” 88.

This echoes Rawls's own statement of this point, which claims that welfare state capitalism "permits very large inequalities in the ownership of real property (productive assets and natural resources) so that control of the economy...rests in few hands."²²

There are a couple of things to clarify about the argument – which I will call the “control of the economy argument” – that O’Neill makes above. Firstly, we should distinguish between two ways in which economic decision-making power can be exercised – privately, and democratically. Now, all citizens in a welfare state capitalist regime have some democratic decision-making power with respect to the economy. This is because we are assuming that welfare state capitalist regimes are democratic, and that the state’s activities include activities in the economic domain. Hence why O’Neill’s claim can only be that the dominant class get to decide “to a considerable degree” how society is to be structured, etc. Citizens collectively can determine the legislative context in which firms and investors operate, and even assuming a significant extent of economic decentralization, this gives them non-negligible power over the economic domain. We should not therefore conclude that O’Neill’s complaint is that some citizens simply have no power at all over the direction of the economy. The state can, at the very least, act so as constrain and influence the activities of firms and investors. His complaint is, I take it, that within this democratic framework there are significant disparities in economic decision-making power which track disparities in ownership of the means of production.

Secondly, following on from this point, a significant disambiguation needs to be made before proper analysis of the control of the economy argument can begin.

²² *Justice as Fairness*, 138.

One way of understanding O'Neill's argument as stated above is that some citizens, in virtue of their ownership of the means of production, end up wielding disproportionate influence in the democratic sphere. This is a way of stating what is sometimes called the "structural" problem with regimes that organise ownership of the means of production as welfare state capitalism does. Those who own substantial amounts of productive capital, it is sometimes claimed, are able to undermine the "feasibility conditions" of some government policies, even though those policies have democratic approval.²³ For example, policies that are known to cause owners of productive capital to withdraw their investment from the national economy are unlikely ever to be implemented. I am not going to deny here that this is a significant concern – indeed, I will consider it at some length in the next chapter. However, to take the structural complaint as identifying the relevant concern here is to run together two different arguments. Some in the literature do run them together, but O'Neill does not – he takes the structural complaint to be distinct from the one currently under consideration, which claims that even in the absence of a situation in which those with more control over the means of production are undermining the normal workings of democratic politics, we should be worried that their decisions have substantially more impact over the economic landscape.²⁴ Rawls also separates these two lines of argument. The quotation from *Justice as Fairness*, above, in its full form states the concern about welfare state capitalism as follows: it "permits very large inequalities

²³ Thomas Christiano, "The Uneasy Relationship Between Democracy and Capital," *Social Philosophy and Policy* 27, no. 1 (2010): 195-217.

²⁴ I make this claim on the basis of O'Neill's taxonomy. The structural constraint argument, as well as other arguments for the conclusion that in welfare state capitalism the basic liberties must be undermined, are dealt with separately from what I call the "economic control" argument. See his "Free (and Fair) Markets."

in the ownership of real property (productive assets and natural resources) so that control of the economy *and much of political life* rests in few hands [my italics].”²⁵

With these clarifications aside, we can now ask: why, on O’Neill’s account, should Rawlsians object to the inequalities in decision-making power we have just identified? O’Neill identifies two major sources of concern – firstly, that inequalities in decision-making power can be said to “generate status harms (therefore undermining the self-respect of “low status” individuals).”²⁶ Secondly, that inequalities in decision-making power can be taken to involve or lead to “unacceptable forms of power and domination.”²⁷ How are we to make sense of these concerns within a Rawlsian framework?

O’Neill’s claim is that we should look to the reasons Rawls gives for why social and economic inequalities ought to be restricted. Rawls, drawing on a similar discussion from T.M. Scanlon, claims that such inequalities ought to be restricted because otherwise we will end up with troubling status hierarchies and relations of domination.²⁸

The problem with this way of understanding why Rawlsians should be concerned about inequalities in decision-making power is that concerns about domination and status hierarchy are not, themselves, very prominent in the Rawlsian picture as it is normally understood. However, we can reconcile them with such a picture by taking the following direction – namely, by understanding them as generating concern on the grounds that if relations of domination and status hierarchies of a certain sort exist, citizens are not furnished with the social bases of

²⁵ Rawls, *Justice as Fairness*, 138

²⁶ O’Neill, “Free (and Fair) Markets,” 88.

²⁷ Ibid.

²⁸ Rawls, *Justice as Fairness*, 130-131; T.M. Scanlon, “The Diversity of Objections to Inequality,” in *The Ideal of Equality*, ed. Matthew Clayton and Andrew Williams (Basingstoke: Palgrave Macmillan, 2000), 41-59. See also O’Neill’s own discussion of Scanlon and Rawls’s views in his “What Should Egalitarians Believe?,” *Philosophy & Public Affairs* 36, no. 2 (2008): 119-156.

self-respect, the social bases of self-respect being those social conditions in which self-respect, in Rawls's terms, is "rooted."²⁹ To put things another way, if relations of domination and status hierarchies exist, citizens are simply not in the kind of social context in which their sense of self-respect can reasonably be expected to flourish. I will consider this possibility in greater detail below.

In what follows, then, I examine in turn the claims that (a) inequalities in decision-making power generate pernicious status harms; (b) inequalities in decision-making power involve or lead to unacceptable forms of power and domination. I argue that we should accept neither of these claims. The majority of the discussion will be taken up with the consideration of claim (b), since this claim is the more complicated and ambiguous of the two.

a. Status hierarchy

O'Neill's first concern about welfare state capitalism is that it allows disparities in economic decision-making to arise that are accompanied by status hierarchies which undermine the social bases of self-respect of those at the bottom of the status hierarchy.

In elaborating this concern, O'Neill's is claiming that there is, or ought to be, a relational egalitarian strand in Rawlsian thought. Many relational egalitarian views will claim that insofar as we limit social and economic inequalities, this is only in order to realize relations of social equals. Rawlsians need not claim this much; they can simply claim that realizing relations of equals is *a reason* to limit social and economic inequalities. Relational egalitarians commonly identify relations which are inconsistent with relations of equals as those involving pernicious status disparities

²⁹ *Political Liberalism*, 318.

and those that involve domination or the problematic exercise of power.³⁰

Furthermore, central statements of relational egalitarianism are concerned with status disparities and domination *because* these relations are taken to undermine the social bases of citizens' self-respect, which is useful if we are attempting to make sense of these concerns within the Rawlsian picture.³¹

In order to make more sense of O'Neill's claims about status hierarchy and domination, which are very briefly stated, it will be useful to have a clear statement of the relational egalitarian position. Here and in what follows I rely on Christian Schemmel's work, since he offers the most extensive statement to date of the position in question. According to Schemmel, relational egalitarians are concerned about cases in which "the worse off are deprived of the social bases of self-respect because... they are assigned inferior social status, according to prevailing social norms."³² One concern here is income and wealth – where the worst off lack the levels of income and wealth which allow them to meet what Schemmel calls "society-wide standards of social acceptability as equals," then this is a state of affairs the relational egalitarian condemns, and seeks to rectify through redistribution and, where possible, by changing social norms.³³

But there is also a second major concern, which is about the kind of status which comes with having "social positions and offices to which social... advantages

³⁰ See, for instance, Carina Fourie, Fabian Schuppert, and Ivo Wallimann-Helmer, "The Nature and Distinctiveness of Social Equality: An Introduction," in *Social Equality: On What it Means to be Equals*, ed. Carina Fourie, Fabian Schuppert, and Ivo Wallimann-Helmer (New York: Oxford University Press, 2015), 1-17; Elizabeth S. Anderson, "What Is the Point of Equality?," *Ethics* 109, no. 2 (1999), 287-337; Samuel Scheffler, "Choice, Circumstance, and the Value of Equality," *Politics, Philosophy & Economics* 4, no. 1 (2005): 5-28; Christian Schemmel, "Why Relational Egalitarians Should Care About Distributions," *Social Theory and Practice*, 37, no. 3 (2011): 365-390; Martin O'Neill, "What Should Egalitarians Believe?"; T.M. Scanlon, "Objections to Inequality."

³¹ In particular, Schemmel in "Relational Egalitarians," and O'Neill in "What Should Egalitarians Believe?" claim this.

³² Schemmel, "Relational Egalitarians," 380.

³³ *Ibid.*, 384-5.

are attached.”³⁴ If I am a doctor, a successful novelist or a CEO, I am likely to have a high social status, in virtue of what I do. Here, the concern of the relational egalitarian is focused on those who are badly off with respect to these advantages to the extent that they are assigned an inferior social status. In particular, we are worried about those who inhabit, to quote Schemmel again, “low skilled jobs involving no power over others.”³⁵ These people, the relational egalitarian thinks, are denied the basic conditions of individual self-respect. This claim seems plausible, on a Rawlsian construal of self-respect (more discussion of this concept follows below), since if most of society views my social position or office as inferior, it will be difficult for me to have confidence in my particular way of life, and this confidence is, of course, part of Rawlsian self-respect.

Now, one way of construing O’Neill’s position is that those who lack economic decision-making power, as a group and just in virtue of this fact end up being part of the worst-off group with respect to status. This is consistent with his claim that those who lack ownership of the means of production are a “subordinate” group.³⁶ But this seems implausible, since positions which bestow control over the economy are not the only positions to which social advantages are attached. If I am a doctor with only small holdings in of productive capital, and consequently little private economic decision-making power, I am still doing pretty well in the society-wide status hierarchy.

So, perhaps O’Neill’s argument is this: if we are concerned about the status of the worst-off group, namely those who are low skilled and have jobs involving no power over others, then one way of redistributing power to them is by giving them a significant stake in the means of production. Consequently, we will have done

³⁴ Ibid., 368.

³⁵ Ibid., 388.

³⁶ O’Neill, “Free (and Fair) Markets,” 88.

something to improve their low status position. There may be problems with this argument, in the sense that it is not clear that redistributing the means of production is the *only* thing we could do to improve the position of the worst off, but, more importantly, here, it is not clear that it is an argument for wide-scale economic re-organisation of the sort O'Neill wants. The conclusion of this argument is not that we have to ensure that all citizens have a stake in the means of production, but only those at the bottom of the status hierarchy.

Consequently, I conclude that we can reject O'Neill's claim that disparities in economic decision-making are accompanied by troubling status disparities.

b. Domination

With status aside, we now turn to the more difficult issue of domination. The issue of domination is more difficult, because it is not always clear, either in O'Neill's discussion or in the relational egalitarian literature more generally, what the stated concerns about domination are supposed to convey. I will here consider two ways of understanding this concern as it relates to inequalities in economic decision-making power. The first way of understanding how inequalities in economic decision-making power involve relations of domination, is to say that they *are* relations of domination, so long as the decision-making in question is "arbitrary." The second way is to say that inequalities in decision-making power provide *opportunities* for domination. I will consider the first way in this and the next two sections. Then under the heading "*Domination and Self-respect (2)*" I will consider the second way.

Much of O'Neill's discussion of the wrongs associated with disparities in ownership of the means of production seems to be drawn from two places: Rawls's discussion of the wrongs of inequality and T.M. Scanlon's discussion of the same

issue.³⁷ Consequently, we might look to one of these thinkers to clarify O'Neill's position on domination. Here, I will consider Scanlon's views, since he more clearly articulates a concern about domination that is relevant to our discussion.³⁸ Economic inequalities, Scanlon claims, can involve "unacceptable forms of power and domination"³⁹ (he uses the same phrase as O'Neill) partly, at least, because they:

"give some people an unacceptable degree of control over the lives of others. The most obvious example is economic power. Those who have vastly greater resources than others... can often decide what gets produced, what kinds of employment are offered, what the environment of a town or state is like, and what kind of life one can live there."⁴⁰

Can we make sense of this complaint as an instance of domination, on the relational egalitarian understanding of this term? I think we can.

Again, I will draw from Schemmel's clarification of the relational egalitarian position. According to Schemmel, relational egalitarians are significantly concerned with domination, understood as "subjection to the arbitrary exercise of power on the part of somebody else."⁴¹ Domination, so understood, is problematic because, again, it deprives citizens of the social bases of their self-respect, where self-respect is understood, for Schemmel, as citizens' "sense of themselves as free and effective

³⁷ O'Neill discusses these views in considerable depth elsewhere. See his "What Should Egalitarians Believe?"

³⁸ Rawls's view, on the other hand, might be construed as claiming that the worry about domination boils down to a concern that those with significant holdings in the means of production will end up having more political influence, and will consequently be able to "enact a system of law and property that ensures their dominant position in the economy as a whole." It is unclear, therefore, whether he is concerned with domination as it is currently being discussed. We can still consider the issue, however, since O'Neill can be taken as arguing that Rawlsians *should* be concerned about non-political domination in addition to the political domination Rawls describes. See *Justice As Fairness*, 131.

³⁹ Scanlon, "Objections to Inequality," 46.

⁴⁰ Ibid., 44.

⁴¹ Schemmel, "Relational Egalitarians," 366.

agents” and as “participants of equal moral standing in societal co-operation.”⁴² He goes on:

“if the dominated understand that they are dominated, that someone can influence their fate simply according to her whims, it is hard to see how this could not diminish their self-respect.”⁴³

Consequently, a regime committed to supplying citizens with the social bases of self-respect would aim to eliminate relations of domination.

Scanlon can be plausibly understood as stating a concern about domination, on Schemmel’s definition, for the following reason. Those who lack holdings in the means of production in welfare state capitalist-style regimes may well, indeed, be subjected to arbitrary power on the part of somebody else. Those who have great holdings in the means of production have significant power to affect the lives of many people in the society in which they live. They can, for example, decide to invest heavily in some industry, significantly increasing the number of jobs available. Furthermore, their power can be described as “arbitrary.” Let us understand “arbitrary” in one standard sense in which this term is used in the republican literature on domination (Schemmel, unfortunately, does not clarify what he means by this term) – in Frank Lovett’s formulation, “not externally constrained by effective rules, procedures, or goals that are common knowledge to all relevant parties.”⁴⁴ Those

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Frank Lovett, “Domination and Distributive Justice,” *The Journal of Politics* 71, no. 3 (2009): 821. Note that we could still claim that Scanlon’s complaint was about domination if we understand “arbitrariness” as meaning in conflict with the interests or the preferences of those over whom power is exercised, or in conflict with their democratically expressed views. I do not discuss these interpretations of “arbitrariness” however, as they are often considered to be less plausible than the one under consideration here. See, for instance, Christopher McMahon, “The Indeterminacy of Republican Policy,” *Philosophy & Public Affairs* 33, no. 1 (2005): 67-93.

with a large ownership stake in the means of production have significant scope to use their power arbitrarily, in this sense, even if they are subject to some external constraints (for example those set by the legislative context in which the companies operate, and those set by any powerful enough social norms in operation). They can to a significant extent influence other people's fate "according to their whims."⁴⁵

It is worth noting here that the claim that those who have significant holdings in the means of production wield arbitrary power may be viewed as a controversial one. Although I have above made a *prima facie* case for the claim that such persons *do* wield arbitrary power, it seems at least plausible that the opposite case could be argued. For instance, it might be claimed that those who have significant control over the means of production generally have their decisions externally constrained by a particular goal – namely, the goal of ensuring that shareholders profit. This goal is commonly known to "all parties" – in the sense that shareholders, those who control the means of production, and others in society all know that this is the goal that constrains the decision-making of those in control. Furthermore, the constraint is "effective", since if those in control of the means of production fail to constrain their decisions by the goal in question they will quickly lose their control of the means of production in question. Consequently, then, the power of these persons is not, in fact, "arbitrary" in the relevant sense.

One significant concern with this line of argument is that we can question whether the power that shareholders wield over management is in fact sufficient for us to confidently be able to say that the power of managers is "effectively" constrained by a known goal. It is worth pointing out, however, that it is to no advantage to my argument here to reject the view that the power of those who control

⁴⁵ Schemmel, "Relational Egalitarians," 366.

the means of production is non-arbitrary, since to accept this would be to claim that we should not be concerned about large disparities in ownership of the means of production on grounds of a concern about domination. However, to fully examine the argument at hand it seems worth granting the claim about the arbitrary exercise of power, and considering whether, even granting this claim, we ought to reject welfare state capitalism.

Should relational egalitarians, and consequently Rawlsians who import relational egalitarian ideas into their thinking, care about domination of this sort? I will suggest not. Relational egalitarians of the sort relevant to a Rawlsian discussion care about certain social relationships on the basis that these relationships deprive citizens of the social bases of their self-respect as it is defined above. If it turns out that some social relationship does *not* deprive citizens of the social bases of their self-respect, then these relational egalitarians should be unworried. Schemmel's definition of domination, I argue, is too broad in the sense that it includes relations which do not in fact deprive citizens' of the social bases of their self-respect. The arbitrary exercise of power by those who own the means of production is, plausibly, one of them.

Before I turn to discuss this issue, however, I want to ask whether the alternative regimes under consideration offer a normative improvement over welfare state capitalist-style regimes from the perspective of a concern about domination as understood here. It will be useful, I think, to have some sense of what the implications of O'Neill's arguments are before we turn to examine its premises.

i. Domination and alternative regimes

To what extent, then, do regimes that provide all citizens with a significant stake in the means of production in fact offer a normative improvement over welfare state capitalist-style regimes (i.e. regimes that do not provide all citizens with such a stake), from the perspective of domination as we are currently understanding this term? I will suggest that if we are motivated by a concern about domination, we will end up wanting, as far as possible, to democratize the economic sphere – this means that we will favour regimes which involve significant social ownership of the means of production. Regimes like property-owning democracy which only aim at the wide dispersal of private ownership of the means of production end up allowing significant domination to persist.

First, consider regimes like property-owning democracy, which aim to widely disperse private ownership of the means of production. The first, obvious, thing to say about these regimes is that they fail to reduce inequalities in economic decision-making power which do not track ownership of the means of production. Here, I rely on a useful discussion of this issue from Tom Malleon. Malleon points out that property-owning democracies look as if they will end up being institutionally very similar to welfare state capitalist regimes, in particular that “the bulk of investment would come from private firms investing according to their ability to make a profit from such investment.”⁴⁶ Given this set-up, Malleon goes on to argue, it is likely that property-owning democracies would “retain a powerful class of investors – the managers of large banks, insurance companies, institutional funds, directors of corporations” with significant control over investment.⁴⁷ This is because although these individuals are, in theory, accountable to shareholders they are likely to retain

⁴⁶ Malleon, “Rawls, Property-Owning Democracy,” 233.

⁴⁷ Ibid.

significant discretion when it comes to deciding what those organizations do.⁴⁸ If we are concerned about domination currently understood, then, we may be worried that property-owning democracy allows a small class of individuals to exercise significant arbitrary power since it only makes it the case that more citizens are shareholders, it does not change the relationship between shareholders and executives.

There is also a second problem with the way that decision-making power is exercised in a property-owning democracy. To see this, consider for the sake of argument a case of a company in a property owning democracy in which shareholders do exercise significant control over what that company does. Let us assume in fact, for simplicity, what is improbable – that important decisions are not made by executives but are made by shareholders collectively. Now consider that there is some important decision to be made about the company’s activities – for example, a large car manufacturer is deciding whether to open a new factory in town A or town B. This decision is likely to have considerable impact on the residents of these towns – in Schemmel’s terms, it is likely to “influence their fate” to a significant degree.⁴⁹

It looks as if this form of economic decision-making is also troubling from the perspective of domination. To begin with, the decisions made by the group “all shareholders of firm X” are arbitrary in the same sense that the capitalist’s decision was arbitrary – namely, they are to a significant extent unconstrained by effective external rules, procedures or goals. Second, there is a significant power disparity between the shareholders as a group, and those affected by their decision. Finally, again, the shareholders’ decision may end up having a significant impact on the lives of the inhabitants of towns A and B. So, we have replaced a situation in which a few citizens (the company executives) can influence the fate of others according to their

⁴⁸ Ibid., 234.

⁴⁹ Schemmel, “Relational Egalitarians,” 366.

whim, with a situation in which a group of individuals (the shareholders collectively) can influence the fate of others according to their whim. Furthermore, there is no reason to think that the inhabitants of towns A and B would necessarily be shareholders in the company which makes this significant decision, unless we are making the assumption that all citizens in a property-owning-democracy are shareholders in all firms (I can see no reason to make this assumption). Consequently, the decision-making situation in a property owning democracy seems to permit significant troubling domination to persist.

It looks as if, therefore, if we are concerned about domination we will end up wanting as far as possible to give citizens what Malleson calls “meaningful democratic control” over the economic sphere.⁵⁰ I do not here wish to engage in a comparison of different concrete proposals for ensuring that citizens in fact have this meaningful control, since we will stray too far from the topic of this chapter – and, in any case, I am about to argue that such meaningful democratic control of the economy is not required on a Rawlsian view. Malleson’s central proposal, however, seems to be the democratization of investment via the establishment of “public community banks functioning like a decentralised nationalized bank, perhaps with local advisory boards.”⁵¹ This kind of set-up, he argues, would end up giving citizens more meaningful control over the economic sphere than, for example, putting all investment under the control of central government.

ii. Domination and self-respect (1)

⁵⁰ Malleson, “Rawls, Property-Owning Democracy,” 236.

⁵¹ Ibid.

Leaving this issue aside, we can now return to the question of whether relational egalitarians and – more importantly – Rawlsians who import their ideas should care about domination, as it has been defined above – namely as a state of affairs in which some suffer “subjection to the arbitrary exercise of power on the part of somebody else.”⁵² Schemmel, as we have seen, wants to claim that instances in which some are subject to the arbitrary power of another map on to instances in which the self-respect of those persons is undermined. However, I think he is wrong here. I will argue that not all instances of domination can reasonably be said to undermine the self-respect of the dominated, and thus whilst the instances of domination which should worry relational egalitarians might be a subset of the cases Schemmel’s definition picks out, the two sets of cases cannot be thought of as co-extensive. Of particular importance is the fact that cases in which, on Schemmel’s definition, those who have significant holdings in the means of production dominate others do not turn out to undermine citizens’ self-respect.

We should pause to remember here that we are not considering relational egalitarian views independently, but instead how they are relevant to a Rawlsian view which takes on board some relational egalitarian ideas. Consequently, we should consider the relationship between domination and *Rawlsian* self-respect. We should therefore remember what the Rawlsian notion of self-respect is and how it fits into the present discussion.

Self-respect, claims Rawls, is “rooted in our self-confidence as a fully co-operating member of society capable of pursuing a worthwhile conception of the good over a complete life.”⁵³ For Rawls, our self-confidence as a fully co-operating member of society (the first element of self-respect) is “rooted in the development and

⁵² Schemmel, “Relational Egalitarians,” 366.

⁵³ *Political Liberalism*, 318.

exercise of the two moral powers,” and this is “supported by the basic liberties which guarantee the full and informed exercise of the two moral powers.”⁵⁴ Our “secure sense of our own value rooted in the conviction that we can carry out a worthwhile plan of life” is supported by “the public nature of this guarantee [i.e. the guarantee of the full and informed exercise of the two moral powers] and the affirmation of this by citizens generally, all in conjunction with the fair value of the political liberties and the difference principle.”⁵⁵

Let us consider the case of domination which O’Neill highlights and the major concern of this chapter – namely, the situation in which, in the context of a welfare state capitalist regime or one like it in the relevant respects, some private individuals have significantly more decision-making power over the economic landscape than the majority of citizens. This gives them wide-ranging power to impact other citizens’ lives, even if they are subject to certain external constraints (laws, social norms). In O’Neill’s words, they “get to decide to a considerable degree how society is to be structured, and what the variety of jobs and social roles within that society is likely to be.”⁵⁶ Should we be concerned that this situation is one which is incompatible with the majority of citizens’ Rawlsian self-respect? In other words, is this compatible with (a) citizens’ self-confidence as a fully co-operating members of society; (b) citizens’ secure sense of their own value rooted in the conviction that they can carry out a worthwhile plan of life? I will suggest that it is.

Firstly, (a). For Rawls, as we can see from the passages I have included on self-respect above, being a “fully co-operating member of society” involves the “full and informed” exercise of the two moral powers. On a Rawlsian view – again, see the passages above – this is guaranteed by the basic liberties. Consequently, the fact

⁵⁴ Ibid., 319.

⁵⁵ Ibid.

⁵⁶ O’Neill, “Free (and Fair) Markets,” 88.

that some citizens have significantly more decision-making power over the economic landscape than others is irrelevant to citizens' sense of themselves as "full co-operating members," so long as this decision-making power doesn't infringe citizens' basic liberties. Since we do not have significant reasons to think that it would, Rawlsian citizens can have self-respect, regardless of the existence of domination as it is so defined.

Secondly, (b). Does domination, above, undermine citizens' "secure sense of their own value rooted in the conviction that they can carry out a worthwhile plan of life"? The power that those with more economic decision-making power have to affect the lives of others may certainly affect the possibility of citizens' carrying out *some particular* plan of life – the factory in which I work may be closed, for example – but it is not part of what the Rawlsian just society guarantees that whatever plan of life a citizen should choose, they should be guaranteed the possibility of carrying out this plan. The Rawlsian picture requires individuals to be able to *revise* their plan of life, should circumstances require it.

O'Neill offers us a different way of understanding the relationship between the possession of economic decision-making power and self-respect. His view at points seems to be that unless we have broad dispersal or social ownership of the means of production, citizens cannot reasonably have a sense of self-respect. So (here it is worth quoting him at length) he says:

"An individual who lives in a social and economic environment that she plays some part in fashioning, and who engages her capacities as an agent with a conception of the good and an ability to co operate with others in productive social relations, will be provided with the 'social bases of self-respect,' to use Rawls's phrase. In other words,

citizens situated in this way will have ‘a lively sense of their worth as persons and... be able to advance their ends with self-confidence.’ Only by making sure that the structure of the economy is such as to broadly disperse control over productive resources, therefore, can we ensure that all citizens are able to have this ‘lively sense’ of their own agency.’⁵⁷

This statement runs together the two components of self-respect, but we can separate out two claims that O’Neill is making. Firstly, that citizens cannot view themselves as “fully-cooperating members of society” (i.e. can’t have component (a)) unless they own the means of production. Secondly, without being a fully cooperating member of society in this latter sense citizens cannot have the “lively sense of their own agency” required for component (b) of self-respect - their conviction that they can carry out a worthwhile plan of life.

Neither of these claims is particularly convincing, even if we accept this alternative understanding of what it means to be a fully co-operating member of society. It is not clear that domination, as it is being defined here, is in conflict with citizens either being fully co-operating in the required sense, or having a lively sense of their own agency. Ownership of the means of production is simply not the only way that citizens can “co-operate with others in productive social relations” or live in a social and economic environment they play “some part in fashioning.”⁵⁸ Simply having a productive role seems sufficient for the former;⁵⁹ whilst the democratic control citizens have over the economic domain in a welfare state capitalist regime looks like it satisfies the latter.

⁵⁷ Ibid., 89. O’Neill quotes from Rawls, *Justice as Fairness*.

⁵⁸ Ibid.

⁵⁹ For a discussion of the relationship between having a “productive role” and self-respect, see Schefczyk “Background Justice Over Time.” As Schefczyk points out, we may not in fact even think that having a “productive role” is necessary for self-respect.

Perhaps, it will be argued, the Rawlsian picture should rightly include a more expansive understanding of self-respect. Here, I will consider the relational egalitarian understanding, offered by Schemmel, according to which self-respect is individuals' sense of themselves as free and effective agents, and as participants of equal moral standing in societal co-operation. Does the situation of domination that O'Neill highlights deprive citizens of the social bases of self-respect understood in *this* way?

We can answer this question by answering the following one: is it reasonable to think that in such a situation citizens can still have a sense of themselves as (a) free agents (b) effective agents; (c) participants of equal standing in societal co-operation? With respect to all three categories, I think the answer is yes. So, the identified situation of domination looks to be consistent with citizens' self-respect. I will take each of these categories in turn.

Firstly, consider citizens' sense of themselves as free agents. Can the fact that some people can make decisions which may have a significant impact on citizens coupled with the fact that these decisions can be made arbitrarily, in the sense of this term defined above, be reasonably be said to undermine citizens' sense of themselves as free agents? Our progress in answering this question is somewhat hampered by the fact that it is not clear what, precisely, "free" is supposed to mean here. But consider two plausible ways of understanding freedom. The first is that citizens possess the familiar range of liberal personal and political freedoms. The second is that they face an adequate range of options from which to choose when they go about deciding how to live their lives. Are the identified disparities in decision-making power inconsistent with freedom in these senses? It is not clear that they are inconsistent. Those who have significantly more decision-making power over the economy

certainly have the power to influence my fate – as O'Neill says, their decisions have significant consequences for what jobs and products there are, and this will have a considerable effect on my life. It is unlikely to have an effect in such a way as to undermine my freedom in either of the two senses. It is not at all clear to me that the kind of decisions those who have significant ownership of the means of production can make are likely to affect my liberal freedoms. When it comes to my freedom understood in terms of my having an adequate range of options from which to choose, it is certainly true that those who own the means of production can have an effect on *what those options are* (they can close a factory in my town), but under normal economic circumstances there are still a range of options for me to choose from. Consequently, this form of domination cannot reasonably be said to undermine citizens sense of themselves as free agents.

What about their sense of themselves as effective agents? I take this to mean, in the Rawlsian sense, that individuals view themselves as having the capacity to form, revise and pursue a conception of the good. If this is the case, then, it is not immediately clear how domination in the sense we are understanding it will have any effect on citizens' sense of themselves as effective. However, on further reflection, we might consider an argument of the following sort. If individuals with significant power can make decisions which end up depriving other citizens of their way of life – for instance, of their particular employment – then perhaps this will have negative consequences for citizens' sense of effectiveness in general. Perhaps, for instance, individuals will feel that it is not worth developing and pursuing a particular plan of life, as that plan of life may end up being blocked by the actions of another, more powerful, individual. So, the objection states, the existence of persons who could – potentially – act so as to block one's way of life means that one will not develop one.

Consequently, the capacity to form, revise and pursue a conception of the good is undermined.

The problem with this type of objection is that it does not seem true to claim in general that because an individual sees the possibility that whatever their plan of life is, it might be blocked, that individual will not go on to develop a plan of life. After all, it is true of any plan of life than any individual develops that it may, in fact, be blocked – either by the actions of another more powerful person, or, we should not fail to notice, by a wide range of other events and circumstances. Yet individuals do, in fact, develop plans of life. So, for instance, the fact that ballet dancer's careers are often ended prematurely by injury does not prevent people developing and pursuing plans of life which involve becoming ballet dancers. Consequently, it is not clear that we should accept this way of understanding the claim that domination in the sense we are understanding it will have any effect on citizens' sense of themselves as effective.

Finally, does the form of domination under consideration have any effect on citizens' sense of themselves as participants of equal moral standing in societal co-operation? Again, I think the answer must be no. It would be a mistake to think that the fact that the decisions of some citizens have more impact on the economic environment should reasonably undermine citizens sense of themselves as equal participants in some scheme of societal co-operation, so long as the following conditions were in place: (1) all citizens possess the same economic rights (for example, the legal right to own productive property); (2) fair equality of opportunity is guaranteed with respect to the positions within this scheme, including positions of power and influence; (3) all citizens have the familiar democratic rights and liberties, which allow them to participate in the economic decision-making which happens at

the state level; (4) there was some fair distribution of the benefits of social co-operation, as realized by, for example, the difference principle. The reason why some individuals' decisions having more impact on the economic environment cannot be reasonably understood to undermine citizens' sense of themselves as equal participants in some scheme of social co-operation is that the fact that conditions (1)-(4) are in place (publicly) affirms the equal status of all individuals in a Rawlsian society. Within this context of public affirmation of equal status, inequalities in decision-making power can be seen as "tolerable", in a way that they would not be in the absence of this context.⁶⁰

The upshot of this argument is, I think, two-fold. Firstly, that not all cases of domination, as it is currently understood, are worrying from a Rawlsian perspective. Only those instances of domination that are *genuinely* self-respect undermining will count as problematic. Second, that the domination which is present in the situation that O'Neill highlights cannot rightly be said to undermine citizens' self-respect. It is not, therefore, one of the instances of domination that is of concern from the Rawlsian perspective.

iii. Domination and self-respect (2)

I have now considered, at length, one way of understanding what it might mean for citizens to be dominated by those who, in virtue of their greater holdings of the means of production, have significant decision-making power with respect to the economy. I now turn to a second way of understanding what O'Neill's concern for domination

⁶⁰ This view reflects that put forward by Niko Kolodny, who himself mentions Rawls and Joshua Cohen as proponents of the same view. See Kolodny "Rule Over None II: Social Equality and the Justification of Democracy," *Philosophy & Public Affairs* 42, no. 4 (2014): 306.

might convey. On the first understanding of domination, whenever capitalists exercise their decision-making power, they dominate others. On the one under consideration, capitalists do not always dominate others when they exercise their decision-making power; however, the fact that their decisions significantly impact citizens' lives (the fact that they "get to decide to a considerable degree how society is to be structured, and what the variety of jobs and social roles are") can give them *opportunities* for domination.⁶¹

We will have to understand domination differently here. Taking into account our previous discussion, it makes sense from a Rawlsian perspective to understand (troubling) instances of domination in the following way: X is dominated by Y if Y exercises arbitrary power over X in such a way as to undermine X's self-respect. One way, presumably, that those with significant economic decision-making power can dominate others in this way is by exploiting the fact that their decisions can significantly affect others to exert control over those others – if X is to some extent dependent on a particular economic outcome being brought about, and Y can bring that outcome about, then, in White's words "A can say: 'Do what I tell you, or else . . . ' and this threat is likely to be effective."⁶² This situation is one in which we might plausibly think X's self-respect is undermined.⁶³

Now, it might be claimed that we should not just be concerned about domination, on this construal, we should also be concerned about vulnerability to domination. So, for example, Elizabeth Anderson advocates that in the case of couples where one partner opts out of the labour market in order to care for a

⁶¹ O'Neill, "Free and Fair Markets," 88.

⁶² Stuart White, "The Republican Critique of Capitalism," *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 566.

⁶³ On a Rawlsian picture this has to do with Y's treating X in a way which fails to respect him or her as free and equal – in particular as "free" in the sense of possessing the capacity to form, revise and pursue a conception of the good. In O'Neill's terminology, domination here is certainly likely to undermine citizens' "lively sense of their own agency," and consequently the second moral power.

dependent (for example a child or an infirm relative), the wage of the working partner should be split between the two of them. This is in order to prevent a situation of domination from arising in virtue of the carer's lack of financial independence (and consequent relative lack of power).⁶⁴

This train of thought leads us to something like Schemmel's position on inequalities in decision-making power. On Schemmel's view, since it is power inequalities that allow the opportunities for domination to arise, it makes sense from the relational egalitarian perspective to, as far as possible, eliminate all power inequalities. He says:

"Generally, relational egalitarianism mandates that decision hierarchies are as flat as possible and offer only minimal opportunities for power abuse; but, for co-operation to be successful, some positions of power have to exist, and insofar as they do, they will always give some people the opportunity to abuse this power."⁶⁵

So, on the relational egalitarian position as construed by Schemmel, there is always a *pro-tanto* reason to reject inequalities of power – because they are a precondition for the abuse of that power – but sometimes it is necessary to accept them. When we consider this claim as forming the motivation for the control of the economy argument, we end up with the following argument: we should reduce power inequalities in control of the economy to the greatest extent possible. This means choosing forms of economic organization that, whilst still functioning successfully, involve the smallest extent of inequalities in decision-making power – we should therefore choose property-owning democracy or one of the market socialisms over

⁶⁴ Anderson, "Point of Equality," 297.

⁶⁵ Schemmel, "Relational Egalitarians," 387.

welfare state capitalism. Again, we may be more likely to favour regimes with significant social ownership for the reasons given above – that property-owning democracies still allow significant disparities in economic decision-making power to persist.

Is there anything to be said for Schemmel's position? I do not find it, ultimately, to be convincing. The first thing to point out is that requiring the *pro tanto* elimination of all power inequalities (and being, it looks like, moderately unhappy from a relational egalitarian perspective whenever it is necessary for them to exist) is to blow a reasonable concern about abuses of power somewhat out of proportion. Frank Lovett, in his discussion of domination, makes an important, and I think here, pertinent point. He claims that there is a common tendency in discussions of domination to claim that a situation of domination just is one in which there are disparities in power, or, to be more precise, disparities in social power. (Disparities in social power are defined as a situation in which one person has the ability to change what another would prefer to do).⁶⁶ But, he says, this looks to be problematic as a definition of domination because it is far too broad – he points out that the owner of a restaurant, on this definition, dominates me if he has the ability to refuse me service if I am rude to servers, also assuming that it is the case that I want to eat there.⁶⁷ On Schemmel's version of relational egalitarianism, there is a similarly absurd conclusion, namely that we should also be *pro-tanto* worried about this situation, because it represents an inequality of power and therefore the potential for power abuse. We may tolerate it, however, only insofar as we can show that having restaurant owners is necessary for social co operation. This way of thinking about the case seems wrong.

⁶⁶ Frank Lovett, *A General Theory of Domination and Justice* (Oxford: Oxford University Press, 2010), 76.

⁶⁷ Ibid, 83.

There is another good reason to reject Schemmel's argument, which stems from a little-discussed but very illuminating aspect of relational egalitarian thought. This is the idea that closely associated to the idea of respecting others is the idea of *trusting* them. The author who does most to flesh out the connection between trust and respect is Jonathan Wolff.⁶⁸ Wolff highlights the importance of trust in the following way: he argues that where people are asked to account for their claims or actions, or at least this happens "too often, or in circumstances when others are not, or when the depth of investigation seems out of proportion," then we can understand this as a way of treating this person with a lack of respect.⁶⁹ This is not the claim, Wolff is quick to point out, that relational egalitarians are called upon to always be naively trusting that another person's motivations or behaviour are unproblematic, regardless of evidence to the contrary. It is instead, as I understand it, a requirement that relational egalitarians should not be suspicious of the motives of others without good reason – especially in certain important areas. These include, Wolff argues, "cases where mistrust generally indicates a suspicion that I may be trying to gain some unwarranted advantage for myself."⁷⁰

Wolff primarily applies his insights about trust to critically analyse certain forms of welfare provision, claiming that they are inconsistent with trust, and therefore respect.⁷¹ But his analysis also has significant implications for Schemmel's argument; it gives us another reason to reject it. Consider the type of relational egalitarian society that Schemmel envisages, in which we view all individuals who inhabit positions of power with suspicion – we would prefer, ultimately, for no-one to inhabit these positions because of the risk that they will abuse them, but unfortunately

⁶⁸ Wolff, "Fairness, Respect."

⁶⁹ Ibid., 108.

⁷⁰ Ibid., 108.

⁷¹ Ibid., 111.

this is impossible. It looks like the inhabitants of such a society would be guilty of just the kind of failures of trust which Wolff argues are inconsistent with respecting others. Furthermore, if as relational egalitarians we seriously suggest that the possibility that people will abuse their power is so concerning that we would, ideally, prevent anyone from ever exercising power over anyone else, then our very proposal for a just society looks like it is based on a lack of trust for people's motivations that embodies precisely the sort of disrespect that Wolff is talking about. How will the people in such a society have self-respect if the design of its institutions is founded on the judgment that people can never be trusted to exercise power over others?⁷² I think, for this reason, we should certainly reject Schemmel's understanding of relational egalitarianism's position on power inequalities.

To anticipate an objection, rejecting the position that we should design institutions based on the assumption that people can never be trusted with power is not the same as claiming that people can always be trusted with power, and that we should design institutions on that basis instead. Following Wolff, I think we can make a reasonable judgment about when our concern about protecting others from the abuse of power ends up being out of proportion. That is what I have tried to do here.

However, it might now be argued that it is precisely a proportionate concern regarding potential abuses of power that should lead us to embrace a property-owning democracy or one of the market socialisms over welfare-state capitalism.⁷³ The move to embrace any of these regime types might be viewed as a move not, following Schemmel, to eliminate all power inequalities, but rather a move to constrain the exercise of those in power in a reasonable way, in order to prevent domination of the sort under consideration from occurring. However, whilst it may well be plausible to

⁷² Note, this is not the same as saying that exercising power over others is a requirement for self-respect.

⁷³ Thank you to Zofia Stemplowska for suggesting this objection.

claim that property-owning democracy or one of the market socialisms represents *a* way to constrain those in power, it is not necessarily clear that this is the only – or best – way to reasonably constrain those in power; nor that there are not alternatives, when it comes to reasonably constraining those in power, which would be compatible with the kind of inequalities in decision-making power that exist in a welfare state capitalist regime. An example of such alternatives might simply be a system of penalties for those who abuse power. Consequently, the burden falls on the defender of the alternative regimes under consideration to demonstrate why these regimes offer the only or best way to reasonably constrain those in positions of power.

Finally, it might be argued that Wolff's claims about the relationship between trust and respect are only plausible in cases where the person who mistrusts, and the person who is mistrusted are, respectively, a more powerful and a less powerful party. In Wolff's original discussion failures of trust are analysed precisely in the context, since the concern is with agents of the state (the more powerful) expressing a lack of trust in potential welfare recipients (the less powerful). In particular, we might not be concerned about expressions of mistrust when they are mistrust of the more powerful by the less powerful.

What can be said in response to this concern? Firstly, it does not seem to be the case that Wolff's own analysis, despite focusing on cases where a more powerful agent expresses a lack of trust in a less powerful agent, supports the kind of reading just set out. What Wolff seems to be arguing is that we should be concerned about mistrust in *any* case where people are asked to account for their claims or actions "too often, or in circumstances when others are not, or when the depth of investigation seems out of proportion."⁷⁴ Secondly, it has been my claim, above, that if a society is

⁷⁴ Wolff, "Fairness, Respect," 108.

designed on the basis that no one can be trusted to exercise power, then a lack of trust is here being expressed with respect to all citizens, since it is being claimed of all citizens that they are incapable of exercising power in a responsible way, and must therefore – if possible – be deprived of any opportunity to do so. Consequently, the claim I put forward does not involve mistrust of the powerful by the less powerful, but mistrust of *all citizens* by those who design and maintain the existence of the institutions in question.

This concludes my defense of welfare state capitalist-style regimes against argument (i) – that, in virtue of failing to ensure dispersed ownership of the means of production, such regimes permit troubling relations of domination and troubling status hierarchies to arise. I now turn to consider argument (ii).

4. PPO

One promising route for someone who wanted to establish that all citizens ought, in some sense, to have a stake in the means of production, would be to argue that such a scenario is required if one of the Rawlsian primary goods is to be properly distributed. In this section, we will consider the plausibility of this argument with respect to one particular primary good. This is the rather neglected – described by one commentator, in fact, as “mysterious”⁷⁵ – “powers and prerogatives of offices and positions of authority and responsibility,”⁷⁶ or, alternatively “powers and prerogatives of offices and positions of authority and responsibility in the political and economic institutions of the basic structure.”⁷⁷

⁷⁵ Arnold, “Difference Principle at Work,” 96.

⁷⁶ *Justice as Fairness*, 58.

⁷⁷ *Political Liberalism*, 181.

There are two important issues to get clear on with respect to this “mysterious” primary good. Firstly, what are “powers and prerogatives of offices and positions of authority and responsibility” [hence PPO]? Second, why are these included amongst the primary goods? On the first question, the major contributors to the small literature on the subject offer different views.

Samuel Freeman, for example, glosses PPO as follows:

“By “powers” he [Rawls] means legal and other institutional powers of various kinds, primarily those powers required to make economic decisions, including powers of control over productive resources.”⁷⁸

Samuel Arnold, on the other hand, understands PPO differently. His claim is that PPO is best understood as referring to “positions of authority, responsibility, and complexity” in the workplace.⁷⁹

When it comes to the question of on what grounds PPO is included in the list of primary goods, we do not get any further information from Freeman, but Arnold does offer a detailed explanation of why PPO, as he understands it, forms part of the range of primary goods. His view is that PPO furnishes citizens with the social bases of significant “internal resources,” resources that they require to function as free and equal citizens, in the Rawlsian sense.⁸⁰ These internal resources are intelligence – “the ability to reason, to plan, to solve problems, to think abstractly, to comprehend ideas, and to learn”⁸¹ – virtuosity – “skillfulness or cultivated aptitude”⁸² – and other

⁷⁸ Samuel Freeman, “Capitalism in the Classical and High Liberal Traditions,” *Social Philosophy and Policy* 28, no. 2 (2011): 50.

⁷⁹ Arnold, “Difference Principle at Work,” 103.

⁸⁰ *Ibid.*, 98.

⁸¹ *Ibid.*, 101.

⁸² *Ibid.*

resources specified as “self-governing and social capacities of the self.”⁸³ Social capacities are further elaborated as “person’s ability to understand, connect with, and influence other people,” whilst self-governing capacities are “a person’s ability to resist weakness of will, to place reason in effective control of his actions.”⁸⁴ Possession of these capacities enables citizens to pursue a wide range of personal ends – for example, carrying out their plans and projects with more success – and, it is claimed, is closely related to doing work that involves authority, complexity and responsibility.⁸⁵

Arnold points out that even if we accept his claims about the relationship between the highlighted internal resources and PPO this does not necessarily give a clear sense of how a Rawlsian just society should organise working life. This is because the difference principle ranges over at least two primary goods: PPO and income and wealth. As Arnold points out, in ensuring that the worst off are as well off as possible with respect to PPO, we may sacrifice productivity, and consequently render the worst off with respect to income and wealth less well off than they might have been in a system with where work was not, for the worst off in *this* respect, as complex and vested with authority and responsibility. His view, however, is that we should be suspicious of the claim that attempting to benefit the worst off with respect to the quality of work *is* as inimical to productivity as some would like to claim. Furthermore, the parties in the original position may choose to trade productivity off for gains in the quality of work for the worst off workers.

The same points hold for Freeman’s account. Even if wide dispersal of the means of production and worker ownership and control over firms *do* diminish

⁸³ Ibid., 98.

⁸⁴ Ibid.

⁸⁵ Ibid., 98-9.

productivity (arguably, they do not),⁸⁶ it may still be the case that the parties in the original position would choose to implement these forms of economic organization, given the importance they place on the primary good of PPO.⁸⁷

I have now set out two major positions on PPO. We can see how Freeman's account has direct bearing on the issue under consideration, namely, the distribution of ownership of the means of production. What about Arnold's account? Arnold argues that a property-owning democracy might be the best economic system for realizing the appropriate distribution of PPO. This is because, he argues, the citizens of a property-owning democracy have enough bargaining power to demand workplace reorganization, and are sufficiently skilled and educated to "naturally want work that matches their abilities."⁸⁸ I will not, however, examine this (rather speculative) part of Arnold's argument in any depth, since I wish to take issue with another part of the account.⁸⁹ This is the claim that PPO is justifiably included as one of the primary goods distributed by the difference principle.

Arnold's claim is that PPO is justifiably included amongst the primary goods because of the close relationship between citizens holding positions of authority, responsibility and complexity, and their being furnished with the social bases of various internal resources – intelligence, virtuosity, self-government and various important social capacities. At least some of these resources seem necessary for carrying out a wide range of conceptions of the good. Some level of intelligence, if intelligence is understood as the ability to reason, plan and so on, is necessary for

⁸⁶ Some argue that worker controlled firms are in fact more productive. See, for example, Samuel Bowles and Herbert Gintis, *Democracy and Capitalism* (London: Routledge & Kegan Paul, 1986); and Samuel Bowles, Herbert Gintis, et al. *Recasting Egalitarianism*, ed. Erik Olin Wright (London: Verso, 1998).

⁸⁷ Freeman's claim, in fact, is that welfare state capitalism *is* more efficient than competing regimes, but a commitment to PPO (and securing the social bases of self-respect) means that Rawlsian justice requires a property-owning democracy. Freeman, "Capitalism," 47-50.

⁸⁸ Arnold, "Difference Principle at Work," 116.

⁸⁹ Furthermore, Arnold may want to agree with Freeman's view to the extent of claiming that PPO at least *includes* powers over productive resources.

carrying out all conceptions of the good; self-government is significant if one is to actually accomplish the plan of life one embarks upon; basic social capacities may also be required to carry out many plans of life. The question here is what the relationship is between PPO, as understood by Arnold, and these capacities.

Consider that a Rawlsian just society has an adequate childcare and education system. We would expect the results of this system to be that individuals for the most part emerge at sixteen or eighteen from compulsory education with certain levels of skills and knowledge. We would expect, for example, for these individuals to have an adequate level of intelligence, in the sense given above, as well as reasonable self-governing and social abilities. Now consider that these individuals go into the workplace. It seems likely that most jobs will continue to nurture their social and self-governing capacities, even jobs which are not normally considered to involve considerable responsibility, authority and complexity.⁹⁰

Consider, for example, shop work. Here, one is (a) part of a team; (b) the job is in any case public-facing; (c) one has certain responsibilities that require self-government – one has to turn up on time, complete the tasks assigned in the right way, to certain deadlines, and so on. Although it may certainly be true to say that positions of responsibility and authority may develop the qualities of self-government and one's social capacities to a greater extent than shop work, it is not clear what the relevance of this fact is, here. Arnold, himself, makes this point. In order to establish that PPO is a primary good, he claims, Rawls will need to show that

⁹⁰ I do not want to claim that jobs will nurture such capacities under *any* circumstances – for instance we might be concerned that precarious jobs would not nurture such capacities. However, to argue that jobs in a Rawlsian society ought not to be precarious is not to argue that all citizens should have access to positions of positions of authority, responsibility and complexity.

“With these jobs and positions, people tend to develop full and robust social and self-governing capacities; without them, their social and self-government capacities lie fallow, or wither, or develop but fitfully and inadequately.”⁹¹

We do not want to include everything that may simply *enhance* these qualities amongst the primary goods, otherwise our list of primary goods will swell unreasonably. The question is whether education plus employment of the usual kind ought to be considered to inadequately furnish citizens with, or perhaps even destroy the important internal resources mentioned above. In the case of social and self-governing capacities, it is just not clear, I think that there is a close enough relationship of this sort between them and PPO – close enough to claim that without PPO individuals do not have these capacities in a “full” and “robust” enough sense.

Arnold wants, I think, to make a stronger claim when it comes to the internal resources of intelligence and virtuosity and their relationship to complex work. He does want to claim that in the absence of complex work these capacities *do* “lie fallow, or wither, or develop but fitfully and inadequately.” In particular, he wants to claim (a) that non-complex work actually *diminishes* intelligence, and (b) that without non-complex work individuals are significantly less likely to develop virtuosity. What should we make of these claims?

Let us consider the first. Arnold cites empirical evidence that intelligence increases with complex work, and that it decreases if the work is not complex. On this evidence, he wants to base the claim that complex work is a social basis of intelligence. Consider now that what we want is for citizens to have “full and robust” abilities to reason, to plan, to solve problems, to think abstractly, to comprehend

⁹¹ Arnold, “Difference Principle at Work,” 99.

ideas, and to learn. We know that non-complex work may diminish intelligence; we do not, however, know whether it does so to the extent that we can no longer call this intelligence “full and robust.” Secondly, if there are opportunities within society for individuals to increase their intelligence in other ways – assuming that individuals have sufficient leisure time in which to take advantage of these opportunities – how worried should we be that non-complex work does diminish intelligence to some degree? What we are asking here is, essentially, whether the relationship between complex work and intelligence is close enough for one to plausibly be considered a “social basis” of the other. This is not yet sufficiently well established for Arnold’s argument to go through.

Let us now consider the question of virtuosity. “Virtuosity” is described here as “skillfulness and cultivated aptitude.”⁹² The presence of virtuosity alongside intelligence as an “all-purpose means” for achieving a wide range of ends is, however, confusing. We can easily make sense of how the possession of some level of intelligence helps one to achieve a wide range of ends. However, the same does not seem to be the case for virtuosity. When we talk about someone being “skilled,” we often mean by this that this person is skilled at some particular thing X (say, skilled at social work, or teaching, or interior design, or playing the violin). It is not clear, however, how being skilled at one thing X helps one achieve a *wide range* of ends. It presumably helps one achieve a single end, namely doing one particular thing X. What Arnold perhaps means, since he takes one component of complex work to be that that work involves a variety of tasks, is that such work encourages people to develop a broad range of skills.⁹³ By “virtuosity” is then meant “in possession of a wide range of skills.” If I am good at social work, interior design *and* playing the

⁹² Ibid., 101.

⁹³ Ibid., 102.

violin, I can be said to possess virtuosity in this new sense. But it is not clear how “virtuosity” in this sense is genuinely an all-purpose means in the desired sense, since I may still only possess three or four niche skills, which do not help me further any *other* ends that I may happen to have.

What Arnold perhaps ought to say when he discusses “virtuosity” and its relationship to complex work is that performing a wide variety of tasks develops a wide range of skills which *are* helpful for other ends. So, by being a social worker, I may become good at dealing with difficult people; by playing the violin for an audience, I may overcome my stage fright. Both of these things may stand me in good stead in other parts of my life. What we want, therefore, is for people to do work which develops a range of skills which are, themselves, “all-purpose means.” Arnold’s claim should therefore be that complex work (by which he means not just work which involves a wide variety of tasks but work which is non-mindless) develops this wide range of skills. However, if we understand virtuosity in this way, Arnold’s argument turns out to be incomplete. What are these skills – remember, here that we have already taken social skills, self-governing skills and intelligence off the table – and how does complex work develop them? Arnold does not discuss this. The burden of argument, therefore, now lies with someone who wants to make the case for complex work as a social basis of important internal resources to answer these questions. As Arnold’s argument stands, however, it does not offer a convincing case for PPO as a primary good.

What about Freeman’s arguments? Freeman, to recall, claims that PPO should be cashed out mostly in terms of “those powers required to make economic decisions, including powers of control over productive resources.”⁹⁴ Freeman, as Arnold notes,

⁹⁴ Freeman, “Capitalism,” 50.

does not in fact appear to give any argument as to why these powers, in particular, should be considered a primary good. Could we construct such an argument?

Primary goods, according to Rawls, are

“various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good.”⁹⁵

Can powers to make economic decisions be construed as something which is “generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good”? If we move away from Arnold’s strategy, which we have already considered above, of claiming that these powers are “generally necessary” in virtue of providing individuals with important internal resources, we might consider the following claim: individuals can better advance their determinate conceptions of the good if they are able to exercise control over the economic sphere. If they exercise control over their workplaces, they have control over the context in which they (are likely to be) carrying out part of their conception of the good – namely, their place of employment. If they exercise control over the economy as a whole, they (if we are to believe O’Neill) get to exercise control over what kind of jobs and social positions are available – if, say, part of my conception of the good involves working in a particular industry, I can use the powers given to me by PPO to try to ensure that the industry in question continues to exist. The problem with this argument, I think, is that it just does not seem to convincingly pick out a condition which is “generally necessary” for

⁹⁵ *Justice as Fairness*, 57.

individuals to carry out their conceptions of the good. Rawls claims that in formulating a list of primary goods

“[w]e need at least a rough idea of rational plans of life showing these plans usually have a certain structure and depend on certain primary goods for their formation, revision, and successful execution.”⁹⁶

Now, with respect to the claim about the workplace, whilst it is true that many conceptions of the good might be carried out in the workplace, it is not clear that their successful execution depends on individuals having *control* over their workplaces. With respect to the claim about control over the economic domain as a whole, it is also not clear that the successful execution of most rational plans of life *depend* on control over the economic domain as a whole – as we have seen above, only those whose plans of life are in some way “threatened” will have their plan of life depend on such control. The claim that such control is “generally necessary,” therefore, seems false. Furthermore, in the wider context of Rawlsian theory, Rawlsian citizens are meant to “conceive of themselves as beings who can revise and alter their final ends.”⁹⁷ Consequently, it is not clear how much sympathy the Rawlsian picture has towards those with threatened ways of life.

As a final thought it might be claimed that PPO are things which are part of almost everyone’s plan of life, not instrumentally, but as ends. Everyone, it might be claimed, will view either (a) exercising economic decision-making power, or (b) (in the broader construal of PPO) exercising power over others more broadly, as desirable. This, however, simply seems untrue as a fact about people’s beliefs.

⁹⁶ Ibid., 58.

⁹⁷ *Theory of Justice*, 131.

We have not, at the end of this survey, managed to come up with a good reason for the inclusion of PPO amongst the primary goods. Consequently, I think we can dismiss arguments for property owning democracy or market socialism that use the need for the inclusion of PPO amongst the primary goods as a starting point.

5. Conclusion

This concludes my consideration of arguments (i) and (ii), both of which claim in different ways that welfare state capitalism, in virtue of failing to disperse ownership of the means of production, cannot satisfy the difference principle. In this chapter, I have argued that we should find neither of these arguments convincing. Against (i) I have argued that failing to ensure widespread ownership of the means of production does not in fact allow troubling relations of domination and troubling status hierarchies to arise. Against (ii) I have argued that we can cast significant doubt on the need to include powers and prerogatives of office and positions of authority and responsibility amongst the primary goods.

In the next chapter I turn to consider the remaining arguments for the claim that a Rawlsian regime must widely disperse ownership of the means of production. These are arguments (iii) and (iv), that regimes which fail to widely disperse ownership of the means of production cannot, as a consequence of this fact, guarantee the fair value of the political liberties; argument (v), that fair equality of opportunity cannot be guaranteed in regimes which fail to ensure wide ownership of the means of production; and argument (vi), that stability is undermined in regimes which fail to ensure wide ownership of the means of production.

Chapter 6: Ownership of the Means of Production (2)

1. Introduction

In the previous chapter I considered two central challenges to the view that Rawlsian justice does not require widespread ownership of the means of production. I now turn to consider, and dismiss, the remaining challenges to this claim. The arguments I consider here are as follows:

(iii) & (iv): regimes which fail to widely disperse ownership of the means of production cannot, as a consequence of this fact, guarantee the fair value of the political liberties.

(v): fair equality of opportunity cannot be guaranteed in regimes which fail to ensure wide ownership of the means of production.

(vi): stability is undermined in regimes which fail to ensure wide ownership of the means of production.

As I noted in Chapter 5, these arguments will not require as extensive consideration as arguments (i) & (ii), which I take to be the most serious of the existing challenges to

the view that Rawlsian justice does not require all citizens to have, in some sense, a stake in the means of production. However, the arguments considered in this chapter still merit serious consideration. In particular arguments (iii) and (iv) require a careful and reasonably lengthy response. Arguments (v) and (vi), on the other hand, will be considered only briefly. In the case of argument (v), this is because concerns about fair equality of opportunity have been adequately dealt with by others. In the case of argument (vi) it is because the argument in question does not, in my view, pose a significant challenge.

First, then, this chapter considers arguments (iii) and (iv), which claim that regimes that fail to ensure widespread ownership of the means of production cannot, as a consequence of this fact, ensure the fair value of the political liberties. This is either because they allow large holdings of *wealth* to be converted into political power, or because they allow large holdings of the *means of production* to be converted into political power. In this chapter, I argue against the first that regimes which fail to widely disperse the ownership of the means of production can nevertheless prevent the wealthy from disproportionately influencing the political process. I argue against the second –the “structural constraint” concern – that regimes which fail to widely disperse the ownership of the means of production can nevertheless prevent those with large holdings in the means of production from disproportionately influencing the political process. In the latter case, I defend and develop Thomas Christiano’s claim that we can view those with large holdings in the means of production as being under a duty to refrain from undermining the democratic process.

Having dismissed arguments (iii) & (iv) I then turn to consider arguments (v) and (vi) which claim, respectively, that fair equality of opportunity is undermined in

regimes which fail to ensure wide ownership of the means of production; and that stability is undermined in regimes which fail to ensure wide ownership of the means of production. Since, as I noted above, these arguments have either been considered exhaustively elsewhere or do not present a serious challenge to the view I wish to defend, my discussion of them will be brief.

2. The fair value of the political liberties

I now turn to consider arguments (iii) & (iv), that regimes which fail to disperse ownership of the means of production cannot guarantee the fair value of the political liberties.

There are two versions of this argument to consider. The first version, which is relatively easily dismissed, claims that regimes that fail to disperse ownership of the means of production fail to prevent the conversion of *wealth* into political power. The second version, which is perhaps more challenging, is the structural constraint concern. This claims that regimes that fail to disperse ownership of the means of production fail to prevent the conversion of *power over the means of production* into political power. These two claims represent two ways of understanding Rawls's complaint that regimes which fail to disperse ownership of the means of production allow "control of ... much of political life" to rest "in a few hands."¹

Let me take these argument in turn.

a. The conversion of wealth into political power

¹ *Justice as Fairness*, 137-8.

First, then, let us consider the challenge that regimes – like welfare state capitalism – that fail to disperse ownership of the means of production by so doing fail to prevent the conversion of wealth into political power. The concern here is that by permitting large inequalities in ownership of the means of production, we permit large disparities in wealth, and since wealth can be converted into economic power, those with more wealth have comparably more opportunities to exercise economic power. The ways in which wealth can be converted into political power are likely to be familiar to us. There is, firstly, what Martin O’Neill calls “corruption... in the gross literal sense whereby the wealthy effectively buy the allegiance of politicians.”² There is, secondly, what O’Neill calls “milder” forms of corruption, in which the wealthy are able to gain superior influence over the democratic process.³ To offer a few examples: wealthy people who donate large amounts to political campaigns often thereby gain access to senior politicians in the parties they support (for instance, at fundraising events) – this allows them the chance to get their views heard directly by those who are either in power or are likely to come into power; wealthy people are able to ensure that their preferred candidates for political office are better funded than rival candidates, with all the advantages that this brings to those candidates; wealthy individuals often have better access to the media, meaning that on political matters their voices are better heard than those who lack such access. These are just some of the ways in which we can say that those who have greater wealth are better able to wield political power.⁴

² “Free (and Fair) Markets,” 82.

³ Ibid.

⁴ Recent empirical work suggests that in the US the views of wealthy citizens do have a greater impact on what policy the government adopts, compared to the views of less well-off citizens. See Martin Gilens and Benjamin I. Page, “Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens,” *Perspectives on Politics* 12, no. 3 (2014): 564-581.

On a Rawlsian picture, this means that the worth (or “usefulness”)⁵ of the political liberties is not equally guaranteed for all citizens – the political liberties of those with greater wealth have greater value. But the Rawlsian scheme, of course, guarantees the fair value of the political liberties; guarantees, in other words, that the worth or usefulness of those liberties is “sufficiently equal that all have a fair opportunity to hold public office and affect the outcome of elections, and the like.”⁶ If welfare state capitalist-style regimes undermine the fair value of the political liberties by allowing the conversion of wealth into power, then another institutional set-up must be chosen.

Rawls himself is clear on this issue, claiming that a Rawlsian just society must “take steps to enhance the value of the equal right of participation for all members of society.”⁷ Rawls claims that a variety of steps can be taken to secure the fair value of the political liberties, of which ensuring that “property and wealth be kept widely distributed” is just one.⁸

However, as a number of thinkers have now pointed out, it is not at all clear that a regime which failed to widely disperse ownership of the means of production could not implement other measures to ensure that the conversion of wealth into political power was blocked – for instance policies of campaign finance reform, and the regulation of political speech.⁹ Consequently, the critique of welfare state capitalist-style regimes currently under consideration does not provide a particularly compelling argument for their abandonment.

⁵ *Justice as Fairness*, 149.

⁶ *Ibid.*

⁷ *Theory of Justice*, 197.

⁸ *Ibid.*, 198. Other means include the use of government funds to “encourage free public discussion” and public funding of political parties.

⁹ O’Neill, “Free (and Fair) Markets,” 82. See also, Vallier, “New Droperty-owning democrats,” 302.

Furthermore, as Kevin Vallier points out, welfare state capitalist-style regimes (contrary to what Rawls seems to think) need not involve large disparities in income and wealth.¹⁰ Indeed, it is somewhat strange to argue that simply because a regime fails to ensure that all citizens have holdings in, or participate in the collective control of, the means of production, this means that no redistributive activity occurs. Such a regime may still aim to achieve *income* equality, for instance;¹¹ furthermore, it is not clear why such a regime may not also significantly tax holdings of (productive) wealth in order to ensure high-quality welfare, health and educational services, or to increase the income of the worst-off. As I defined a property owning democracy, it is a regime that taxes holdings of the means of production in order to ensure that all citizens had such holdings; if such holdings are taxed for different reasons, then, we are not talking about a property-owning democracy. This seems to me to allow for a wide range of regimes which are (perhaps strongly) egalitarian, but not property-owning democracies or market socialist regimes.

The idea of non-productive-property dispersing regime as *in virtue of this fact* an inegalitarian one seems strange. So, we can add to the above arguments by claiming that welfare state regimes could well limit inequalities in income and wealth, and consequently contribute to achieving the fair value of the political liberties in this way.

We now turn to consider a somewhat more serious case against welfare state capitalist style regimes, in the form of the structural constraint concern.

¹⁰ Vallier, “New Property-owning Democrats,” 302.

¹¹ We can also note here that according to some theorists income inequalities in places such as the US can be traced back to large disparities in *salaries* earned, and not to whether or not individuals have holdings in productive property. The very rich, John Roemer claims, are “the upper management of corporations, both financial and industrial, movie stars, some athletes, some highly paid professionals,” all of whose wealth is due to very high salaries which are “competitively determined.” Roemer, “Thoughts on Arrangements of Property Rights in Productive Assets,” *Analyse & Kritik* 35, no. 1 (2013): 58.

b. The conversion of ownership of the means of production into political power.

I now turn to consider the claim that welfare state capitalist style-regimes should be rejected in favour of regimes which widely disperse ownership over the means of production because welfare-state capitalist style regimes fail to prevent those who possess large holdings in the means of production from exercising a “structural” influence over democratic politics. Such an argument proceeds as follows. Those who have large holdings of the means of production exercise significant power over democratic politics because they can withdraw investment from the economy of the state in which they are based, and move it elsewhere. Governments, who rely on such investment to secure the well-being of their economies, are consequently likely to act in ways which ensure that those who currently invest in their state’s economy continue to invest there. This means formulating policies which appeal to the interests of those with large holdings in the means of production, even if those policies are not in the general interest, or are, indeed, explicitly contrary to what the citizenry of the state in question have decided upon in democratic forums. Even if those who have large holdings in the means of production do not expressly threaten to withdraw investment if their interests are not catered for, governments are still likely to try to act to cater to those interests, knowing the likely consequences of not doing so.

This is a serious concern. It should be noted, however, that it does not simply apply to regimes which do *not* widely disperse ownership of the means of production, but also to regimes which do disperse it. So, for instance, property-owning-democracies are vulnerable to similar criticisms, for two reasons. The first is that property-owning democracies replace owners of large holdings of productive capital

with many owners of smaller holdings; however, these owners of smaller holdings will effect a similar constraint on government activity. If the government fails to act in the interest of those who hold productive capital, those individuals will withdraw their investment.¹² Consequently, governments will have the incentive to act in these persons' interests. The second, as Tom Malleon points out, is that property-owning democracies typically conceived still involve large *firms*, even if no individual now has large holdings in those firms.¹³ These large firms, however, are also likely to exercise constraints over government activity, since the government is likely to wish to act to ensure that such organizations (which are, for instance, large employers) do not disinvest, and consequently design government policy to take into account their interests. For these two reasons, the structural constraint complaint is really – as O'Neill himself suggests – an argument for a regime which places the economic sphere as much as possible under collective democratic control.¹⁴

What is to be said against such an argument? The response I defend here is offered by Christiano. I will set out Christiano's arguments, and then offer my own suggestions as to how this argument may be further defended against criticisms of its controversial nature.

What Christiano proposes is that we should understand those in possession of large holdings of productive capital as being under a duty to refrain from acting in ways that undermine democratically-made decisions – and, more broadly, as being under a duty to “avoid interfering with the aims of a democratic society.”¹⁵ The duty we should understand these “capitalists” to be under is an informal one; that is, one

¹² This point is made by White in “Republican Critique of Capitalism.”

¹³ Malleon, “Rawls, Property-Owning Democracy,” 230.

¹⁴ O'Neill, “Free (and Fair) Markets,” 83.

¹⁵ Christiano also thinks that capitalists “sometimes they have positive duties to assist in pursuing the aims of a democratic society.” “Democracy and Capital,” 208.

that is not legally enforced.¹⁶ The duty itself is one that, in fact, we should understand all citizens to be under; however, since capitalists typically have a greater ability to undermine democratically-made decisions, we should take them to be under a “special responsibility by virtue of the power they hold, not to use it to pursue antidemocratic aims.”¹⁷

To see how such a duty would constrain capitalists’ actions, consider an example given by Christiano himself. Imagine that a rise in the minimum wage has been democratically approved by a particular country’s citizenry. This minimum wage, let us further assume, would negatively affect the profits of some of the country’s major businesses. In the absence of such a duty, it might well be the case that the businesses in question would make it known that they would disinvest from the national economy if such a policy were adopted; consequently, in light of the negative consequences of adopting the policy, the government would in all likelihood not implement the policy in question, despite the democratic mandate. In contrast, in the scenario in which capitalists took themselves to be under a duty to refrain from acting in ways that undermine democratically-made decisions, the businesses in question would choose not to disinvest from the national economy – and would make it clear that disinvesting would not be their response to the adoption of the minimum wage. This would permit the government to act in line with the democratic mandate.

Christiano does suggest that in some instances it will be too burdensome for business owners to not act so as to undermine democratically-made decisions (perhaps if this would result in the failure of their business, for instance), but where it is not too burdensome, the duty holds.¹⁸

¹⁶ Ibid., 207.

¹⁷ Ibid.

¹⁸ Ibid., 209.

If we accept that we should take capitalists to be under the kind of duty that Christiano sets out, then, the structural constraint is dissolved. Those who have greater control over the means of production (or greater control over firms) will – as illustrated in the minimum wage case – not act so as to undermine democratically made decisions. Consequently the control that these individuals have over the means of production does not translate into any increased influence over the political process. Thus, the fair value of the political liberties is preserved.

There are, however, several concerns which are likely to be raised when it comes to this line of response. I will now consider these concerns, and either suggest why such concerns can be dismissed, or explain how Christiano's view can be modified in a way that enables us to respond to such concerns.

The first set of concerns that could be raised about this view is that if the capitalists' duty is not a legal one, then it remains at their discretion when and how far they act on it. This might lead us to be concerned that (a) capitalists will not in fact act on the duty; (b) even if capitalists are in general motivated to act on the duty, since it is to some extent up to them when and how far they act on it (because, for instance, they don't have to act on the duty if it is too burdensome to do so), uncertainty about how they will act will still generate a version of the structural constraint.

Let me respond to concern (a) first. Here, I think, the concern is misguided. Since we are considering the matter of the structural constraint from the perspective of Rawlsian theory, we can assume full compliance with whatever duties of justice are taken to exist and apply to citizens. Consequently, we can stipulate that capitalists will – as a consequence of growing up in a just society – in fact be motivated to comply with the duty in question.

Let us turn to concern (b). Here, we can respond to the concern in question by adding to the duty that Christiano proposes. In the example above, in which I discussed how capitalists who took themselves to be under Christiano's duty would be expected to act in the face of the proposed introduction of minimum wage legislation, I mentioned that we would expect these capitalists not just to choose not to disinvest from the national economy, but also to make it clear that disinvesting would not be their response to the adoption of the minimum wage. Now, Christiano's specification of the duty under consideration was simply that capitalists should "avoid interfering with the aims of a democratic society." However, I think that in response to the objection under consideration we can add that capitalists should make their intended response to the implementation of certain government policies *public*, so as to prevent the government from judging wrongly what those intentions are. This will prevent uncertainty about how capitalists will act from generating a version of the structural constraint.

A second, more significant, concern that could be raised against Christiano's response to the structural constraint is very different. This is the concern that the response is too controversial to have any appeal to a wide audience. This is because it is a mainstream view that we should not take individuals to be under duties of justice, when it comes to their personal behaviour, which are not exhausted by simply the familiar Rawlsian duty to maintain and support just institutions. To claim that there are further duties of individual justice that apply to individuals destroys the familiar Rawlsian moral division of labour in which it is institutions that ensure that justice is effected, and all that is required of individual behaviour is to ensure that those institutions are able to fulfill this function.

The justifications given for this moral division of labour are various. Two of the most important are as follows.

Firstly, it is argued that the business of justice must be taken “off the plate” of ordinary people.¹⁹ Individuals, it is claimed, must be allowed to act from self-interest and in pursuit of their own projects, which they will be unable to do if their own choices are to be informed by the goal of realizing justice. It is, as Murphy puts it, in his characterization of this kind of argument, morally unappealing that “people must constantly think about how well-off other people are and adjust their behavior accordingly.”²⁰ It is morally unappealing, in part because it undermines freedom, and in part because it results in individuals living less good lives than they otherwise would.²¹ A moral division of labour where principles of justice are taken only to apply to major social institutions, on the other hand, preserves a sphere for individuals to pursue their own projects and self-interest, “secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made.”²²

Secondly, it is argued that – on a Rawlsian picture specifically – principles of justice are to be applied to society’s major institutions only, where institutions are to be defined as “those actions which realize public rules in a way that exerts profound and unavoidable influence on individuals’ access to social primary goods.”²³ Rules are taken to be “public” if it is the case that individuals can come to

¹⁹ This characterization of the argument is offered by Liam B. Murphy in “Institutions and the Demands of Justice,” *Philosophy & Public Affairs* 27, no. 4 (1998): 258. Murphy takes Thomas Nagel to be one of the main authors of this argument.

²⁰ *Ibid.*

²¹ *Ibid.*

²² John Rawls, “The Basic Structure as Subject,” *American Philosophical Quarterly* 14, no. 2 (1977): 164.

²³ Williams, “Incentives, Inequality, and Publicity,” *Philosophy & Public Affairs* 27, no. 3 (1998): 234. See also his “Justice, Incentives, and Constructivism,” *Ratio* 21, no. 4 (2008): 476-493.

“attain common knowledge of the rules’ (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals’ conform with those requirements.”²⁴

This view comes from Andrew Williams, and on such a view the reason why we would have a moral division of labour between institutions so defined and other actions is precisely because we can only apply principles of justice to institutions understood as systems of public rules. If we begin to apply principles of justice to systems of rules which are not public, then Rawlsian citizens will not be able to gain the requisite knowledge of the rules’ general applicability, particular requirements, and the extent to which individuals conform to those rules. If citizens cannot gain this knowledge, however, they will be unable to discover whether these rules are, in fact, being followed and whether, in fact, the society in which they live satisfies the principles of justice. They will, consequently, not know whether the society they live in is just – and this state of affairs, on the view of those who defend the publicity principle, should be regarded as a troubling one. Furthermore, Rawls himself seems to suggest, if the principles of justice are not taken to apply to a public system of rules, then individuals will not just not know whether they are living in a just society; they will also not know what justice requires of them. So, Rawls argues, rules need to be public because unless they are citizens will not know “what limitations of conduct to expect of one another and what kinds of actions are permissible”; as a consequence, there will be no “common basis for determining mutual expectations.”²⁵

Both of these objections were developed in response to G.A. Cohens’s arguments that, in a Rawlsian just society, the difference principle should be taken to

²⁴ Ibid., 234.

²⁵ *Theory of Justice*, 49.

apply to citizens' market choices. Cohen's view – which we do not need a detailed elaboration of here – is that talented workers should, where they are capable of doing so, choose to work as hard (and in the same kinds of jobs) in the absence of the receipt of special incentives as they would have done in the presence of them.²⁶ The concern about this proposal from the perspective of the first objection is that it is “morally unappealing” that individuals should have to choose to act in this way; it undermines their freedom, and means that they live less good lives than they otherwise would have done. The concern about this proposal from the perspective of the Williams' objection is that it implies that citizens in a Rawlsian just society would be unable to attain knowledge of whether the difference principle was or was not being satisfied – consequently, the publicity condition would be violated.²⁷ For instance, on Cohen's view we can pay incentives to motivate talented individuals to work harder at their jobs, so long as those talented individuals could not, in fact, work as hard in their absence. As Samuel Scheffler points out, we might expect that sometimes incentives could generate the kind of performance that could not “be summoned at will.”²⁸ Williams points out here that citizens of a Rawlsian just society would have a difficult time working out, for any given incentive payment, whether in fact it was necessary to elicit performance that could not be “summoned at will” by the individual question. Consequently, it would be difficult to tell whether or not the payment in question was licensed by justice.²⁹

²⁶ See G.A. Cohen, “Incentives, Inequality, and Community,” in *The Tanner Lectures on Human Values*, vol. 13, ed. G. B. Petersen (Salt Lake City: University of Utah Press, 1992), 262-329; “The Pareto Argument for Inequality,” *Social Philosophy and Policy* 12, no. 1 (1995): 160-185; and “Where the Action Is: On the Site of Distributive Justice,” *Philosophy & Public Affairs* 26, no. 1 (1997): 3-30.

²⁷ Williams, “Incentives, Inequality, and Publicity.”

²⁸ G.A. Cohen “Incentives, Inequality, and Community,” 291.

²⁹ Williams, “Incentives, Inequality, and Publicity,” 241. Williams offers us a number of other reasons for thinking that if the principles of justice were applied to individual choices in the way that Cohen suggests, the publicity condition would be violated.

Our interest here, however, is not with Cohen's view but with the issue of whether the obligation capitalists should be viewed as being under – the obligation to “avoid interfering with the aims of a democratic society” – can also be viewed as vulnerable to the objections set out above.³⁰

Let us start with the concern that seeing capitalists as being under such an obligation is “morally unappealing” because it would imply that “people must constantly think about how well-off other people are and adjust their behavior accordingly.”³¹ This, the objection goes, would involve restrictions on people's liberty, and would result in citizens leading less good lives than they otherwise would (the latter, presumably, because they must constantly think about how well-off others are, and not about their own self-interest).

There are, firstly, general concerns with this line of objection to applying principles of justice to people's choices. One of these concerns is that the consequences of applying principles of justice only to major social institutions can be just as burdensome for individuals. Murphy, for instance, points out that the rules of taxation may be very burdensome for individuals in the relevant sense, with self-employed people in particular, because of the way the rules apply to them, “probably think[ing] about taxation more or less constantly.”³² Consequently, it is not clear that a concern about burdensomeness should lead us to reject the application of principles of justice to individuals' choices. A second concern pertains specifically to the worry that liberty is being restricted when principles of justice are applied to individual choices. This concern – from Williams – is that if individuals follow the principles in question in their personal behavior because they are motivated to do so as a

³⁰ Christiano also thinks that capitalists “sometimes they have positive duties to assist in pursuing the aims of a democratic society.” “Democracy and Capital,” 208.

³¹ Murphy, “Institutions,” 258.

³² Ibid., 260.

consequence of the operation of social norms – or, in Cohen’s language, the operation of some sort of “ethos” – then it is not clear that freedom is being restricted. Only if individuals followed these principles as a consequence of the presence of legal enforcement would liberty be restricted.³³

Secondly, we might question whether the duty that Christiano proposes should in fact be viewed as unduly burdensome. Would capitalists who complied with such a duty in fact have to “constantly think about how well-off other people are and adjust their behavior accordingly”? This seems unlikely, given that the duty in question has to do first and foremost with one particular type of decision – the decision about whether to withdraw capital in the face of government policies that might affect one’s business interests adversely. When we come to consider the wider duty that Christiano takes all citizens to have – the duty to “avoid interfering with the aims of a democratic society,” again, the discharge of this duty does not look to be particularly burdensome in the required sense. This is because Christiano sees the discharge of this duty to consist, for the most part, in simply obeying the law.³⁴

It seems, then, that we need not be concerned that Christiano’s duty is unduly burdensome. Consequently, there seems to be no good reason – from the perspective of the objection under consideration – for rejecting the proposal that we should take citizens to be under an obligation not to interfere with the aims of a democratic society.

What of Williams’ objection? Williams’ objection, to recall, is that the application of principles of justice to certain choices is problematic because we run afoul of the publicity condition.³⁵ Here, Christiano’s view is in more trouble. For

³³ Williams, “Incentives, Inequality, and Publicity,” 228.

³⁴ Christiano, “Democracy and Capital,” 207.

³⁵ Here – we should probably note – the principle being applied to individual choices as the fair value of the political liberties.

instance, how will we know whether or not capitalists are fulfilling the duty in question? Perhaps, we could respond, we will know because government policy is not being undermined. This, however, is not an adequate response. This is because, on Christiano's view, in some cases capitalists can act so as to undermine government policy – in instances when it is taken to be too burdensome for them to do so. Since, however, it looks as though individuals are to decide for themselves when following the duty in question is “too burdensome,” it becomes very difficult for other citizens to tell when capitalists are legitimately undermining government policy, and when they are not. Consequently, we cannot know the extent to which these capitalists are conforming with the requirements of justice.

A response here might be to set out criteria for when we should view following the duty in question to be “too burdensome.” This would be to depart from Christiano's view that we should leave it up to capitalists themselves to decide this question.³⁶ Here, however, I am going to adopt a different strategy. I will suggest that we understand the duty to refrain from undermining government policy in a different way to the way that Christiano understands it. This way of understanding the duty, I will claim, helps us to avoid Williams' objections. It also allows us to avoid having to engage further with the complicated question of whether principles of justice should be taken to apply to individual choices.³⁷

What I propose is that we understand Christiano's duty as being part of the familiar Rawlsian duty to support just institutions. (In what follows, I will understand

³⁶ Christiano, “Democracy and Capital,” 209.

³⁷ For further discussion on this question see, for instance, Samuel Scheffler, “Is the Basic Structure Basic?,” in *The Egalitarian Conscience: Essays in Honour of G.A. Cohen*, ed. Christine Synowich (Oxford: Oxford University Press, 2006), 102-129; Kok-Chor Tan, “Justice and Personal Pursuits,” *The Journal of Philosophy* 101, no. 7 (2004): 331-362; Seana Valentine Shffrin, “Incentives, Motives, and Talents,” *Philosophy & Public Affairs* 38, no. 2 (2010): 111-142; Thomas W. Pogge, “On the Site of Distributive Justice: Reflections on Cohen and Murphy,” *Philosophy & Public Affairs* 29, no. 2 (2000): 137-169; and A. J. Julius, “Basic Structure and the Value of Equality,” *Philosophy & Public Affairs* 31, no. 4 (2003): 321-355.

the term “Christiano’s duty” to refer specifically to the duty that capitalists are under not to undermine government policy, rather than the broader duty of all citizens not to undermine government policy).

Christiano does not offer his discussion in a Rawlsian framework. However, he does offer some comments which help us to understand how his proposed duty would fit into such a framework. In particular, he explicitly aligns himself with Cohen’s view that “in an egalitarian society, citizens have duties that go beyond the duties to maintain and support just institutions. They also have egalitarian duties that they must observe in their personal behavior.”³⁸ Christiano, then, denies that we should understand the duty he proposes as part of a duty to maintain and support just institutions, and argues that the duty in question should be taken – like the egalitarian duties proposed by Cohen – to be additional to those more familiar duties. It is my view, however, that Christiano’s duty is more plausibly understood as being part of an existing duty to support just institutions. Let me now discuss how we can understand Christiano’s duty to be part of this existing duty.

In *A Theory of Justice* Rawls outlines the content of what he calls a “fundamental duty of justice” as follows:

“This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.”³⁹

Why would we think that Christiano’s duty forms part of this “fundamental duty of justice”? The answer can be given as follows. It, firstly, seem straightforward to see

³⁸ Christiano, “Democracy and Capital,” 208.

³⁹ *Theory of Justice*, 99.

a duty to support just institutions that exist and apply to us as requiring that individuals act so as not to undermine, or contribute to undermining, just institutions. Secondly, it also seems straightforward to say that one significant institution in a just Rawlsian society is the democratic political system. Why, then, given these two claims, should capitalists acting so as to undermine government policy by, for instance, withdrawing their investment, be seen as failing to fulfill a duty to support just institutions? My claim is that such action violates the duty to support just institutions because it is action which undermines the democratic political system. Consequently, such behaviour should be ruled out by the duty to support just institutions, as it is at odds with the requirement – implied by this duty – that individuals act so as not to undermine, or contribute to undermining, just institutions. Why, then, are capitalists undermining the democratic political system when they (for instance) withdraw their investment? I think there are two ways of understanding why this is the case.

Firstly, it seems very plausible that in a society where government decisions are persistently seen to be made in response to the anticipated actions of powerful institutions such as capitalist firms, there is likely to be an erosion of support for the democratic institutions themselves, because those institutions no longer carry out their supposed function. It seems likely that such an erosion of support would occur, since it is not clear why citizens would continue to support institutions which are simply seen as a means by which the powerful get to have their wishes enacted. Where there is an erosion of support for democratic institutions, those institutions are significantly more vulnerable to ceasing to exist, since individuals will not act so as to preserve the institutions in their less effective form if those institutions are threatened, they will not make an effort to participate in them, and so on.

Secondly, it also seems plausible to think that a society where government decisions are persistently seen to be made in response to the anticipated actions of powerful institutions such as capitalist firms is one in which democratic institutions have already been undermined, because the policies which are being enacted are no longer those which have a democratic mandate, but are those which have the approval of a few powerful individuals and organizations. If powerful individuals and organizations consistently act so as to undermine the decisions of democratic institutions then it seems fair to say that they are no longer *democratic* institutions, but rather decision-making institutions which track the interests of the powerful.

These, then, are the reasons why we should see capitalists as under a duty not to undermine democratically made decisions.

If this argument is correct and the duty not to undermine democratic decision-making (except where this is unduly burdensome) is indeed part of a duty to support and maintain just institutions, then we now have a different – and I think more conclusive – response to those who claim that we should reject such a duty because it undermines the traditional Rawlsian “division of labour” between institutions and individual action. This is because Rawlsians already endorse a duty to maintain and support just institutions, which is not taken to be incompatible with their position on the institutional division of labour. We have only, here, explained in what this duty should be taken to consist, rather than made the potentially controversial move of proposing additional duties for individuals.

Three concerns about my proposed way of understanding the duty of capitalists to “avoid interfering with the aims of a democratic society” remain to be addressed.⁴⁰ Firstly, we might still be concerned that the duty in question makes the

⁴⁰ Christiano, “Democracy and Capital,” 208.

duty to support and comply with just institutions too burdensome for capitalists. I have responded to this concern above by suggesting reasons as to why this duty should not be viewed as too burdensome. A second response is that whilst Rawls does include a “cost caveat” on the duty to further just arrangements not yet established (“at least when this can be done without too much cost to ourselves”)⁴¹ there is no such cost caveat for the duty to support and comply with just institutions that already exist and apply to us.⁴² This suggests that it is in fact reasonable, on a standard Rawlsian picture, for the duty to support and comply with just institutions to be – sometimes – costly for individuals to comply with. Consequently, even if it was argued that the duty capitalists were under was burdensome, this is an acceptable feature of such a duty, as it is presently being understood.

A second concern is that raised by Williams – that we should be concerned that citizens of a just society will not know when capitalists are legitimately undermining government policy, and when they are not, because capitalists get to decide for themselves when following the duty in question is “too burdensome.” This concern, however, can be responded to in the following way. The publicity condition is – on a Rawlsian picture – only taken to apply to the rules of institutions and not, consequently, to duties of justice.⁴³ This is perhaps just as well for Rawlsians as the aforementioned “cost caveat” on the duty to further just arrangements not yet established is likely to be just as problematic, from the perspective of publicity, as the “too burdensome” caveat on Christiano’s duty.

The final concern that can be raised about my proposed way of understanding the capitalists’ duty concerns this “too burdensome” caveat. I noted in response to the first concern that Rawls’s duty to support and comply with just institutions has no

⁴¹ *Theory of Justice*, 99.

⁴² This point is made by Murphy, from whom the phrase “cost caveat” is also taken. “Institutions,” 290.

⁴³ *Theory of Justice*, 48-49.

cost caveat. Consequently, if the duty to avoid interfering with the aims of a democratic society is to be taken as part of the duty to support just institutions, then it might be argued that this “too burdensome” caveat should be dispensed with, and capitalists should be expected avoid interfering with the aims of a democratic society even when this is extremely burdensome. I’m not sure that, in fact, it would be too unpalatable a conclusion to simply accept that we should dispense with Christiano’s “too burdensome” caveat and expect capitalists to avoid interfering with the aims of a democratic society regardless of the consequences for their own self-interest. However, if we did want to retain the “too burdensome” caveat we could argue along the following lines: the capitalist duty to refrain from interfering with the aims of a democratic society is derived from a duty not to undermine the democratic institutions of a just society. If it is the case that capitalists could sometimes interfere with the aims of a democratic society without undermining democratic institutions (because, for instance, these interferences were very infrequent, and so whilst some decisions were undermined the institution itself was not, and the trust of citizens in that institution was not eroded), then it looks like they would still be fulfilling their duty to support just institutions, whilst also – sometimes – being able to act out of self-interest. This response would, however, require capitalists to only act out of self-interest when not undermining government decisions was very burdensome, in order to ensure that they did not undermine these decisions too frequently.

I therefore conclude that Christiano’s response to the structural constraint concern can be successfully defended, despite its *prima facie* controversial nature. Consequently, this concern need not move Rawlsians to embrace some kind of collective control of the economic realm. This also concludes our discussion of the fair value of political liberties arguments.

3. Fair equality of opportunity

I now turn to consider argument (v), which claims that fair equality of opportunity is undermined in economic regimes which fail to widely disperse ownership of the means of production. In this discussion, I will rely in the main on the insights of previous authors who have already offered what I take to be a satisfactory defense of welfare state capitalist-style regimes.

For Rawls, fair equality of opportunity ensures that citizens' chances of success (for instance, success in accessing desirable social positions and offices) are not affected by their social background. Instead, what should be the determinant of this success is "talent and ability and willingness to use these gifts."⁴⁴ The claim that Rawls makes against welfare state-type regimes is that they fail to do anything to prevent the intergenerational transmission of advantage, because they do not implement policies which prevent intergenerational transfers of wealth. A property owning democracy, as Rawls defines it, would – on the other hand – "involve the enactment of significant estate, inheritance and gift taxes, acting to limit the largest inequalities of wealth, especially from one generation to the next."⁴⁵ Consequently, it is claimed, a commitment to fair equality of opportunity should move us away from welfare state capitalist-style regimes.

As has been noted by Martin O'Neill, however, it is not clear why a welfare state capitalist-style regimes cannot themselves enact significant estate, inheritance, and gift taxes to limit the largest inequalities of wealth.⁴⁶ Property-owning

⁴⁴ *Justice as Fairness*, 44.

⁴⁵ O'Neill, "Free (and Fair) Markets," 81.

⁴⁶ *Ibid.*, 85.

democracy, as O'Neill points out, is defined by an attempt to ensure that all have roughly equal holdings of productive property *within* generations.⁴⁷ For a welfare state-style regime to pursue policies which aim to ensure that large holdings of productive property are not transmitted between generations, then, is not for the defenders of such regimes to concede the argument to property owning democrats. Furthermore, welfare state capitalist-style regimes may pursue alternative policies to prevent the intergenerational transmission of advantage. Christian Schemmel, for instance, suggests that rival strategies to property owning democracies could, for example, "emphasise meritocratic selection procedures, and reduce the instrumental importance of possession of capital for attaining desirable jobs and positions."⁴⁸ Finally, as Schemmel points out, there is nothing in the Rawlsian fair equality of opportunity principle which intrinsically demands the wide dispersal of ownership of the means of production.⁴⁹

Although this discussion of the argument from fair equality of opportunity has been brief, a brief discussion is all that is really required to set out the appropriate response to it. As both O'Neill and Schemmel claim, it is not clear that welfare state capitalist-style regimes cannot enact policies to secure fair equality of opportunity.

4. Stability

⁴⁷ Ibid.

⁴⁸ Schemmel, "Welfare State," 10.

⁴⁹ Ibid. Samuel Freeman disagrees with this claim, arguing that fair equality of opportunity requires, specifically, ongoing opportunities for the control of productive capital. Since, however, this view is generally regarded as an implausible interpretation of fair equality of opportunity, I do not discuss it here. For more, see O'Neill "Free (and Fair) Markets," 84-87.

Finally, then, we turn to a brief consideration of argument (vi), the argument from stability.

There are two versions of this argument worth considering, the first from Tilo Wesche, and the second from Waheed Hussain. Let me consider Wesche's arguments first.

Wesche argues that the kind of economic regime we choose should be selected based not just on a consideration of which regime avoids letting the powerful have undue influence over the political process (which we discussed under the heading "the fair value of the political liberties) above, but also on consideration of which regime positively *fosters* democratic politics. That is, when we select economic regimes, we should consider which of these regimes will ensure *stability*, and will do so by securing the fair value of the political liberties. Political institutions, Wesche argues, "should be stable in virtue of a shared sense of justice that may not be overruled or concealed by hostile and antagonistic attitudes of citizens" nor should political debate "be distorted by the adverse effects of divisive and deluded convictions."⁵⁰ This, Wesche claims, requires a property-owning democracy.

Stability, then, Wesche claims, requires a shared sense of justice. Furthermore, stability requires a *deliberative* political culture where, as a consequence of public debate, the principles of justice which govern the society in question are "reasoned," but (consistent with the publicity condition) are also publicly seen to be reasoned.⁵¹ The problem with a welfare state capitalist style-regime, claims Wesche, is that because it permits disparity in holdings of the means of production, it allows two groups to emerge in society with significantly opposed interests. Those who own the means of production wish to retain their holdings, and the income generated by them,

⁵⁰ Wesche, "The Concept of Property in Rawls's Property-Owning Democracy," *Analyse & Kritik* 35, no. 1 (2013): 106.

⁵¹ *Ibid.*, 107.

whilst those who rely on redistributive transfers from those with significant holdings in the means of production will oppose the owners in this respect.⁵² This, Wesche claims, leads to antagonistic political debate, and a failure of the two groups to see themselves as having “shared values.”⁵³ Consequently, stability is threatened. In a property-owning democracy, in contrast, there is no division between owners of the means of production and others and, consequently, no antagonism of the sort currently under consideration.

How troubling is this kind of argument? I think that, in the course of the discussions in this chapter, we have already developed the resources to address it. In the above discussion, I defended Thomas Christiano’s view that those who have significant holdings in the means of production should have a duty to refrain from using their greater potential influence over the democratic process from undermining democratic politics. If it is publicly known that owners of the means of production and other capitalists are bound by such a duty, then it does not seem to me that antagonistic political debate of the sort that Wesche describes need arise, since those who rely on tax-funded transfers need not be concerned that capitalists will use their greater power in the democratic process to retain a greater share of their income and wealth, against what has been democratically decided.

Wesche however, in a different strand of thought, seems to argue that antagonism in public debate will *inevitably* arise when one group generates society’s wealth, and another group get some of that wealth redistributed to them.⁵⁴ If two groups are in such a relationship, he seems to argue, we will inevitably see the emergence of “envy, resentment, and rancorous attitudes.” If this is correct, then we may be concerned that even if capitalists comply with the duty Christiano proposes,

⁵² Ibid., 109.

⁵³ Ibid.

⁵⁴ Ibid.

deep and troubling divisions will still exist between social groups. Wesche, however, does not provide us with any clear evidence for why we might think that the emergence of attitudes of envy, resentment, and rancor must emerge and undermine democratic discourse wherever redistribution takes place. Unless he can provide evidence for this claim he cannot, I think, hope to use it as a basis for arguing that welfare state capitalist-style regimes must be abandoned.

The second argument, offered by Waheed Hussain, is along somewhat different lines, and in fact closely resembles one of the arguments considered in Chapter 4 for a basic right to actually privately own productive property. This was that unless citizens actually had holdings of productive property, they will fail to properly develop a sense of justice. There, we considered O'Neill's version of the argument; here, let me consider – briefly – Hussain's version.

Hussain claims that a Rawlsian just society must be realized by a regime which he refers to as “democratic corporatist property-owning democracy.”⁵⁵ This involves the institutions typically associated with a property-owning democracy, but, in addition, involves – with respect the economic sphere – various representative associations whose function is to collectively determine the framework in which competition between different firms is to take place.⁵⁶ Like O'Neill's argument from workplace democracy, Hussain's claim is that by participating in these kind of decision-making bodies (of which most citizens would be part), citizens develop their capacity for a sense of justice. The importance of the development of a sense of justice in terms of *stability*, is, according to Hussain, that with a strong sense of justice citizens will be the sort of people who ensure that, whenever the “just

⁵⁵ Hussain, “Sense of Justice,” 181.

⁵⁶ Ibid.

character” of basic institutions in threatened, “political forces will emerge in society to sustain [those institutions].”⁵⁷

The response I will give to Hussain’s argument has already been offered in response to O’Neill’s similar line of argument. I refer the reader to Chapter 4 for a fuller discussion of this response – here I offer only a brief summary. The main thrust of this response is that Hussain’s argument relies on the claim that the kind of representative associations identified are the only places in which citizens can develop a sense of justice – yet it seems clear that this is not the case. So, for instance, venues in civil society and in private associations may be sufficient for citizens to develop the sense of justice. In addition we should note that the education system of a just society may well suffice to develop a sense of justice.

This then concludes my discussion of stability arguments. My claim has been that neither of these arguments provide a good case for thinking that a Rawlsian just society must widely disperse ownership of the means of production.

5. Conclusion

This, then, concludes my defense of regimes which do not ensure wide dispersal of the means of production against the most significant arguments which have, so far, been leveled against them. The need for Rawlsians to embrace such regimes has, I believe, been significantly overstated.

The reader may note that the arguments of this chapter have not aimed at establishing the superiority of welfare-state-style regimes over property-owning democracies or versions of market socialism. Instead, the claim has been simply that

⁵⁷ Ibid., 186.

welfare state capitalist regimes are *compatible* with Rawlsian justice and not, as critics have claimed, deeply incompatible. Consequently, what has been argued for (or perhaps, argued *towards*) here is something like an extension of Rawls's agnosticism about the choice between liberal socialism and property-owning democracy.⁵⁸ Unlike Rawls's own view, however, the agnosticism is taken to extend to welfare state capitalist-style regimes (as they have been defined here, not, of course, as they have been defined by Rawls) too. This means that the principles of justice alone are not sufficient to fully guide the choice between economic regimes; instead, it may be up to societies implementing the principles of justice to decide which regime to opt for, perhaps based on considerations of feasibility given their particular circumstances, or, as Rawls suggests, on the basis of historical or cultural features of that society.⁵⁹

⁵⁸ See *Justice as Fairness*, 139.

⁵⁹ *Ibid.*, 139.

Conclusion

The aim of this thesis has been to provide an answer to the following three questions:

- (1) Should Rawlsian political philosophy include a basic right to own, or be eligible to own, housing and other personal items?
- (2) Should Rawlsian political philosophy include a basic right to own or be eligible to own items (or non-physical entities) typically taken to fall under the heading “productive property”?
- (3) Should Rawlsian political philosophy defend – on grounds other than a commitment to basic rights – the claim that all citizens should have, in some sense, a stake in the means of production?

The answers I have given to these questions have been as follows.

(1) Firstly, I argue that Rawlsian political philosophy should not include a basic right to own housing and should not (with certain exceptions) include a basic right to own personal items.¹ My argument here draws on the fact that, on a Rawlsian picture, basic rights are accorded special protection on the basis that they

¹ I do acknowledge that there are compelling arguments for the claim that citizens should own or be able to own *some* types of personal item. For more discussion of this, I refer the reader back to Chapter 2 of this thesis.

protect the development and exercise of the two moral powers. My claim is that, for housing and for the majority of personal items, the development and exercise of the two moral powers can be adequately protected by a lesser set of property rights than those that comprise ownership rights, as they are typically understood. This lesser set of rights I call “rental rights,” since they are similar to the rights a tenant of rental housing is likely to have over that housing. More specifically, I argue that what is necessary to protect the development and exercise of the two moral powers are the following set of rights: *the right to possess X* – the right to have exclusive physical control over X; *the right to use X* – the right to use X at their discretion; *the right to manage X* – the right to “decide how and by whom the thing owned shall be used”;² and a modified version of the owners’ *right to security* – that is, their immunity against the expropriation of the item in question.

In defending the basic right to have rental rights over housing and personal items, I devoted more space to defense of the claim that a right to exercise rental rights over housing and personal items was sufficient to protect the development and exercise of the two moral powers, than to the claim that it was necessary to protect them. This is because, as I argue in Chapter 1, the orthodox Rawlsian (and, I suspect, although I have not argued this, the default liberal egalitarian) position on basic property rights holds that justice requires a basic right to *own* housing and personal items. However, I also claim, in Chapter 3, that the defense of the claim that rental rights are necessary for the development and exercise of the two moral powers should not be neglected. Consequently, Chapter 3 provides such a defense. It was claimed that rental rights over housing and personal items are necessary for the development and exercise of the two moral powers because they are necessary to protect citizens’

² Honoré, *Making Law Bind*, 168.

interest in self-respect, independence, and stability, as well as being directly necessary to protect their capacity to form, revise, and pursue a conception of the good. We should here note, too, that my claim is that citizens have a right to *actually* have rental rights over housing and over a subset of personal items I call “personal necessities,” and a right to be eligible to have rental rights over a wide range of other personal items.

At this point, one final objection might be raised to my claim that a Rawlsian account should protect a basic right to rent housing and personal items, rather than a basic right to own them. This objection is as follows: although the arguments put forward in Part 1 of this thesis have shown that a basic right to rent housing and personal items adequately protects the development and exercise of the two moral powers, what has not been shown is that a basic right to rent housing and personal items protects the development and exercise of the two moral powers *better* than a basic right to own such things.³ Consequently, it has not been shown that Rawlsians should adopt a basic right to rent, rather than a basic right to own, since under a regime in which a basic right to own were included amongst the basic rights and liberties, citizens might well have a better-developed capacity for a conception of the good, or a better developed capacity for a sense of justice, or both.

This objection however, ignores the Rawlsian position on the basic rights and liberties. In choosing a set of basic rights and liberties Rawlsians do not seek to choose the set which *maximizes* the development and exercise of the two moral powers; they seek to choose the set which is necessary to protect *adequate* development and exercise of those powers;⁴ consequently, even if a basic right to own did better protect the development and exercise of these powers, in the sense of

³ Thank you to Zofia Stemplowska and Simon Caney for suggesting this objection to me.

⁴ Here I draw on the discussion in von Platz, “Economic Liberties.”

ensuring more-than-adequate development and exercise of these powers (which, of course, remains to be shown), this would not be a relevant consideration. As Rawls himself argues, the basic liberties are only meant to ensure that citizens reach the “minimum requisite degree” of the development and exercise of the moral powers.⁵

(2) Secondly, I argue that Rawlsian political philosophy should not be taken to include a basic right to own or be eligible to own items (or non-physical entities) typically taken to fall under the heading “productive property.” I consider three types of argument for a Rawlsian basic right to own or be eligible to own productive property – arguments that all citizens should possess “powerful” rights to be eligible to own productive property; arguments that all citizens should possess “limited” rights to be eligible to own productive property; and arguments that all citizens should have rights to actually possess some productive property. The first set of arguments are most commonly associated with the work of John Tomasi; the second set with a number of his critics; and the third with thinkers such as Gavin Kerr, Bruce Ackerman and Anne Alstott. My claim is that none of the three types of arguments for a Rawlsian basic right to own or to be eligible to productive property is successful; consequently, no such right should have inclusion amongst the basic rights and liberties.

Although the conclusions I drew with respect to a Rawlsian basic right to productive property were negative, consideration of the arguments – particularly those provided by Tomasi – for such a right did yield a positive proposal with respect to citizens’ rights to non-productive property. This positive proposal, as noted in Chapter 4, does not revise the claims made in Chapters 1-3 about housing and personal items; instead, it considers a new category of non-productive property: savings. My claim

⁵ See, for instance, Rawls, *Political Liberalism*, 113. Again, I draw here on the discussion in von Platz, “Economic Liberties.”

was that Rawlsian citizens should be taken to have a basic right to be eligible to save, because the pursuit of a very wide range of conceptions of the good require individuals to be able to accumulate resources.

My claims about Rawlsian basic property rights, then, drawn together, can be set out as follows: firstly, the set of basic rights and liberties includes a basic right to rent housing and personal items, which consists of a basic right to actually rent housing and a subset of personal items, “personal necessities,” and a basic right to be eligible to rent a wide range of other personal items; secondly, it includes a basic right for individuals to be able to save; finally it includes a basic right to be able to own certain kinds of personal necessities – for instance, items of religious significance, and items which are consumed during use. The set of Rawlsian basic rights and liberties contains no basic rights to own, or to be eligible to own, *productive* property.

Before moving on to summarise the answer the thesis gives to question (3), it is worth pausing to note the significance of the answers given to questions (1) and (2). The answers are significant in two ways. Firstly, Chapters 1-4 together provide a distinctive account of what basic property rights a Rawlsian political philosophy should include. This account differs both from the orthodox Rawlsian position, which claims that a basic right to own housing and personal items is the only basic property right to be included amongst the basic liberties, and from more recently-developed right-Rawlsian positions, which claim that in addition to a basic right to personal property, there ought to be a basic right to own certain types of productive property. The account I put forward in the thesis rejects both of these types of view, and I hope I have offered good reasons for thinking that my account is superior to its two alternatives. In addition, we should note that the account put forward is not only a distinctive account of what basic property rights a Rawlsian view should include

amongst the set of basic liberties, it also does what other accounts do not – namely, provides a fully-fleshed-out account of what those rights consist in. This is particularly important given the significant role that basic rights play in the Rawlsian picture: basic rights protect citizens’ fundamental interests; their equal protection affirms citizens’ equal status, and helps to secure the social basis of self-respect.⁶ It is, additionally, important given the fact that the priority of the basic liberties, on a Rawlsian picture, puts constraints on what can be done to achieve other social goals. Consequently, we will want to know what those constraints are.

Secondly, the account of basic property rights developed in Chapters 1-4 contributes to the wider legal and philosophical literature on property. In particular, the idea that the right to *rent* is a type of property right which ought to be considered morally salient when it comes to housing and personal items is not one which has any prominence in the literature on property, in part because the distinction between ownership and rental is not acknowledged as important, or clearly spelled out. One contribution of Chapter 1-4 to a wider discussion, then, is the claim that it is the right to rent which should be considered morally salient when it comes to the question of what types of property rights over housing and personal items should be considered to be basic rights.

(3) Finally, I argue that Rawlsian political philosophy should not defend, on grounds other than a commitment to basic rights, the claim that all citizens should have, in some sense, a stake in the means of production. In Chapters 5 and 6 of the thesis I consider a recent important body of literature which argues that Rawlsian justice cannot be realized unless all citizens have, in some sense, a stake in the means of production. This literature, associated with a resurgence of interest in Rawls’s

⁶ *Political Liberalism*, 318-9.

views on property-owning democracy, offers a number of arguments as to why a regime in which all citizens do not have a stake in the means of production cannot realize Rawlsian justice. These arguments are as follows: (i) that such a regime cannot ensure that the difference principle is satisfied; (ii) that such a regime cannot guarantee the fair value of the political liberties; (iii) that such a regime cannot guarantee fair equality of opportunity; (iv) that such a regime cannot guarantee stability.

To summarise my rejection of these arguments in a complicated task. Briefly, however, let me outline my case against the most significant of these arguments – (i) and (ii). Two versions of argument (i) were considered – firstly, that a regime which does not ensure that all citizens have a stake in the means of production involves troubling status hierarchies and instances of domination; secondly, that such a regime does not ensure the proper distribution of the primary good PPO, or powers and prerogatives of offices and positions of authority and responsibility. My case against the first version of this argument involved arguing that the reason we care about status hierarchies and domination on a Rawlsian picture has to do with the potential for these types of relation to undermine citizens' self-respect. The self-respect of citizens can, however, be secured even in a regime in which some private citizens possess significantly more economic decision-making power than others as a consequence of possessing greater holdings in the means of production. My case against the second version of (i) involved arguing that the primary good PPO should not be distributed by the difference principle, because it should not, after consideration, be counted amongst the primary goods.

Two versions of argument (ii) were also considered, the most important of which was the argument that regimes that fail to ensure that all citizens have a stake

in the means of production fail to prevent those who possess large holdings in the means of production from exercising significantly more power than other citizens over which policies government adopts. If some private citizens exercise significantly more power over which policies government adopts than others, then this means that citizens' political liberties do not have equal worth; the fair value of these liberties is therefore not guaranteed. In response to this argument my claim is that regimes which do not ensure that all citizens have a stake in the means of production need not be concerned that the fair value of the political liberties will be undermined. Instead, I argued, drawing on Christiano's work, that the fact that citizens in a Rawlsian just society have a duty to uphold just institutions implies that that they also have a duty to "avoid interfering with the aims of a democratic society."⁷ If those with large holdings in the means of production, specifically, have such a duty, then this means that they should refrain from exercising undue influence over government policy, even if they are able to. Consequently, the fair value of the political liberties is preserved.

With the main arguments of this thesis summarised, let me now turn to consider the implications of the arguments of this thesis for our overall picture of Rawlsian political philosophy.

The first important implication of the thesis in this respect is that Rawlsian political philosophy has less determinate implications for institutional organization – and particularly less determinate implications for the organization of the institution of property – than has previously been thought. It has less determinate implications in two respects. Firstly, the fact that citizens are taken to have a basic right to rent rather than to own housing and (with certain exceptions) personal items means that whilst a

⁷ Christiano, "Democracy and Capital," 208.

just Rawlsian state can involve citizens owning or being eligible to own these things, it is also possible that a Rawlsian state could rule out ownership of them, and ensure that the basic right to rent was satisfied in a different way – for instance, in a state rental or market rental scenario.⁸ Secondly, the fact that welfare state capitalist-style regimes – that is, regimes which do not ensure that all citizens have a stake in the means of production – are compatible with Rawlsian justice means that the Rawlsian picture also has more flexibility when it comes to choice of economic regime. As I argued in Chapters 5 and 6, Rawlsian justice can plausibly be realized by a market socialist regime, a property owning democracy, or a welfare-state capitalist-style regime.⁹

We might ask whether it is to the advantage of Rawlsian political philosophy not to have determinate implications for institutional organization. Here I think we can suggest, drawing on Rawls's own thinking, that the answer is yes. Rawls, in his discussion of the fact that he takes both market socialism and property owning democracy to be compatible with Rawlsian justice, states that when a decision is to be made between the two regimes "we look to society's historical circumstances, to its traditions of political thought and practice, and much else."¹⁰ What this line of thought suggests – to extrapolate from Rawls's original thoughts – is that, in not having determinate implications for institutional organization, justice as fairness is at an advantage over more determinate accounts of justice, since it can more easily be realized by different societies with different historical circumstances, traditions of

⁸ See Chapter 1 for a full discussion of these scenarios.

⁹ In addition, of course, the arguments of Chapter 4, which dismiss Tomasi-style claims that Rawlsian citizens ought to have a "powerful" basic right to be eligible to own productive property, mean that it is not the case that Rawlsian justice *must* be realized by an economic regime which allows individuals unrestricted rights to accumulate and retain holdings in the means of production.

¹⁰ *Justice as Fairness*, 139.

political thought and practice, and so on. Institutional flexibility in an account of justice, then, can certainly be viewed as an advantage.

The second important implication that the thesis has for how we view the Rawlsian picture of justice overall has to do with the significance that we should see this view as placing on ownership. My claim is that the Rawlsian view, properly understood, places less overall emphasis on the importance of ownership than has sometimes been thought. I argue for this claim in three ways in the thesis. Firstly, I claim that the Rawlsian view cannot justify a right to own or be eligible to own housing and (with certain exceptions) personal items; instead, what can be justified is a right to rent them. This is because the ownership of – or the ability to own – housing and the relevant personal items is not taken to be necessary for the development and exercise of the two moral powers. In rejecting the claim that there ought to be a basic right to own or to be eligible to own housing and (with certain exceptions) personal items, I am arguing that owning or being eligible to own these things is simply not as important as Rawlsians had previously thought. Rawlsians had, previously, placed too much emphasis on the importance of this type of ownership. Secondly, I claim that the Rawlsian view cannot justify a basic right for citizens to own, or to be eligible to own, those things which are normally taken to fall under the heading “productive property.” Again, in arguing this, I am arguing against views which want to claim that the ownership of – or the ability to own – these types of things are of particular importance from the perspective of Rawlsian citizenship. Finally, I claim that a Rawlsian society, to be consistent with justice, need not be a property owning democracy or a market socialist regime. In claiming this, I am arguing that it is not the case that all citizens of a Rawlsian just society need to have, in some sense, a stake in the means of production. Again, here I am arguing against

views that want to stress the importance of Rawlsian citizens owning (either privately or collectively) a certain type of property – in this case the means of production.

A key message of this thesis, then is that we should resist a picture of Rawlsian political philosophy that sees this theoretical perspective as placing any great significance on citizens being the owners of various sorts of item, both productive, and non-productive.

This concludes both my summary of the arguments of the thesis, and of the thesis' broader implications for the Rawlsian picture as a whole. Before drawing the discussion of this thesis to a close, however, I would like to briefly say something about how the ideas put forward here might be deployed in future work.

Housing has become a very prominent issue in recent years in the UK, as a consequence of a housing shortage which has resulted in rising rents and house prices in many parts of the country, and an increase in homelessness. Despite the prominence of this issue in the public sphere, there is little political philosophy being done on the issue. One way in which the ideas of this thesis could fruitfully be taken forward is in the application of the account of basic rights to housing I develop here to the issue of the current UK housing crises. In particular, such an account could be used to highlight the extent to which the housing crisis has resulted in individuals' basic rights being violated. In addition, consideration of the UK housing crisis raises important questions, related to the ones I have answered in this thesis, about housing – for instance, questions about housing affordability. Should we be concerned that individuals are paying too great a proportion of their income in rent? Does it matter that some individuals are paying far more for their accommodation than others, just because of where they happen to be able to get a job? Answering these questions, drawing on what has been argued here, will be a task for future work.

Bibliography

- Ackerman, Bruce A. and Anne Alstott. *The Stakeholder Society*. New Haven, CT: Yale University Press, 2008. ProQuest ebrary e-book.
- Alexander, Larry. "What Is Freedom of Association, and What Is Its Denial?" *Social Philosophy and Policy* 25, no. 2 (2008): 1–21.
- Anderson, Elizabeth. "Recharting the Map of Social and Political Theory: Where is Government? Where is Conservatism?" *Bleeding Heart Libertarians* (blog).
<http://bleedingheartlibertarians.com/2012/06/recharting-the-map-of-social-and-political-theory-where-is-government-where-is-conservatism/>.
- . Review of *Free Market Fairness* by John Tomasi. *Political Theory* 41, no. 1 (2013): 163–66.
- . "What Is the Point of Equality?" *Ethics* 109, no. 2 (1999), 287–337.
- Arnold, Samuel. "Right-wing Rawlsianism: A Critique." *The Journal of Political Philosophy* 21, no. 4 (2013): 382–404.
- . "The Difference Principle at Work." *The Journal of Political Philosophy* 20, no. 1 (2012): 94–118.
- Bird, Colin. "Why Not Marx?" *Critical Review* 26, no. 3–4 (2014): 259–82.

- Barnett, Peter A. and Ian H. Gotlib. "Psychosocial Functioning and Depression: Distinguishing Among Antecedents, Concomitants, and Consequences." *Psychological Bulletin* 104, no. 1 (1988): 97-126.
- Becker, Lawrence C. "Too Much Property." Review of *The Right to Private Property* by Jeremy Waldron and *A Theory of Property* by Stephen R. Munzer. *Philosophy & Public Affairs* 21, no. 2 (1992): 196-206.
- Bowles, Samuel and Herbert Gintis. *Democracy and Capitalism*. London: Routledge & Kegan Paul, 1986.
- Bowles, Samuel, Herbert Gintis, et al. *Recasting Egalitarianism*. Edited by Erik Olin Wright. London: Verso, 1998.
- Breakey, Hugh. "Two Concepts of Property: Ownership of Things and Property in Activities." *The Philosophical Forum* 42, no. 3 (2011): 239-265.
- Carens, Joseph. "Invitation to a Dialogue." *Critical Review: A Journal of Politics and Society* 26, no. 3-4 (2014): 283-89.
- Christiano, Thomas. "The Uneasy Relationship Between Democracy and Capital." *Social Philosophy and Policy* 27, no. 1 (2010): 195-217.
- Christie, Drew . "Recent Calls for Economic Democracy." *Ethics* 95, no. 1 (1984): 112-128.
- Christman, John. Review of *Reinterpreting Property* by Margaret Jane Radin. *Ethics* 106, no. 3 (1996): 648-650.
- . *The Myth of Property: Towards an Egalitarian Theory of Ownership*. Oxford University Press, 1994.
- Clayton, Matthew and Andrew Williams. "Some Questions for Egalitarians." In *The Ideal of Equality*, edited by Matthew Clayton and Andrew Williams, 1-20. Basingstoke: Palgrave Macmillan, 2000.

Cohen, G.A. "Incentives, Inequality, and Community." In *The Tanner Lectures on Human Values*, vol. 13, edited by G. B. Petersen, 262-329. Salt Lake City: University of Utah Press, 1992.

———. "On the Currency of Egalitarian Justice." *Ethics* 99, no. 4 (1989): 906-944.

———. *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy*. Edited by Michael Otsuka. Princeton: Princeton University Press, 2001.

———. *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge University Press, 1995.

———. "The Pareto Argument for Inequality." *Social Philosophy and Policy* 12, no. 1 (1995): 160-185.

———. "Where the Action Is: On the Site of Distributive Justice." *Philosophy & Public Affairs* 26, no. 1 (1997): 3-30.

Cohen, Sheldon and Thomas A. Willis. "Stress, Social Support, and the Buffering Hypothesis." *Psychological Bulletin* 98, no. 2 (1985): 310-357.

Cruft, Rowan. "Are Property Rights Ever Basic Human Rights?" *The British Journal of Politics and International Relations* 12 (2010): 142-154.

Cunliffe, John and Guido Erreygers. "Basic Income? Basic Capital! Origins and Issues of a Debate." *The Journal of Political Philosophy* 11, no. 1 (2003): 89-110.

Dan-Cohen, Meir. "The Value of Ownership." *The Journal of Political Philosophy* 9, no. 4 (2001): 404-434.

Department for Communities and Local Government. *A Decent Home: Definition and guidance for implementation*. 2006.

———. *English Housing Survey Headline Report 2012-13*. 2014.

Dworkin, Ronald. *A Matter of Principle*. Cambridge: Harvard University Press, 1985.

Elster, Jon. "From Here to There; or, If Cooperative Ownership Is So Desirable, Why Are There So Few Cooperatives?" *Social Philosophy & Policy* 6, no. 2 (1989): 93-111.

Fourie, Carina, Fabian Schuppert, and Ivo Wallimann-Helmer. "The Nature and Distinctiveness of Social Equality: An Introduction." In *Social Equality: On What it Means to be Equals*, edited by Carina Fourie, Fabian Schuppert, and Ivo Wallimann-Helmer, 1-17. New York: Oxford University Press, 2015.

Freeman, Samuel. "Capitalism in the Classical and High Liberal Traditions." *Social Philosophy and Policy* 28, no. 2 (2011): 19-55.

———. *Justice and the Social Contract*. Oxford University Press, 2007. ProQuest ebrary e-book.

———. *Rawls*. London: Routledge, 2007. Taylor & Francis e-library e-book.

Fried, Charles. *An Anatomy of Values: Problems of Personal and Social Choice*. Cambridge, MA: Harvard University Press, 1970.

Gavison, Ruth. "Privacy and the Limits of Law." *The Yale Law Journal* 89, no. 3 (1980): 421-471.

Gerstein, Robert. "Intimacy and Privacy." *Ethics* 89, no. 1 (1978): 76-81.

Gilens, Martin and Benjamin, I. Page. "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens." *Perspectives on Politics* 12, no. 3 (2014): 564-581.

Grey, Thomas C. "The Disintegration of Property." In *NOMOS XXII: Property*, edited by J. Roland Pennock and John W. Chapman. New York: New York University Press, 1980.

Grunebaum, James O. *Private Ownership*. London: Routledge & Kegan Paul, 1987.

Harris, J. W. *Property and Justice*. Oxford: Clarendon Press, 1996.

- Hart, H. L. A. "Rawls on Liberty and Its Priority." *The University of Chicago Law Review*, 40 (1973): 534-555.
- Hayek, F.A. "Freedom and Coercion." In *The Liberty Reader*, edited by David Miller, 80-99. Boulder, CO: Paradigm Publishers, 2006.
- Honoré, Tony. *Making Law Bind*. Oxford: Clarendon Press, 1987.
- Hussain, Waheed. "Nurturing the Sense of Justice: the Rawlsian Argument for Democratic Corporatism." In *Property-Owning Democracy: Rawls and Beyond*, edited by Martin O'Neill and Thad Williamson, 180-200. Wiley-Blackwell, 2012.
- Jackson, Ben. "Property-Owning Democracy: A Short History." In *Property-Owning Democracy: Rawls and Beyond*, edited by Martin O'Neill and Thad Williamson, 33–52. Chichester, UK: Wiley-Blackwell, 2012.
- Julius, A. J. "Basic Structure and the Value of Equality." *Philosophy & Public Affairs* 31, no. 4 (2003): 321-355.
- Kerr, Gavin. "Property-Owning Democracy and the Priority of Liberty." *Analyse & Kritik* 35, no. 1 (2013): 71-92.
- Kittay, Eva Feder. *Love's Labour: Essays on Women, Equality, and Dependency*. New York and London: Routledge, 1999.
- Kolodny, Niko. "Rule Over None II: Social Equality and the Justification of Democracy." *Philosophy & Public Affairs* 42, no. 4 (2014): 287-336.
- Le Grand, Julian and Saul Estrin. *Market Socialism*. Oxford: Clarendon Press, 1989.
- Lever, Annabelle. *On Privacy*. New York: Routledge, 2012.
- Lovett, Frank. *A General Theory of Domination and Justice*. Oxford: Oxford University Press, 2010.
- . "Domination and Distributive Justice." *The Journal of Politics* 71, no. 3 (2009): 871-830.

- MacKinnon, Catherine. *Toward a Feminist Theory of the State*. Cambridge, MA: Harvard University Press, 1989.
- Malleson, Tom. "Rawls, Property-Owning Democracy, and Democratic Socialism." *Journal of Social Philosophy* 45, no. 2 (2014): 228-251.
- McMahon, Christopher. "The Indeterminacy of Republican Policy." *Philosophy & Public Affairs* 33, no. 1 (2005): 67-93.
- Melenovsky, C.M., and Justin Bernstein. "Why Free Market Rights Are Not Basic Liberties." *The Journal of Value Inquiry* 49 (2014): 47-67.
- Mental Health Foundation. *The Lonely Society?* 2010.
- Munzer, Stephen R. *A Theory of Property*. Cambridge: Cambridge University Press, 1990.
- Murphy, Liam B. "Institutions and the Demands of Justice." *Philosophy & Public Affairs* 27, no. 4 (1998): 251-291.
- Murphy, Liam B., and Thomas Nagel. *The Myth of Ownership: Taxes and Justice*. Oxford: Oxford University Press, 2002.
- Nickel, James W. "Economic Liberties." In *The Idea of a Political Liberalism: Essays on Rawls*, edited by Victoria Davion and Clark Wolf, 155-176. Lanham, MD: Rowman & Littlefield Publishers 2000.
- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- Okin, Susan Moller. *Justice, Gender and the Family*. New York: Basic Books, 1989.
- O'Neill, Martin. "Free (and Fair) Markets without Capitalism: Political Values, Principles of Justice, and Property-Owning Democracy." In *Property-Owning Democracy: Rawls and Beyond*, edited by Martin O'Neill and Thad Williamson, 75-100. Malden, MA: Wiley-Blackwell, 2012.

- . “Three Rawlsian Routes towards Economic Democracy.” *Revue De Philosophie Economique* 8, no. 2 (2008): 29-55.
- . “What Should Egalitarians Believe?” *Philosophy & Public Affairs* 36, no. 2 (2008): 119-156.
- O’Neill, Martin and Thad Williamson, eds. *Property-Ownning Democracy: Rawls and Beyond*. Malden, MA: Wiley-Blackwell, 2012.
- Otsuka, Michael. *Libertarianism Without Inequality*. Oxford: Clarendon Press, 2003.
- Pedersen, Darhl M. “Psychological functions of Privacy.” *Journal of Environmental Psychology* 17 (1997): 147-156.
- Penner, J. E. “The ‘Bundle of Rights’ Picture of Property.” *UCLA Law Review* 43, no. 3 (1996): 711–820.
- . *The Idea of Property in Law*. Oxford: Clarendon Press, 1997.
- Penny, Richard. “Self-Respect or Self-Delusion? Tomasi and Rawls on the Basic Liberties.” *Res Publica* 21, no. 4 (2015): 397-411
- Persky, Joseph. “Rawls’s Thin (Milleian) Defense of Private Property.” *Utilitas* 22, no. 2 (2010): 134-147.
- Pierce, Jon L., Tatiana Kostova, and Kurt T. Dirks. “The State of Psychological Ownership: Integrating and Extending a Century of Research.” *Review of General Psychology* 7, no. 1 (2003): 84-107.
- Pogge, Thomas W. “On the Site of Distributive Justice: Reflections on Cohen and Murphy.” *Philosophy & Public Affairs* 29, no. 2 (2000): 137-169.
- Rachels, James. “Why Privacy is Important.” *Philosophy and Public Affairs* 4, no. 4 (1975): 323-333.
- Radin, Margaret Jane. “Property and Personhood.” *Stanford Law Review* 34, no. 5 (1982): 957-1015.

- . *Reinterpreting Property*. Chicago: University of Chicago Press, 1993.
- Rawls, John. *A Theory of Justice*, rev. ed. Cambridge, MA: Harvard University Press, 1999.
- . *Justice as Fairness: A Restatement*. Cambridge, MA: Harvard University Press, 2001.
- . *Political Liberalism*, exp. ed. New York: Columbia University Press, 2005.
- . “The Basic Structure as Subject,” *American Philosophical Quarterly* 14, no. 2 (1977): 159-165.
- . *The Law of Peoples; with The Idea of Public Reason Revisited*. Cambridge, MA: Harvard University Press, 1999.
- Reeve, Andrew. “The Theory of Property: Beyond Private *versus* Common Property.” In *Political Theory Today*, edited by David Held, 91-114. Stanford: Stanford University Press, 1991.
- Reich, Charles A. “The New Property.” *The Yale Law Journal* 73, no. 4 (1964): 733-787.
- Roemer, John. “Thoughts on Arrangements of Property Rights in Productive Assets.” *Analyse & Kritik* 35, no. 1 (2013): 55-63.
- Ryan, Alan. *Property and Political Theory*. Oxford: Blackwell, 1984.
- Sanders, John T. “Projects and Property.” In *Robert Nozick*, edited by David Schmidtz, 34-58. Cambridge: Cambridge University Press, 2002.
- Shapiro, Daniel. “Why Rawlsian Liberals Should Support Free Market Capitalism.” *The Journal of Political Philosophy* 3, no. 1 (1995): 58-85.
- Scanlon, T.M. “The Diversity of Objections to Inequality.” In *The Ideal of Equality*, edited by Matthew Clayton and Andrew Williams, 41-59. Basingstoke: Palgrave Macmillan, 2000.

———. “Thomson on Privacy.” *Philosophy & Public Affairs* 4, no. 4 (1975): 315-322.

Schefczyk, Michael. “Background Justice Over Time: Property-Owning Democracy versus a Realistically Utopian Welfare State.” *Analyse & Kritik* 35, no. 1 (2013): 193-212.

Scheffler, Samuel. “Choice, Circumstance, and the Value of Equality.” *Politics, Philosophy & Economics* 4, no. 1 (2005): 5-28.

———. “Is the Basic Structure Basic?” In *The Egalitarian Conscience: Essays in Honour of G.A. Cohen*, edited by Christine Sygnowich, 102-129. Oxford: Oxford University Press, 2006.

Schemmel, Christian. “How (Not) to Criticise the Welfare State.” *Journal of Applied Philosophy* 32, no. 4 (2015): 393-409.

———. “Why Relational Egalitarians Should Care About Distributions.” *Social Theory and Practice*, 37, no. 3 (2011).

Shiffrin, Seana Valentine. “Incentives, Motives, and Talents.” *Philosophy & Public Affairs* 38, no. 2 (2010): 111-142.

Snare, Frank. “The Concept of Property.” *American Philosophical Quarterly* 9, no. 2 (1972): 200-206.

Tan, Kok-Chor. “Justice and Personal Pursuits.” *The Journal of Philosophy* 101, no. 7 (2004): 331-362.

Taylor, Robert S. “Rawls’s Defense of the Priority of Liberty: A Kantian Reconstruction.” *Philosophy & Public Affairs* 31, no. 3 (2003): 246-271.

Thomson, Judith Jarvis. “The Right to Privacy.” *Philosophy & Public Affairs* 4, no. 4 (1975): 295-314.

- Tomasi, John. "Democratic Legitimacy and Economic Liberty." *Social Philosophy and Policy* 29, no. 1 (2012): 50–80.
- . *Free Market Fairness*. Princeton: Princeton University Press, 2012.
- Vallentyne, Peter, Hillel Steiner, and Michael Otsuka. "Why Left-Libertarianism is not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried." *Philosophy & Public Affairs* 33, no. 2 (2005): 201-215.
- Vallentyne, Peter and Bas van der Vossen. "Libertarianism." In *The Stanford Encyclopedia of Philosophy*. Stanford University. Article published September 5, 2002. <http://plato.stanford.edu/entries/libertarianism/>.
- Vallier, Kevin. "A moral and economic critique of the new property-owning democrats: on behalf of a Rawlsian welfare state." *Philosophical Studies* 172, no. 2 (2015): 283-304.
- Von Platz, Jeppe. "Are Economic Liberties Basic Rights?" *Politics, Philosophy & Economics* 13, no. 1 (2014): 23–44.
- Waldron, Jeremy. *The Right to Private Property*. Oxford: Clarendon Press, 1988.
- . "What is Private Property?" *Oxford Journal of Legal Studies* 5, no. 3 (1985): 313-349.
- Wall, Steven. "Self-Government, Market Democracy, and Economic Liberty." *Social Theory and Practice* 39, no. 3 (2013): 522–34.
- Weale, Albert. "The Property-Ownning Democracy versus the Welfare State." *Analyse & Kritik* 35, no. 1 (2013): 37-54.
- Wesche, Tilo. "The Concept of Property in Rawls's Property-Ownning Democracy." *Analyse & Kritik* 35, no. 1 (2013): 99-111.
- White, Stuart. "Basic Capital in the Egalitarian Toolkit?" *Journal of Applied Philosophy* 32, no. 4 (2015): 417-431.

———. “Freedom of Association and the Right to Exclude.” *Journal of Political Philosophy* 5, no. 4 (1997): 373–391.

———. “The Republican Critique of Capitalism.” *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 561–597.

Williams, Andrew. “Incentives, Inequality, and Publicity.” *Philosophy & Public Affairs* 27, no. 3 (1998): 225–247.

———. “Justice, Incentives, and Constructivism.” *Ratio* 21, no. 4 (2008): 476–493.

Wolff, Jonathan. “Fairness, Respect, and the Egalitarian Ethos.” *Philosophy & Public Affairs* 27, no. 2 (1998): 97–122.

