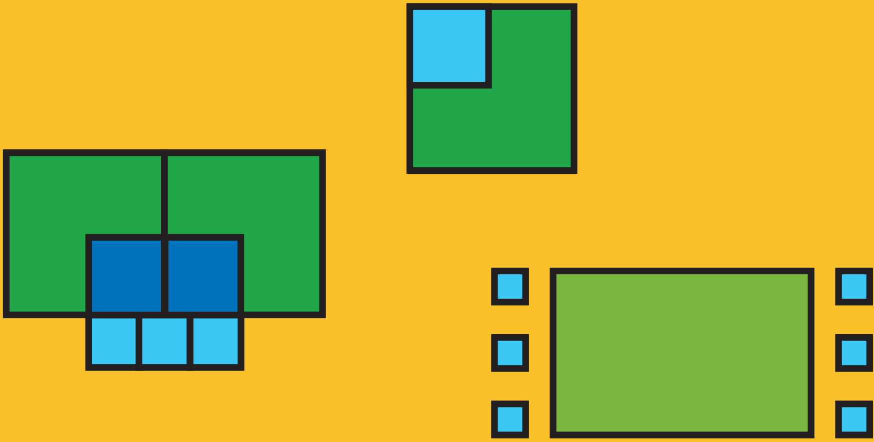

Sharing in Common
A Republican Defence of Group Ownership

Yara Al Salman

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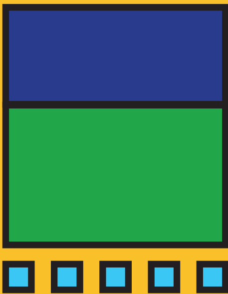

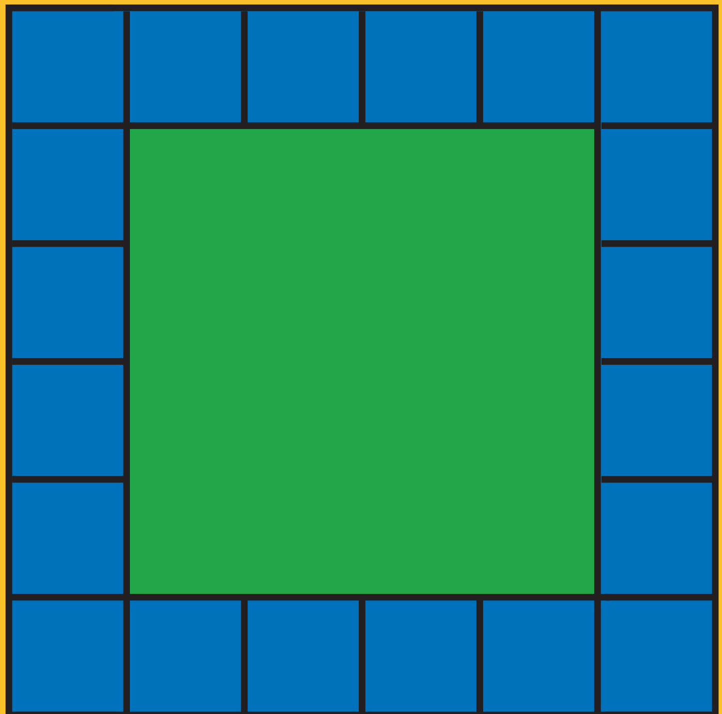

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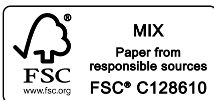

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A Republican Defence of Group Ownership

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For Keyhan

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1. Introduction: A Theory of Group Ownership

1.1 Why study group ownership?

Everywhere in the world, people rely on group ownership institutions to help them meet their most basic needs. In different villages in India, for example, communal forest tenure helps residents obtain timber that they can sell to gain an income, as well as firewood to supply their households with the necessary fuel.[1] In the Netherlands, many self-employed citizens rely on a mutual insurance organisation for their income in case of debilitating disease or accidents, an income that is taken out of the insurance fund they share.[2] Shepherds in Switzerland obtain a living by letting their sheep graze on shared Alpine pastures.[3] Across the USA, people rely on

[1] Rucha Ghate and Harini Nagendra, 'Building Institutional Foundations for Community Forest Management', *Down to Earth*, 29 January 2019, https://www.downtoearth.org.in/blog/forests/building-institutional-foundations-for-community-forest-management-63010; Bina Agarwal, 'Participatory Exclusions, Community Forestry, and Gender: An Analysis for South Asia and a Conceptual Framework', *World Development* 29, no. 10 (2001): 1623–48.

[2] Eva Vriens and Tine De Moor, 'Mutuals on the Move: Exclusion Processes in the Welfare State and the Rediscovery of Mutualism', *Social Inclusion* 8, no. 1 (2020): 225–37.

[3] Tobias Haller et al., eds., *Balancing the Commons in Switzerland: Institutional Transformations and Sustainable Innovations* (Abingdon: Routledge, 2021). See also the

energy cooperatives for their electricity.[4] Quite possibly there is a cooperative store around the corner where you live, where workers own the firm they work for.

While these cases are significantly different in many ways, they also have a few structural features in common. They all involve groups of persons making use of a shared object to attain their basic needs, in a manner that is under the governance of the group members. This group is private, moreover; the use of objects is not governed by all the citizens in a society, but by a more limited set of persons.

In each case, one can imagine alternative ways for the people involved to meet their basic needs, relying on alternative ownership institutions. The villagers in India could have been employed by a government authority that manages forest use. Insurance funds and energy generators can be owned by the state, in which case citizens will collectively finance and control their provision. Another possibility is that these resources are owned by large hierarchical business corporations, selling the relevant services to their consumers. Furthermore, the Swiss shepherds could be using individually owned plots of land. And very likely, there is a store around your corner that isn't owned by all its workers.

How, then, should one evaluate the choice for group ownership over other institutions? What makes the sharing practices I've mentioned, and the institutions that make them possible, valuable? And under which conditions are they valuable? One way of approaching this question is to take each of the cases separately, and ask how a particular sharing

classic study of Swiss common pastures by Robert M. Netting, *Balancing on an Alp: Ecological Change and Continuity in a Swiss Mountain Community* (Cambridge: Cambridge University Press, 1981).

[4] NRECA America's Electrical Cooperatives, 'Our Communities', 1 September 2021, Our Mission.

organisation has benefited its members. While there would be much to appreciate in such a case-by-case approach, the question arises whether there isn't a more general reason that explains the value of *all* these sharing practices, and, crucially, the precise conditions under which this value is realised. This would be a reason that explains their worth not by looking at the specific characteristics of any case, but by analysing their structurally similar features. In this dissertation I shall argue that there *is* indeed such a reason. In articulating it, I aim to provide a normative justification for the institution of group ownership – that is, the institution that makes these sharing practices possible.

The question of whether group ownership can be justified and how, has so far received very little attention. This is true in particular in the field of political philosophy, which is where my research is situated. Here, most historical and contemporary property theories are instead about individual ownership.[5] Influential thinkers like Hugo Grotius, John Locke, Immanuel Kant, and Georg Hegel, for example, all developed theories about why individuals should own property, and either said nothing about group ownership at all or only treated it very briefly, and in Hegel's case dismissively.[6] In fact, Erik Olsen argues that early modern authors like Grotius

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[5] This may not be immediately apparent from the literature, because theorists often use the term "private property" to refer to individual ownership. The problem with this way of using the term, however, is that it's not only individuals who can hold property in a private capacity. Private groups can also do this, and in that case we should also speak of private as opposed to public (or state) property.

[6] Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck (Indianapolis: Liberty Fund, 2005), bk. 2, chapter 2, paragraph 5; John Locke, *The Second Treatise of Government*, Dover Thrift Editions (Mineola, N.Y: Dover Publications, 2002), paras 25–51; Kant's brief treatment of something like group ownership is in 'Doctrine of Right', in *Practical Philosophy*, trans. Mary J. Gregor, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 1996), 6:251. Hegel's brief notes are in *Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. Hugh Barr Nisbet (Cambridge: Cambridge University Press, 1991), para. 46.

and Locke didn't just *focus* on individual ownership, but effectively attempted to *redefine* the concept of property, such that property and individual ownership came to be seen as synonyms.[7] On such a conceptual scheme, the very idea of group ownership seems like a non-starter. Even Karl Marx, famous for his scorching and extensive analysis of capitalist ownership institutions, had only a little to say about the worker cooperatives that people were setting up in his time in an attempt to replace those institutions.[8] Contemporary theorists continue in this way. In their book-length treatments of property, Lawrence Becker, Jeremy Waldron, James Grunebaum, and John Christman don't discuss justifications for or critiques of group ownership.[9] Group ownership is also left out of the briefer but influential property theories developed by Robert Nozick and other libertarians, both right and left.[10]

When theorists do discuss group ownership, moreover, this is often in the very particular context of workplace governance. There is a lively debate going on between political philosophers of different stripes over

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[7] Erik J Olsen, 'The Early Modern "Creation" of Property and Its Enduring Influence', *European Journal of Political Theory* 0, no. 0 (2019): 1–23.

[8] See his comments on worker cooperatives in 'Instructions for the Delegates of the Provisional General Council', trans. Barrie Selman, 1866, sec. 5, https://www.marxists.org/archive/marx/works/1866/08/instructions.htm#05.

[9] Lawrence C. Becker, *Property Rights: Philosophic Foundations* (London: Routledge & Kegan Paul, 1977); James O. Grunebaum, *Private Ownership* (London: Routledge & Kegan Paul, 1987); Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988); John Christman, *The Myth of Property: Toward an Egalitarian Theory of Ownership* (Oxford: Oxford University Press, 1994).

[10] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 150–82. Right libertarian defences of property rights include Gerald F. Gaus and Loren E. Lomasky, 'Are Property Rights Problematic?', *The Monist* 73, no. 4 (1990): 483–503; and Jan Narveson, 'Property and Rights', *Social Philosophy and Policy* 27, no. 1 (2010): 101–34. For a collection of contemporary left-libertarian discussions, see Peter Vallentyne and Hillel Steiner, eds., *Left-Libertarianism and Its Critics: The Contemporary Debate* (New York: Palgrave, 2001).

whether workers should govern the firms they work for, for example by forming a cooperative.[11] However, when interpreted as a discussion about group ownership, this literature faces two important limitations. The first is quite simply that the idea of ownership is under-theorised in this context, and rarely defended directly. Theorists in favour of worker governance instead argue just for that; that workers should have a say in the management of their workplace, not that they should own it.[12] Secondly, the arguments are specific to the context of the workplace, with no attempt to see how their implications might be extended to ownership arrangements in other contexts. While firm governance is certainly an important area of research, the lack of a more general outlook on group ownership means that the value of this institution remains obscure.

This gap in political theory needs to be addressed, and not just for reasons of scholarly interest. The more important reason is rather that leaving the topic understudied could have damaging consequences in the real world, by making citizens, politicians, and policy makers insufficiently aware of what is at stake in their decisions about group ownership. Political philosophers make it their business to provide normative arguments for and against institutions. Unlike social scientists, they do not develop empirically verifiable theories that causally explain how certain institutions can arise, or what sort of effects these institutions can have on a society. Instead, political philosophers attempt to say something about what sort of institutions a society *should* adopt, change, or abolish according to moral reasons that are relevant for the political domain. Their expertise lies in conceptualising and defending the values and principles that ought to guide a

[11] For an overview, see Roberto Frega, Lisa Herzog, and Christian Neuhäuser, 'Workplace Democracy - The Recent Debate', *Philosophy Compass* 14, no. 4 (2019): e12574.
[12] See on this Inigo González-Ricoy, 'Ownership and Control Rights in Democratic Firms: A Republican Approach', *Review of Social Economy* 78, no. 3 (2020): 411–12.

normative analysis of the rules that govern a society. They have a responsibility to use that expertise to assist citizens in thinking about which institutions they should adopt. Political philosophers do this by clarifying the values that are at stake in such decisions, just as social scientists have a responsibility to clarify to citizens what the empirical effects of their decisions will be, and how feasible the options are that citizens can choose from.[13] In both cases, the point is to help citizens recognise what they can and want to achieve together and how.

Yet that is exactly what political theorists haven't done in the case of group ownership. Stronger still, their focus on individual ownership might give the impression that group ownership is not a viable option at all. Thus, political philosophers may have missed opportunities to shed light on real and important political decisions. Let me give one example.

In 2013, the municipality of the Greek city of Thessaloniki put its drinking water company up for sale.[14] This was one in a series of many privatisations that the Greek government implemented during the financial crisis, at least partly under the pressure of the European Union. The prospective buyer was the multinational Suez, which already owned such companies in other European cities. The citizens of Thessaloniki, some of whom worked for the municipal water company, were absolutely set against this sale. They were aware of the experiences other cities had with Suez, and were afraid that their access to clean drinking water could no longer be guaranteed.[15] The citizens therefore thought of a solution. As

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[13] Adam Swift and Stuart White, 'Political Theory, Social Science, and Real Politics', in *Political Theory: Methods and Approaches*, ed. David Leopold and Marc Stears (Oxford: Oxford University Press, 2008), 49–69.

[14] Daniel Moss, 'Greeks Stand up to Protect Their Water from Privatization', *Our World*, 1 November 2013, https://ourworld.unu.edu/en/greeks-stand-up-to-protect-their-water-from-privatization.

[15] Shuchen Tan, 'Ons Gemeengoed', *Tegenlicht* (VPRO, 1 April 2018).

they could no longer exercise control over the drinking water company through their municipality, they would buy the company themselves. It would effectively come down to a form of group ownership as I have described it; a group of individuals sharing a resource over which they exercise collective control. The residents raised the money and made the bid, only to be rejected outright by the board of the water company. The story doesn't end there: before the company was definitively sold, the socialist political party Syriza won the national elections and the company wasn't privatised. In 2019, however, the far right Nea Dimokratia won, and the risk of privatisation increased again.[16] In this volatile environment, residents of Thessaloniki still cannot be sure that their right to clean water will be secured in the future. Their story doesn't stand on its own. In different places in the world, people want to secure their right to drinking water by making sure they own the source themselves, in common. And often, their initiatives face significant opposition from governments and business corporations, or are not considered as a serious option.[17]

Of course, one cannot be sure what motivates this opposition to sharing. In attributing it to a lack of philosophical theories on group ownership, one might very well overestimate the power that such theories have

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[16] Hans Wetzels, 'Volledige Privatisering Grieks Waterbedrijf Dreigt Na Verkiezingsoverwinning Rechts-Liberale Partij Nea Dimokratia', *MO Mondiaal Nieuws*, 1 November 2019, https://www.mo.be/reportage/waterprivatisering-griekenland.

[17] Rutgerd Boelens, Tom Perreault, and Jeroen Vos, 'Introduction: The Multiple Challenges and Layers of Water Justice Struggles', in *Water Justice*, ed. Rutgerd Boelens, Tom Perreault, and Jeroen Vos (Cambridge University Press, 2018), 11. For examples of cases in Bolivia and Mexico, see Jeroen Vos and Rutgerd Boelens, 'Rooted Water Democracies and Water Justice', *FLOWs* (blog), 19 January 2021, https://flows.hypotheses.org/6033; and Emilio Godoy, 'Inheemse Bevolking van Mexico Verdedigt Haar Recht Op Autonoom Waterbeheer', *MO Mondiaal Nieuws*, 21 September 2021, https://www.mo.be/nieuws/inheemse-bevolking-van-mexico-verdedigt-haar-recht-op-autonoom-waterbeheer.

in the first place. But I think it's safe to say that knowledge about group ownership and its value can only improve the situation. It might help understand what exactly is being denied to people by denying them the possibility of group ownership, and also – by implication – what is accepted in adopting alternative arrangements.

It is worth dwelling on this last point a little. One might think that a theory of private group ownership can simply be added to what work philosophers have already done about public, individual, and other forms of property and ownership, without significantly affecting this existing body of work. But that is not true. The inclusion of more property types in philosophical investigations increases the burden to make arguments for any of these types in a *comparative* way. Once we have a better understanding of the alternatives for individual ownership, for example, theories in favour of this institution must be re-evaluated. The question will then be whether this form of property realises certain values better or worse than other forms. An examination of group ownership is needed, then, not just to clarify why *it* may or may not be justified, but also to clarify what the value is of alternative property institutions.

1.2 The value of group ownership

The main research question of this thesis is: when and why is group ownership normatively justified as an institution for the governance of the use of objects? For a work of this length, it will be helpful to state my answer here already in a very brief and non-technical way. In a nutshell, I will argue that group ownership is valuable when and because it empowers people, and that it is also justified for that reason.[18] Group ownership achieves this

[18] Note that I do not mean to argue that this is the only reason for why one could possibly value and therefore justify group ownership. But it is the argument that I will focus on in this dissertation.

goal in two steps. Firstly, the institution helps people realise the preconditions of their own empowerment. Secondly, the institution places people in control of the process through which these preconditions are realised. This may sound a bit strange – as if I'm saying the same thing twice. Surely, to be in control of something is to be empowered, and to be empowered is to be in control? But let me take a moment to explain why it's helpful to separate these strongly related notions in my argument.

Being empowered means being able to resist the power that others might exercise over you. You are then not too vulnerable to the possibility that someone else determines – without your say-so – what you can and will do. People need many things to be empowered in this way, but at the very least they must have access to adequate nourishment, healthcare, shelter, and reliable information. A person who cannot meet these needs is vulnerable to the power of someone who can offer them food, care, or shelter on extortionate terms and thus force them to do things they otherwise wouldn't in exchange. Without reliable information, in addition, people can be easily manipulated and again made to do things they wouldn't have if they knew more about their situation. The ability to satisfy these basic needs, then, is a *precondition for being empowered*.

There are many ways in which these basic needs can be satisfied, but they will not all contribute to empowerment equally. This is where the control part comes in. To be truly and securely empowered, people should be able to meet their basic needs in a way that is under their control. For example, you are not empowered if you have access to shelter only because someone happens to let you sleep in their house. You are in that case very vulnerable, not least vis-à-vis the homeowner. They can withdraw their permission at any time, or change the conditions under which they let you sleep there. You must have *control* over your place of shelter to be assured that you have a place to stay, and that you can continue to have a place to

stay under conditions that you determine either alone or on an equal basis with others who are in the same position as you. It's only when this condition is satisfied that people are not (vulnerable to becoming) problematically dependent on agents who *can* secure basic goods for them but *need* not do so. You need control, in other words, to not be subject to caprice.

Does that mean that to be empowered, individuals have to become completely self-sufficient, not relying on anyone else and exercising full individual control over their basic need satisfaction? Not at all. People can cooperate to provide one another with basic goods on a reciprocal basis, and they can collectively control that process of cooperation too. In that case, they are equally in charge of the preconditions for their empowerment, and therefore not vulnerable to a capricious will.

It is precisely because group ownership can facilitate such cooperation and realise collective democratic control over it, that it's a valuable institution. Group ownership involves placing a group in a position of authority. The group members can then decide what may and may not be done with an object.[19] This helps them to work together to meet their basic needs. An example will illustrate how this works. In the arid region of Valencia in Spain, A. Maas and R.L. Anderson studied a group of crop farmers who shared an irrigation system with which they watered their individual plots of land.[20] As a group, the farmers achieved what they couldn't have achieved on their own, namely the maintenance of crop fields that they relied on for their livelihood and therefore for the satisfaction of their basic needs. After all, they could hardly have set up separate and

[19] For my definition of ownership, see chapter 2, section 2. For the definition of group ownership, see section 4.B in the same chapter.

[20] Arthur Maass and Raymond Lloyd Anderson, *And the Desert Shall Rejoice: Conflict, Growth, and Justice in Arid Environments* (Cambridge, Mass: MIT Press, 1978). See also the short case description in Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990), 69–76.

individually owned irrigation systems just for their own fields. To facilitate their cooperation, the farmers needed rules about how much water each farmer could take and when, what sorts of maintenance tasks everyone should perform, and so on. They set up these rules themselves, using their specialised, experience-based knowledge to devise tailor-made and effective rules that an external party (like a corporation or government) would have found very hard to come up with. The fact that the farmers had the authority to decide what persons internal and external to the group could do with the irrigation system – the fact that they owned it as a group, in other words – was therefore highly important to get them to cooperate in the right way and secure their livelihood.

When suitably organised, moreover, group ownership not only promotes cooperation in the service of basic needs satisfaction, but does so in a way that gives everyone equal control over the process. For this, the group's authority must be democratically organised. Imagine that the farmers had unequal decision-making power. In that case, the less powerful farmers would depend on the will of the more powerful ones, and would therefore become vulnerable to their caprice. Or imagine that an external agent set the rules on the irrigation system *for* the farmers. In that case, the farmers' ability to secure their livelihood would depend on the decisions of other agents entirely, agents who could act at their own discretion, even if this would lead to the overuse or destruction of the irrigation system. The view I shall defend in this thesis is that such ways of organising control over basic capabilities are not only problematic when they have dire consequences, however, but that they are problematic in and of themselves. It's not right that the farmers should have to *hope* that someone *lets them* meet their basic needs. No one should be in a position where another can do with them what they want, entirely at their own discretion.

Two lessons can be taken away from this case. Firstly, when sharing

a resource according to rules determined by all, people can use that resource to good effect. They can then use it to meet their basic needs, as the farmers used the irrigation system to (indirectly) meet theirs. In some cases, this option of group ownership will be better for them than alternative arrangements such as individual ownership. In later chapters, I will discuss cases where the option of private group ownership is better than public ownership as well. Group ownership is then not only a viable way of meeting one's basic needs, but is even the preferred option. The second lesson is that group ownership empowers people by giving the persons who rely on a resource for their basic needs, equal control over how that resource may be used. The group members' basic needs are then met, and they are the ones who can control how they are met.

To realise this goal, group ownership institutions must take a certain shape. The particular conception of group ownership that I will defend in this dissertation is the institutional realisation of a practice that I will call *sharing in common*. When individuals share things in common, they use them according to rules they collectively set themselves, in a democratic way. The members of a group may then have individual rights to use a resource, just as the farmers from Valencia have a right to obtain water for their individually owned fields. However, these rights will be determined, authorised, and subject to change by the democratic decisions of the group. In other words, it is the group that has ultimate authority over how an object may be used.

1.3 A republican defence

My argument is a republican defence of group ownership. The word "republican" here refers to a family of political-theoretical views that are united by their perspective on power relationships. As Philip Pettit argues in his seminal systematisation of republican theory, authors in this

tradition object to *domination*.[21] You dominate another person when you have the capacity to exercise arbitrary power over them, meaning power that is under your control rather than the control of the person subjected to it.[22] Paradigmatic examples of domination are of slaveowners' power over their slaves, that of dictators over their subjects, and the power of husbands over their wives under traditional, sexist marriage institutions. Republicans argue that the "subordinates" in these cases are in an unacceptable position, and that this is so regardless of how the "superiors" use their power. Simply to be at the mercy of someone else's will like that, is not a position that any adult should be in. Instead, individuals should enjoy *non-domination*, meaning the secure protection against arbitrary power.[23] This is realised by giving persons equal control over the terms of the relationships that they are in. In the paradigmatic case of a dictatorship, for example, this would involve turning the authoritarian regime into a democracy where rulers are constantly kept in check by the citizenry.

I shall argue in this dissertation that group ownership helps to realise a certain level of non-domination, which I will refer to as *basic non-domination*. This is the technical and more precise term for the status that I referred to as empowerment in the previous section. You enjoy basic non-domination when two conditions are met. Firstly, you have the capabilities and functionings that are reasonably necessary for the ability to withstand arbitrary power. A capability is an effective opportunity to do or be something, like the capability to be adequately nourished.[24] A functioning refers

[21] Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).
[22] Pettit, 52–58.
[23] Pettit, 66–69.
[24] Amartya K. Sen, 'Equality of What?', in *The Tanner Lecture on Human Values*, vol. I (Cambridge: Cambridge University Press, 1979), 218; Ingrid Robeyns, 'Capabilitarianism', *Journal of Human Development and Capabilities* 17, no. 3 (2016): 405.

to the achievement of an opportunity; it is something that you are or do, like the functioning of being literate.[25] You need different types of capabilities and functionings to be able to withstand arbitrary power. I already mentioned the importance of having access to adequate nourishment, healthcare, and reliable information in the previous section. In addition, civil and political rights such as the right to vote and the right to a fair trial are also crucial. I will refer to all these capabilities and functionings as *basic capabilities.* The second condition for enjoying basic non-domination is that you are in control, together and on an equal basis with everyone in a similar position, of decisions that can affect your basic capabilities.

Now I can restate my core argument in the technical terms that I shall develop in the following chapters. Group ownership as the institutional realisation of sharing in common is justified when and because it helps to secure basic non-domination. It does this by satisfying two criteria, which are derived directly from the criteria for enjoying non-domination. The *basic capability criterion* states that ownership institutions must promote a way of using resources that enables people to rely on those resources to attain their basic capabilities. Group ownership meets this criterion by facilitating productive and sustainable cooperation between people who share a resource. The *control criterion* is that ownership institutions must place the people who rely on a resource for their basic capabilities, in control of how that resource may be used. Group ownership meets this criterion when the member-owners are the people who rely on the relevant resource, placing them in control of the decisions that might affect their basic capabilities. In addition, to meet the control criterion group ownership institutions must also be regulated by democratic communities whose basic capabilities can be impacted by the actions of group-owners.

[25] Robeyns, 'Capabilitarianism', 405.

In the context of research on workplace governance, different republican authors have already recognised the value of group ownership. The way firm governance is structured now, is that a class of persons controls the assets on which another social class depends to make a living. Having no productive assets of their own with which they can sustain a livelihood, workers have no choice but to work for a capitalist.[26] This dependence ensures that capitalists can treat workers according to their own capricious will; workers' only escape, after all, is to work for another capitalist.[27] Different republicans have therefore argued that workers should gain control over their workplace to bring an end to dominating productive relationships.[28] One way in which this control can be organised, which was

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[26] Alex Gourevitch, *From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century* (Cambridge: Cambridge University Press, 2014), chap. 3.

[27] I assume here that it's not possible for workers to exit the labour market entirely, and that firms are not competing over workers so fiercely that employers will pressured to meet workers' demands.

[28] Nien-hê Hsieh, 'Rawlsian Justice and Workplace Republicanism', *Social Theory and Practice* 31, no. 1 (2005): 115–42; Alex Gourevitch, 'Labor Republicanism and the Transformation of Work', *Political Theory* 41, no. 4 (2013): 591–617; Alex Gourevitch, 'The Limits of a Basic Income: Means and Ends of Workplace Democracy', *Basic Income Studies* 11, no. 1 (2016); Elizabeth Anderson, 'Equality and Freedom in the Workplace: Recovering Republican Insights', *Social Philosophy and Policy* 31, no. 2 (2015): 48–69; Keith Breen, 'Non-Domination, Workplace Republicanism, and the Justification of Worker Voice and Control', *International Journal of Comparative Labour Law and Industrial Relations* 33, no. 3 (2017): 419–40; James Muldoon, 'A Socialist Republican Theory of Freedom and Government', *European Journal of Political Theory*, 2019, 1–25; Tom O'Shea, 'Socialist Republicanism', *Political Theory* 48, no. 5 (2019): 548–72; González-Ricoy, 'Ownership and Control'. Note that not all republicans agree with this view. Robert Taylor, for instance, argues that non-domination should not be realised by letting workers govern their workplace, but by promoting workers' opportunities to exit employment relationships. See Robert S. Taylor, 'Market Freedom as Antipower', *The American Political Science Review* 107, no. 3 (2013): 593–602; Robert S. Taylor, *Exit Left: Markets and Mobility in Republican Thought* (Oxford: Oxford University Press, 2017).

advocated by many republican activists in the nineteenth century, is in a worker cooperative; a firm that is owned by the group of workers who govern it democratically.[29]

It will be noticed that this republican critique of current firm governance closely tracks socialist complaints against the capitalist mode of production and the property institutions that make it possible. Socialists also locate the injustice of capitalism in the fact that workers do not control the means of production they rely on, and they therefore also advocate institutions that would realise such control, such as collective ownership of the means of production or worker cooperatives.[30] Indeed, the resemblance is no coincidence. James Muldoon, Tom O'Shea, and Bruno Leipold argue that socialist and republican thought are tightly interwoven, and that thinkers like Marx made extensive use of republican concepts to criticise capitalism.[31] Republicanism, in its turn, profits from socialist analyses of ownership institutions to understand how the concepts of domination and non-domination can be brought to bear on productive relationships.

My argument builds on and extends this "socialist republican" current, by generalising its insights beyond the issue of workplace governance. Like other authors working in this field, I shall also argue that to realise non-domination it's crucial that people control the resources they rely on for their most important needs. In addition, I too will argue that this control is sometimes best granted to democratically organised private *groups*,

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[29] Gourevitch, *From Slavery*, 87.

[30] Karl Marx and Friedrich Engels, *The Communist Manifesto*, First Avenue Classics (Minneapolis: Lerner Publishing Group, 2018); Karl Marx, *Capital: A Critique of Political Economy. Volume I*, ed. Friedrich Engels, trans. Edward B Aveling and Samuel Moore (London: Electric Book Co., 2001), e.g. chapters 27 and 33.

[31] Muldoon, 'A Socialist Republican'; O'Shea, 'Socialist Republicanism'; Bruno Leipold, 'Chains and Invisible Threads: Liberty and Domination in Marx's Account of Wage-Slavery', in *Rethinking Liberty before Liberalism*, ed. Annelien de Dijn and Hannah Dawson (Cambridge: Cambridge University Press, forthcoming).

such as the workers in a firm. However, I shall take the discussion away from the specific case of workplace governance, and shall moreover argue not just for any form of control but for the control that people enjoy as owners. An important aim of this dissertation is to develop a general theory that systematically explains the link between non-domination, ownership, and resources. In this way, my thesis will contribute specifically to republican scholarship. I shall say more in a moment about the more general contribution my research makes to the study of property institutions in different theoretical traditions. Before I do that, however, it is helpful to contrast my republican argument with alternative approaches to the defence of group ownership.

1.4 Alternative approaches

The republican defence I'll give is different from at least two other justifications of group ownership. It differs firstly from a broadly *liberal* argument that Hanoch Dagan, David Miller, and Daniel Jacob and Christian Neuhäuser have defended in subtly different ways.[32] These theorists don't defend group ownership directly for the values that it realises. Instead, they argue that individuals may have reasons to prefer joining organisations that are based on group ownership over other organisations, and that – from a liberal perspective – the task of a government is to facilitate the satisfaction of this preference. Thus, Dagan argues that governments must promote citizens' capacity for individual self-determination by ensuring that citizens have a menu of different ways of life to choose from. As some of the options on this menu are made possible by a form of group ownership, it

[32] Hanoch Dagan, *A Liberal Theory of Property* (Cambridge: Cambridge University Press, 2021); David Miller, *Market, State, and Community: Theoretical Foundations of Market Socialism* (Oxford University Press, 1990), chap. 3; Daniel Jacob and Christian Neuhäuser, 'Workplace Democracy, Market Competition and Republican Self-Respect', *Ethical Theory and Moral Practice* 21, no. 4 (2018): 927–44.

follows that governments should adopt and protect this institution.[33] Miller and Jacob and Neuhäuser don't argue for the institution of group ownership in general, but rather develop arguments for why governments should facilitate worker cooperatives and other types of worker-governed organisations. Miller's claim is grounded in a commitment to the liberal ideal of government neutrality, which he believes requires that governments support citizens who have a preference for productive relationships that are difficult to sustain due to a society's economic institutions.[34] In their turn, Jacob and Neuhäuser argue that a liberal government should give citizens a fair opportunity to access the social bases of self-respect.[35] This has implications for people who cannot respect themselves while working in a hierarchical organisation. As the authors put it, "[if] it is very important for republican-minded people with strong democratic convictions to work in a democratic workplace, they should have a fair opportunity to do so."[36]

My view differs from these liberal approaches by providing a *direct* reason for valuing group ownership. The defence is not, that is, routed via the individual preferences or conceptions of the good life that people may or may not have. The reason that group ownership is a justified institution is not that people happen to value it, but that it realises non-domination. The realisation of non-domination, moreover, is something that we owe to individuals regardless of what their preferences are. Contrary to what Jacob and Neuhäuser claim, non-domination is not something that governments only have to secure for sensitive individuals because they happen to want

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[33] Dagan, *A Liberal Theory of Property*, chap. 4.
[34] Miller, *Market, State, and Community: Theoretical Foundations of Market Socialism*, chap. 3.
[35] Jacob and Neuhäuser, 'Workplace Democracy, Market Competition and Republican Self-Respect', 938.
[36] Jacob and Neuhäuser, 938.

it. Instead, non-domination is a status that *must* be accorded to beings capable of practical reason (or so I shall argue in chapter four). It follows that my defence of group ownership applies irrespective of the preferences that people happen to have.

As such, the argumentative structure of my defence resembles that of many arguments justifying individual ownership. Such defences also argue that ownership *directly* realises or is even constitutive of an important value, such as freedom or personal development.[37] These theories do not claim, then, that individual ownership should exist because it's an option that people might choose. Instead, they argue that this institution achieves or instantiates something that is of fundamental importance to human beings, something that would be impossible or at least very difficult to achieve without individual ownership. I shall similarly aim to show that there is such a direct reason that justifies group ownership.

Secondly, my argument also differs from a normative defence of group ownership that is implicit in some empirical studies on this institution. In the past decades, different legal and social scientists have shown that arrangements for sharing resources can be more productive or more sustainable (or both) than arrangements in which the relevant resource is divided into individually owned assets. Elinor Ostrom provided the definitive challenge against the long-standing view that sharing natural resources was unproductive at best, and led to the destruction of resources in the worst-case "tragedy of the commons" type of scenario.[38] Among others,

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[37] See e.g. Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, Massachusetts: Harvard University Press, 2009), chap. 4; Waldron, *The Right*, 1988, chaps 8 and 10.

[38] Ostrom, *Governing the Commons*; See also S.V. Ciriacy-Wantrup and Richard C. Bishop, '"Common Property" as a Concept in Natural Resources Policy', *Natural Resources Journal* 15, no. 4 (1975): 713–27; and David Feeny et al., 'The Tragedy of the

Robert Netting, Carol Rose, Robert Ellickson, and Henry Smith have all articulated conditions under which tragedy is not only avoided, but sharing is more productive of benefits than alternative ownership arrangements.[39]

I say these views provide an implicit defence of group ownership, because the authors do not always recognise or defend the normative theory that must be in the background to prefer more productive ways of using resources over others. Such a normative theory explains what we want from resources, and therefore also in what sense resource use ought to be productive. What are the benefits that it must provide, precisely? This could be welfare, but it could also be a value such as flourishing, or the preconditions for non-domination. In any case: it is a value that must be defended using normative argumentation. Another question that must be answered by an overarching normative framework is to what extent resource arrangements should promote the relevant benefits. Should they maximise their attainment, or must they rather aim at a sufficient amount? These questions have to be addressed before one can speak of a fully-fledged defence of group ownership.

In my argument, I shall make extensive use of these and other empirical studies on group ownership arrangements. I do that by developing and defending an explicit normative framework within which their findings can be evaluated. Thus I can answer the question of why ownership arrangements must promote the productive use of resources in the first

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Commons: Twenty-Two Years Later', *Human Ecology* 18, no. 1 (1990): 1–19 for earlier important statements.

[39] Robert M. Netting, 'What Alpine Peasants Have in Common: Observations on Communal Tenure in a Swiss Village', *Human Ecology* 4, no. 2 (1976): 135–46; Carol M. Rose, 'The Comedy of the Commons: Custom, Commerce, and Inherently Public Property', *The University of Chicago Law Review* 53, no. 3 (1986): 711–81; Robert C. Ellickson, 'Property in Land', *The Yale Law Journal* 102, no. 6 (1993): 1315–1400; Henry E. Smith, 'Exclusion versus Governance: Two Strategies for Delineating Property Rights', *The Journal of Legal Studies* 31, no. 2 (2002): 453-S487.

place, what sort of benefits they must produce, and to what extent. Unsurprisingly, I shall argue that ownership institutions must promote the kind of resource use that will help people to attain their basic capabilities, and with that, their basic non-domination.

1.5 Argumentative steps and contribution to the literature

My argument for group ownership proceeds in three key steps, which engage with different bodies of literature and add to that literature in different ways. In the first step, I develop a conception of group ownership. Secondly, I develop a normative framework with which I will evaluate this concept. This step can be sub-divided into three stages again, namely one where I defend the *form* that a normative property theory should take, one where I defend *the substantive value* that ownership institutions should realise, and one in which I clarify how this value should be *mobilised* to evaluate ownership institutions. In the third key step of my argument, I apply the normative framework I have developed to a particular case of group ownership.

In taking these steps, I bring together and engage with three bodies of work. First of all, I make use of legal and philosophical property theory, including debates on the concepts of property and ownership and debates about the justification of these institutions. This will help me to define my conception of group ownership in chapter two. In addition, I will also critically analyse this literature to determine the form that any justification of a property institution, including group ownership, must take. This will happen in chapter three. Secondly, I shall engage with republican political theory, including systematic work on the concepts of domination and non-domination, and historical and contemporary republican discussions on economic institutions. This will allow me to explain why ownership

institutions should realise basic non-domination in chapter four, and which criteria such institutions have to meet to do it in chapter five. Finally, I make use of social scientific, legal, and historical empirical research on actual sharing arrangements, specifically those in natural and agricultural resources, for two purposes: to provide a case study of how group ownership can in practice meet the criteria for realising non-domination, and to illustrate how my normative framework can be used to assess actual ownership institutions. This I will do in chapters six and seven.

The resulting theory contributes to political-philosophical research in several ways. Its main contribution is in providing an extended normative justification of group ownership, one that focuses on its direct value to members of group ownership regimes. Such a defence is sorely lacking in political philosophy and may, as I noted, have important practical consequences.

In addition, the first two steps of my argument offer tools that will facilitate (comparative) research on ownership institutions in many different theoretical traditions. Though my own defence is based in the republican tradition, I develop a concept of group ownership that researchers from different normative perspectives will find helpful. They can study this conception to determine how it can contribute to their own preferred values. This will hopefully provide an impetus for more comparative analyses of ownership institutions. Another tool I develop that is of relevance for this goal, is a typology of the different *forms* of property justifications, and of the conditions under which they are successful. This will be useful in the analysis of existing arguments in favour of different property institutions, and will also help researchers to provide clearer statements of such arguments in the future.

Furthermore, and as I noted briefly already, my normative framework contributes specifically to the republican philosophical literature by

facilitating the analysis of the ownership institutions required for basic non-domination. In particular, the framework allows republicans to study ownership institutions in many different contexts, not just that of workplace governance. It will in addition facilitate a *comparative* analysis of different types of ownership institutions, by providing criteria that make explicit when and why a particular ownership institution ought to be preferred from the perspective of basic non-domination. In this way, I aim to advance research on how republican ideals can be brought to bear on economic institutions.

1.6 Chapter overview

I begin in chapter two by setting out my conception of group ownership as the institutional realisation of sharing in common. The chapter first defines property and ownership in general, before defining group ownership as the position of authority where a group has the right to decide – within limits set by law – how an object may be used. This authority ranges both over people outside the group and over the group members, whose rights to use and derive an income from the shared object are defined, authorised, and liable to be changed by the members' collective and democratic decisions. I argue that this makes the individual entitlements that group members have with respect to an object fundamentally different from individual property rights. I furthermore show how my conception of sharing in common is rooted in, yet differs from Elinor Ostrom's description of *common property regimes*, which are governance arrangements in which a bounded group of interdependent users of a resource manage that resource themselves.[40] The main difference is that my conception includes internal democratic decision-making as part of its definition. It is this feature, together with the fact that the group's decisions are binding on its members, that

[40] See Ostrom, *Governing the Commons*.

sets sharing in common apart from other arrangements in which multiple people use an object. I shall show that the two main advantages of my conception compared to these alternative arrangements are that group ownership can facilitate the kind of cooperation that enables people to make better use of resources, and that group ownership places people in control of the rules that govern an important part of their lives.

Having defined group ownership, I set out the normative framework with which I shall evaluate this institution in chapters three to five. In chapter three, I do not yet discuss the substantive values in which I shall ground my justification of group ownership, but rather defend the *form* that this argument shall take. The chapter zooms out from any particular property institution, to ask more generally how such institutions can be justified at all. In answering this question, I do not rely on a substantive commitment to the value of non-domination or another value, as my concern in this chapter is with the shape of justificatory theories rather than their substance. I will, however, assume that property institutions ought at least to be justifiable to everyone in a society because they impose obligations on everyone in a society, and that this is true because individuals are beings capable of practical reason. On this minimal basis, I argue that plausible justifications of property can only take two forms, namely *instrumental* and *constitutive*. Instrumental theories defend property institutions because they contribute causally to some good, whether that is autonomy, welfare, negative freedom, or another value. Constitutive theories instead defend property institutions because they constitute (a component of) a good, namely that of normative authority. I reject alternative justificatory strategies based on historical entitlement and natural property rights, by arguing that these either fail to defend property institutions on their own, or do not differ from instrumental or constitutive theories in any relevant sense. Hence, I will only make use of instrumental and constitutive

arguments in my defence of group ownership.

Specifically, I defend group ownership when and because it instrumentally promotes and is constitutive of the value of basic non-domination. In chapter four, I define the concepts of domination, non-domination, and *basic* non-domination that will form the substantive core of my normative framework, and argue that they highlight key moral concerns surrounding ownership institutions. I argue that the core evil of domination is that it's a status violation. When people can exercise arbitrary power over you, they do not accord you the respect that is properly accorded to a being capable of practical reason. This is so no matter how they use that power; just the fact that you *can* be treated as someone whose voice doesn't matter, is wrong. I show how this understanding of the problem of domination helps to define the concept in a more precise way, namely as the structurally enabled and structurally unequal capacity to shape people's option sets in a way that they cannot control. The opposite of domination so defined is people's secure enjoyment of equal control over the terms of the relationships they are in, or non-domination. The more specific concept of *basic non-domination* entails, firstly, enjoying *basic capabilities*. These are the capabilities necessary to be minimally able to resist arbitrary power. Secondly, basic non-domination requires that people are in control of decisions that affect their basic capabilities. Basic non-domination so understood functions as a stepping stone; it is a position of empowerment from which people can secure more extensive non-domination in many areas of their life. The chapter ends by showing that, contrary to what is sometimes thought, the republican framework is determinate enough to evaluate the substance of institutions such as ownership, rather than just the procedure under which institutions are adopted.

In fact, I shall use the concepts of domination and basic non-domination to develop *substantive* criteria for the evaluation of ownership

institutions in chapter five. Historical and contemporary republican discussions on ownership show that ownership has two conflicting propensities. On the one hand, this institution can secure people's non-domination if it places people in control of their ability to satisfy their own basic needs. On the other hand, ownership becomes constitutive of insidious forms of arbitrary power when people cannot exercise this control themselves, but instead depend on another person to be able to meet their basic needs. Building on this work and systematising it, I argue that ownership institutions must meet two conditions to help realise non-domination. Firstly, the *basic capability criterion* states that such institutions must promote a way of using resources that allows people to rely on those resources to attain their basic capabilities. Secondly, *the control criterion* holds that ownership institutions must place the people who rely on resources for their basic capabilities, in control of how these resources are used.

Chapters six and seven then use these two criteria to evaluate common property regimes (CPRs) in natural and agricultural resources. These institutions approach the ideal of sharing in common, and therefore provide a good illustration of whether and how group ownership can realise basic non-domination. The goal of using CPRs as a case study is twofold. I firstly aim to show that group ownership institutions can satisfy the two criteria set out in chapter five, and they sometimes do a better job of it than alternative ownership institutions and other strategies for realising control over one's basic capabilities. Secondly, I aim to illustrate how my framework can be mobilised for the analysis of actual ownership institutions in general, and group ownership institutions in particular. In this way, I hope to facilitate further comparative research on how these institutions perform from the perspective of non-domination.

Chapter six focuses on CPRs' ability to meet the basic capability criterion. I reject the influential idea that sharing natural resources is highly

unproductive or necessarily leads to a "tragedy of the commons." Empirical evidence shows instead that people are able to use shared in an efficient way, *if* they can set the rules on how these resources may be used themselves collectively. This is important because it means people can rely on resources that they share in common to attain their basic capabilities. The examples I give in the chapter include commonly owned fisheries, forests, pastures, and irrigation systems that people use to obtain their livelihoods, and with that such basic capabilities as the capability to be well nourished, sheltered, and so on. In fact, under certain conditions CPRs perform *better* on the basic capability criterion than the alternatives of individual and public ownership. I furthermore argue that arguments against sharing are often not based on empirical evidence, and may sometimes even have been grounded in the self-interest of people who stood to gain from a privileging of individual over group ownership. The chapter ends with a brief discussion of how the lessons learned from CPRs can be extended to group ownership regimes in other types of resources.

After that, chapter seven discusses how CPRs can satisfy the control criterion. For this, CPRs must be internally democratic and regulated externally by a series of nested democratic communities, all of which ensure that people are in control of the decisions that affect their basic capabilities. I again compare group ownership to alternative institutions, this time using the control criterion, and explain when and why these alternatives can sometimes fail to realise control in the right way. This is more evidence, then, that under certain circumstances group ownership is not just a viable way of securing non-domination, but is even the preferred option. Another advantage of group ownership that I discuss in this chapter is that it extends citizens' possibilities to secure their non-domination. In addition to petitioning national governments to implement grand-scale changes, citizens can also use existing group ownership institutions to set up organisations

with which they can secure their basic capabilities themselves, in a way that is under their control. This, then, is another way in which group ownership places people in control of their own empowerment.

Taken together, the chapters provide one of the few extended normative defences of private group ownership. My hope is that, by the end of the thesis, the absence of political philosophical theories on group ownership will seem highly puzzling. In different places around the world, people rely on group ownership institutions to satisfy their most basic needs in a democratic way. Thus, they take control of their lives together and as equals. It is high time that their sharing practices gain the recognition they deserve, and that their value is defended.

2. The Concept of Group Ownership

2.1 Introduction

In this chapter I set out my concept of group ownership. I demonstrate it is recognisable as a form of ownership and explain how it differs from – and is indeed irreducible to – other property institutions. Group ownership, as I conceptualise it, is the institutional entrenchment of a certain way of sharing objects, which I call *sharing in common*. People who share an object in common share it on the basis of collectively defined rules on which they all have an equal say. Thus, their entitlements to the property in question are determined by the group as a whole, making these entitlements different from individual property rights. As a conceptually distinct form of property, group ownership already merits more attention than it has so far received in political philosophy. But group ownership is not only a conceptually interesting type of property. Towards the end of this chapter, I will very briefly show that the normative significance and attraction of group ownership lies in its ability to give people equal control over the rules they live by, in a way that some other property institutions and sharing arrangements can fail to do. In addition, group ownership is also valuable because it facilitates cooperation between individuals, who can thus achieve goals that they could not have achieved alone or in an uncoordi-

nated way. These two points give a glimpse of the argument to come in the later chapters of this dissertation.

The chapter is organised as follows. In section two, I define the general concepts of property and ownership. Property institutions are institutions that structure people's interactions insofar as these are mediated by things, by allocating rights and obligations to agents with respect to objects. I show that this definition satisfies three important criteria: it distinguishes property from other institutions; encompasses many institutions that are recognised as property institutions in legal practice; and facilitates normative analysis. Ownership, in turn, is a particular form that property institutions can take, denoting an authority position in which an agent is in charge of how an object may be used within limits set by law. In section three, I zoom in on the more specific concept of property rights and explain how I will classify them in this dissertation and what their characteristics are. Together with section two, this section will lay the conceptual groundwork for my conception of group ownership.

I develop this conception in section four. I explain what it means that a group, and not the individual members of a group, owns an object. The member-owners have the authority to decide as a group both what people inside and outside the ownership regime may do with their property. Individual entitlements to use or derive an income from this property are based on this authority of the group. When an ownership institution is organised in this way, it realises the ideal of sharing in common. I will explain how this ideal is derived from, yet differs from existing sharing arrangements in natural and agricultural resources, called common property regimes.[41] Under these regimes, which have been extensively studied by

[41] Elinor Ostrom, 'Private and Common Property Rights', in *Encyclopedia of Law and Economics*, ed. Boudewijn Bouckaert and Gerrit de Geest (Cheltenham, UK ; Northampton, MA: Edward Elgar, 2000), 332–79.

Elinor Ostrom and other commons scholars, the users of a resource collectively manage that resource themselves.[42] However, unlike in my conception of group ownership, the collective decision-making process in common property regimes is not always democratically organised.

In section five, I contrast the practice of sharing in common with other arrangements that could plausibly be described as sharing.[43] Individuals are or can be disempowered in other types of sharing arrangements because of their lack of equal and binding collective control rights with respect to objects. Though they may have a right or weaker entitlement to use or derive income from an object, they are not or not equally in charge of what this entitlement looks like, or of whether it's secured for the future. In addition, the possibilities for persons to cooperate may be greatly hampered by their inability to take collective decisions on how to use a resource. When sharing in common, however, people are together and equally in control of such entitlements, and thereby of the rules that structure important parts of their lives. They can cooperate to achieve their goals and do so on equal terms.

2.2 Defining property and ownership

Property institutions are systems of rules that structure interactions between persons with respect to particular things.[44] As Jeremy Waldron clarifies, property institutions do this by assigning particular composites of

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[42] See in particular Ostrom, *Governing the Commons*.

[43] I am concerned here with practices in which people share *objects*, rather than things like memories, experiences, ways of life, and so on.

[44] Wesley Newcomb Hohfeld, 'Fundamental Legal Conceptions as Applied in Judicial Reasoning', *The Yale Law Journal* 26, no. 8 (1917): 710; Waldron, *The Right*, 1988, 31; Stephen R. Munzer, *A Theory of Property* (Cambridge: Cambridge University Press, 1990), 17; Christman, *The Myth of Property*, 16; Larissa Katz, 'Property Law', in *The Cambridge Companion to the Philosophy of Law*, ed. John Tasioulas (Cambridge University Press, 2020), 371–88.

rights and responsibilities to particular entities, with respect to particular objects.[45] The idea is something like this: every society determines what people may or may not do with respect to objects, and these rules are themselves derived from principles about what people may do to one another. Property's role is to institute rules on who can and who should hold these rights and responsibilities, what these rights and responsibilities are, to which objects they apply, and how this allocation may change. A familiar example is of the property institution of home ownership, where an individual or group has the authority to decide what – within limits set by the law – others may do to their house. The individual or group is the entity, the authority described is constituted by a set of rights and responsibilities that this entity holds, and the house is the object in question. This allocation may change when the owners sell their house to someone else.

This way of defining of property institutions focuses on what these institutions do, in general, and not on the specific form such institutions sometimes take in a society, or on the interests that such institutions are (sometimes) taken to fulfil.[46] As such, the definition has the advantage of being broad enough to capture many different property institutions, both within and across different societies. This is in contrast with definitions that focus on a particular feature of property rights, such as definitions that equate property with the right to exclude people from an object.[47] The problem with the latter approach is that it focuses on a feature of property that some but not all property institutions share. Thus the definition

[45] Waldron, *The Right*, 1988, 31–32.
[46] Gregory S Alexander and Eduardo Moisés Peñalver, *An Introduction to Property Theory* (Cambridge: Cambridge University Press, 2012), 3–5.
[47] See e.g. James W. Harris, *Property and Justice* (Oxford: Oxford University Press, 1996); James E. Penner, *The Idea of Property in Law* (Oxford: Oxford University Press, 2000); Thomas W. Merril and Henry E. Smith, 'What Happened to Property in Law and Economics?', *Yale Law Journal* 111, no. 2 (2001): 357–98.

cannot capture property institutions – including even the paradigmatic institution of land ownership – that lawyers would not hesitate to call property, where the right holder has no right to exclude people from their property.[48] In Scotland and Sweden for example, people have a right to access and traverse land that is owned by another person, provided they don't interfere with the use that the owner makes of that land, for example by destroying crops.[49] This is to say nothing of property institutions that afford right holders with lesser interests than ownership, such as easements.[50] An easement – a delimited right to use the property of another entity – is generally recognised as a property right, but it certainly doesn't allow the right holder to exclude others from an object. The definition I'm working with, however, recognises an easement as an allocation of a right with respect to a particular object to a particular entity, and therefore does capture it as a property institution.

At the same time, the definition is specific enough to distinguish property from other institutions. Property's allocative function sets it apart from other rules pertaining to the use of objects.[51] Many legal regulations specify what people may do with respect to objects, as objects are

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[48] Larissa Katz, 'Exclusion and Exclusivity in Property Law', *University of Toronto Law Journal* 58, no. 3 (2008): 275–315; Alexander and Peñalver, *An Introduction to Property Theory*, 3–4.

[49] Alexander and Peñalver, *An Introduction to Property Theory*, 4.

[50] Munzer, *A Theory of Property*, chap. 1; Amnon Lehavi, *The Construction of Property: Norms, Institutions, Challenges* (Cambridge: Cambridge University Press, 2013), chap. 1.

[51] By function I simply mean what an institution does, not the reason for which one might want it to do what it does. Such reasons can form the input for evaluative standards, while functions are the objects of an evaluation. To give a concrete example that isn't based on property: the function of educational institutions is simply that they educate, but one of the reasons for their existence might be that these institutions contribute to the personal growth of individuals. Personal growth might be a standard by which we measure educational institutions, and education their function.

implicated in almost all our actions. However, not all of these regulations allocate rights and responsibilities with respect to *particular* objects to *particular* entities. A rule that prohibits you from pressing the fire alarm without cause, for instance, is not a property rule. It does not assign specific rights and obligations with respect to a specific object to a specific entity, but simply prohibits an action.[52] This distinction is of course crucial for a normative evaluation of property; such research must, among other things, evaluate whether the specific function of property is justifiable.

In addition, normative research should clarify *which* property institutions are justified, valuable, or even required in a just society.[53] The definition I use helps with that too, by enabling the mapping of different institutions and their distinctions. The basic structure of a property institution is its allocation of (A) rights and responsibilities, to (B) an entity, with respect to (C) an object.[54] Different institutions can therefore be distinguished on the basis of their different specifications of these three elements.

It's important to qualify this last point, however. To study property institutions from a normative perspective, it's not enough to focus on the particular form that they take, and how this form can be analysed in terms of the three elements I have just laid out. Instead, such an analysis must also focus on the ideas that, according to the self-understanding of a society,

[52] See on this Alexander and Peñalver, *An Introduction to Property Theory*, 6.
[53] On the distinction between this level of normative analysis and the more general justification of property, see Lawrence C Becker, 'The Moral Basis of Property Rights', in *NOMOS XXII: Property*, ed. J.R. Pennock and J. Chapman, 1980, 187–220.
[54] See also Christman, *The Myth of Property*, 23. Christman includes a fourth element, which is the persons against whom the rights and other legal modalities of property apply. I've chosen to leave this out because as in rem rights, property rights always apply against the same set of persons – which is everyone else in a society. See Hohfeld, 'Fundamental Legal Conceptions'.

guide the formation of property institutions.[55] These *organising ideas*, as Waldron calls them,[56] are principles and patterns according to which legal specialists and in some important cases also laypersons believe property institutions are modelled in their society.

One of the central organising ideas in liberal democracies, is that of ownership. Ownership is a position of authority, where the right holder can decide what may be done with an object.[57] This object is then their property.[58] Ownership affords a degree of discretion, where owners may decide for themselves how they use their property and may decide for others how they may use it, within limits set by law. This last qualifier is important: ownership does not somehow give people a right to decide for themselves entirely what may be done with an object; it is always an area of discretion hedged by the institutions of a society. Anthony Honoré observed this as a common feature of ownership in legal systems that one would otherwise sharply distinguish from one another, writing that

> "it is striking that the French civil code, enacted in an atmosphere of liberal enlightenment, defines ownership as 'the right of enjoying and disposing of things in the most absolute manner, provided that one abstains from any use

[55] On the role of self-understanding in determining the organising ideas of property institutions, see Waldron, *The Right*, 1988, 46.

[56] Waldron, 38.

[57] Waldron, 39; Katz, 'Exclusion'.

[58] The use of the word "property" to refer to a thing rather than to rights and responsibilities is sometimes thought to be a mistake typical of laypersons' understanding of the term. See e.g. (Armen A. Alchian and Harold Demsetz, 'The Property Right Paradigm', *The Journal of Economic History* 33, no. 1 (1973): 16–27]. As Leif Wenar clarifies, however, the recognition that property is about rights and responsibilities with respect to things does not imply that specialists may not use the term 'property' to refer to the object specified in those rights and obligations. To the contrary, this use can render certain legislation, such as the Takings Clause in the US, intelligible. Leif Wenar, 'The Concept of Property and the Takings Clause', *Columbia Law Review* 97, no. 6 (1997]: 1923–46.

> forbidden by statute or subordinate legislation,' while the earliest Soviet civil code, framed in a socialist context, provided in very similar language that 'within the limits laid down by law, the owner has the right to possess, to use, and to dispose of his property.'"[59]

Ownership is distinct from more limited property interests – meaning more limited (sets of) rights with respect to objects – in that the latter do not afford the right holder with the legal authority to decide, ultimately, what may be done with an object. I may have a property right to use an object in a circumscribed way – say, to cross a piece of land – but that hardly gives me the right to decide what may be done with that land within the limits of the law. I am not, as Larissa Katz puts it, the person who sets the agenda for that land, determining how others may use it and how I will use it myself.[60] At most, I can decide whether I want to cross the land or not, which indicates an area of discretion over what I do, and not over how the property may be used.

There are multiple ways in which one could specify property institutions that would fit the organising idea of ownership. That is to say, there are multiple ways of specifying (A) rights and responsibilities, (B) an entity, (C) the object, that would fit the general idea of an agent having discretionary authority within the limits of the law over how an object may be used. Ownership, then, is not reducible to any specification of these three elements, nor is it reducible to a specification, in particular, of the rights and responsibilities under (A).[61] All specifications that fit can plausibly be said

[59] Anthony M. Honoré, 'Ownership', in *Making Law Bind: Essays Legal and Philosophical* (Oxford: Oxford University Press, 1987), 163. Honoré adds that "[o]bviously, much here depends on what limits are laid down by law in each system."
[60] Katz, 'Exclusion'.
[61] This also means that the idea of ownership is not definite enough, in practical matters, to decide which rights persons have. Barbara H. Fried, 'Left-Libertarianism: A Review Essay', *Philosophy & Public Affairs* 32, no. 1 (2004): 66–92.

to instantiate the idea of "authority over an agenda" are different ownership institutions. Some ownership institutions may, for example, include the right to bequeath an object, others not. Ownership is not definable by these specific rights, but by the idea that guides how these rights are grouped together.

I emphasise this point because some theorists have believed that views such as the one I have laid out about the *structure* of property institutions, necessarily imply that there is nothing to the idea of property institutions *but* that tripartite structure.[62] I have claimed that property institutions can partly be described in terms of a composite – or, more conventionally, *bundle* – of rights and responsibilities that they assign to entities. This idea of property as "a bundle of sticks" was dominant in most of the twentieth century, but in the last decades it has drawn sustained criticisms from different legal theorists. Their precise criticisms vary, but what they seem to have in common is the idea that the bundle of sticks picture of property conjures an image of property as a random collection of rights and other legal incidents.[63] As such, it cannot, firstly, explain what is really constitutive of property.[64] Nor can it, secondly, explain why certain property rights are combined in the way that they are. It cannot clarify, that is, which principles guide the formation of property institutions.[65]

The view I have laid out, however, is not vulnerable to these two objections. I have not argued that property institutions can only be seen or

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[62] See e.g. James E. Penner, 'The Bundle of Rights Picture of Property', *UCLA Law Review* 43, no. 3 (1996): 711–820; Merril and Smith, 'What Happened'; Daniel B. Klein and John Robinson, 'Property: A Bundle of Rights? Prologue to the Property Symposium', *Econ Journal Watch* 8, no. 3 (2011): 193–204. For a critique of this view, see Lehavi, *The Construction*, 45–85.

[63] Klein and Robinson, 'Property'.

[64] Penner, 'The Bundle'.

[65] Klein and Robinson, 'Property'.

analysed as a bundle of rights and responsibilities. Theorists should also pay attention to the ideas according to which rights and responsibilities are grouped together, or at least are understood to be grouped together by members of the society in which the property institutions in question function. In fact, I believe these organising ideas form a fruitful starting point for normative philosophical property theories, as they have the right level of abstraction for philosophers to engage with. For a normative study of ownership, it will be highly relevant to study it as an organising idea *before* studying its particular manifestation in a society in terms of the composite of rights and responsibilities that (partly) make it up. This addresses the second objection to the bundle of sticks view of property. To address the first objection, the concept of organising ideas is not necessary. As I said before, the idea of property as an allocative system of rights that regulates interactions between persons with respect to particular things, already picks out a definite idea of property that sets it apart from other institutions.[66]

2.3 Property rights

Having defined property and ownership, I will now zoom in on the idea of property rights and on how these can be classified and characterised. This is important for my definition of group ownership in section four, as it will enable me to show why the rights of individual members in a group ownership regime cannot be conceptualised as property rights, while the rights of the group as a whole can. It will in addition be valuable for the rest of the dissertation, where I will often refer to the different types of property

[66] Stephen R. Munzer, 'Property and Disagreement', in *Philosophical Foundations of Property Law*, ed. J. E. Penner and Henry E. Smith (Oxford, United Kingdom: Oxford University Press, 2013), 289–319.

rights, as well as the characteristics that set them apart from other types of rights.

A. Classifying property rights

Wesley Hohfeld and Anthony Honoré are the two theorists who have arguably done the most to clarify that property institutions do not consist of simple or monolithic rights between persons and things but are complex composites of rights and other normative modalities that apply between persons. Furthermore, the authors also developed systems for classifying these normative modalities.

Frustrated with the imprecise language surrounding the concept of rights, Hohfeld set out to clarify the different modalities that lawyers were actually referring to when using this word.[67] A person who is said to have a right can be holding a claim-right, liberty, power, or an immunity.[68] A claim right to something or some action has as its correlative a duty; someone must either refrain from interfering or, stronger still, supply the holder of a claim with what they have a claim to. By contrast, a liberty – such as the liberty to take an apple from a bowl – implies no such duty. The correct correlative is a no-claim. No one has a claim right that I *don't* take an apple. A power enables the holder to change the normative situation, i.e. change what a person may and may not do. You could have the power, for example, to impose a duty on me to leave the apple in the bowl. I would then have a corresponding liability to submit to this. Finally, an immunity signifies that one cannot change my normative situation in some particular

[67] Hohfeld only considered claim-rights worthy of the title of rights, but my approach is to continue to refer to liberties, powers, and immunities as rights, and differentiate between these concepts when necessary. See on this also Leif Wenar, 'The Nature of Rights', *Philosophy & Public Affairs* 33, no. 3 (2005): 223–52.

[68] Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning', *The Yale Law Journal* 23, no. 1 (1913): 16–59.

respect. To illustrate, I may have an immunity that protects my liberty to take an apple. In that case, you do not have a power but a disability; you cannot change my normative situation.

Hohfeld's categorisation has important implications for the analysis of property. It shows that property ought not to be analysed as a simple relationship between a right holder and an object. More precisely, property should not be conceptualised as a single monolithic 'right' over an object, such as the right to fully control it. For in characterising property in this way, someone would be committing two errors. Firstly, the description of the right or rather rights involved is inaccurate. What does it mean to have a right to fully control a plot of land, for example? This very generally defined right actually jumbles together different types of relationships. The more precise claim would be to say that a landowner may have a claim right to exclude non-owners from their land, a liberty to use it as they want, and an immunity from anyone changing this situation, in addition to other possible claim-rights, liberties, powers, immunities, duties, and liabilities. In short: the monolithic right is very imprecise in articulating just what the legal position of the owner is.

The second error is that this description misrepresents the property relation as one between an object and a thing, when in fact the relationship applies between persons.[69] For note, for example, that the claim-right to exercise control over a piece of land implies the duties of other persons. It cannot be otherwise; without such a correlative duty, we should not speak of a claim-right at all. Certainly it would be strange to say that the land held this duty. The same applies to the other modalities mentioned.[70] It is worth

[69] Hohfeld, 'Fundamental Legal Conceptions', 722–25.

[70] Not all of Hohfeld's modalities have a necessary correlative. It may be possible that someone has an obligation to do something, without anyone else having an enforceable claim against them to make them perform that obligation. See on this H. L. A. Hart, 'Are

stressing the moral significance of this error. It obscures what is morally salient about certain relationships, by describing relationships where people have authority over another person – that is, relationships where people can change the rights and obligations of others – not as authority relationships at all, but as a relationship between an object and a person. As such, this simplistic understanding of ownership vastly hinders normative analysis. Property rights, then, ought to be classified with the help of Hohfeld's fundamental legal incidents.[71]

Honoré's work on the concept of ownership offers a valuable addition to this system of classification.[72] Honoré argues that "mature legal systems," as he calls them, all have a very particular institution of individual ownership in common, which consists of similar legal modalities.[73] This is the institution of liberal ownership, which offered individuals a great deal of discretion in what they could do and oblige others to (not) do with their property. Honoré argues that this ownership institution consists of the following incidents: owners have rights to possess, use, and manage an object, the right to derive income from it, the right to the capital (including the rights to alienate, consume, destroy and waste), and a right to security. The institution in addition includes the incidents of absence of term and

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There Any Natural Rights?', *The Philosophical Review* 64, no. 2 (1955): 175. In the case of property rights and other modalities, however, I would argue that there always is a correlative, just as Hohfeld describes.

[71] In what follows I will discuss how these incidents can be further classified depending on the content of the actions they sanction. This categorisation is external to Hohfeld's own system. An additional dimension of classification that I will not discuss, and which is *internal* to Hohfeld's system, is the division between first-order modalities (such as claim-rights, liberties, and obligations), that address directly what a right holder may and must do, and second-order modalities (such as liabilities, immunities, powers, and disabilities), which determine how the first-order modalities may be changed and by whom. See on this Wenar, 'The Concept of Property and the Takings Clause', 1939.

[72] Honoré, 'Ownership'.

[73] Honoré, 162.

residuary character, two legal immunities, as well as the incident of transmissibility. Finally, Honoré lists a liability to execution, and a duty to prevent harm. As can be seen, each of these incidents combines a Hohfeldian modality with a particular activity, and thus gives a more precise indication of the sorts of rights – and other normative modalities – that property right holders have.

The way these incidents can be grouped and regrouped admits of some flexibility. Honoré claims that none of the incidents are individually necessary or sufficient for the concept of liberal ownership.[74] A society that recognises some, but not all of these incidents, can possibly still be said have a concept of liberal ownership. He further shows that for any object, the incidents with respect to that object can be held by a single person, in which case we should speak of *full liberal ownership*, or can instead be disaggregated and held by multiple persons, in which case each of these persons has a more limited set of property rights.

It is perhaps because of this apparent flexibility that some property theorists have treated Honoré's eleven incidents as if they made up *all* the building blocks for *every* property institution, and not just that of liberal ownership.[75] Strictly speaking, however, this stretches Honoré's analysis beyond its proper use. It is possible that an individual only has a few of the incidents Honoré lists, and that this composite still makes up a property institution.[76] But the incidents of liberal ownership are not – and Honoré

[74] Honoré mentions this when he discusses different suggestions for delineating ownership from other property institutions. One of the suggestions is "that some one incident is to be taken as decisive [for calling the composite of incidents ownership]." Honoré rejects this possibility, claiming that "[i]n the case of all the listed rights, however, it is possible to put examples which would lead to the opposite result from that sanctioned by usage." Honoré, 176-177. For every incident, then, it is possible to show that property right holders sometimes have them without therefore being considered an owner.

[75] For an example of the type of view criticised, see Becker, 'Moral Basis'.

[76] Honoré, 'Ownership', 176.

does not intend them as – *the only* incidents that make up more limited types of property. This is because a property right can be much more circumscribed than any of the incidents he lists. We see this in particular with certain usufructuary rights, such as a right of way. Such an easement counts as a property right, yet none of the incidents that Honoré gives could be listed as a building block for that right. To be sure, one of the incidents is a right to use an object, but unlike an easement this is an open-ended right, that allows for many different sorts of use. As Honoré puts it:

> "The right (liberty) to use the thing at one's discretion has rightly been recognised as a cardinal feature of ownership, and the fact that, as we shall see, certain limitations on use also fall within the standard incidents of ownership does not detract from its importance. The standard limitations on use are, in general, rather precisely defined, while the permissible types of use constitute an open list."[77]

A right of way clearly does not fit that description; the permissible type of use is a closed set, namely crossing the land, while the list of impermissible things is open-ended. It follows that, in generalising from Honoré's approach to liberal individual ownership to the more general study of property institutions, one should not make use of the same incidents he describes. Instead, what is valuable in such a generalisation is to take on Honoré's approach of combining Hohfeldian incidents with particular actions, such as using, possessing, deriving an income, and so on. It is *this* approach to classifying property that should be generalised in the study of all property institutions, not the specific incidents he analysed for liberal ownership.

For my purposes here, it is helpful to classify the types of activities that property rights allow at a higher level of abstraction than Honoré used

[77] Honoré, 168.

for liberal ownership. In particular, property rights can concern (1) use, (2) income, or (3) control with respect to objects. This categorisation builds on John Christman's analysis of ownership in terms of control and income rights and adds another dimension of use rights.[78] Control rights include rights to decide what may be done with an object, while income rights determine in what way and how much income a person may derive from selling or otherwise profiting from an object. Often, however, people only have a right to use an object in a circumscribed way. Elinor Ostrom and Edella Schlager, for example, talk about the right to access a natural resource as a property right.[79] This doesn't give people the right to determine what may be done with the resource (they may only determine whether they personally want to access it or not), nor does it entitle them to part of the income. A separate category of use rights will be helpful to cover rights such as this right to access.

B. Characteristics of property rights

Property rights can be distinguished from other types of rights in four ways.[80] Their first distinguishing characteristic is that they bind all or most persons in a society.[81] If I buy a house and thereby gain the right to exclude others from it, then everyone or almost everyone will have an obligation to

[78] Christman, *The Myth of Property*.

[79] Edella Schlager and Elinor Ostrom, 'Property-Rights Regimes and Natural Resources: A Conceptual Analysis', *Land Economics* 68, no. 3 (1992): 249–62.

[80] Thomas Grey disagrees that any of these characteristics distinguish property rights from other rights, but I believe this is because he assumes that any characteristic has to distinguish property from other rights *on its own*. I agree that no characteristic can do that, but they may be able to do so jointly. Thus, one characteristic may set property rights apart from contractual rights, while another is necessary to distinguish it from human rights. See Thomas C. Grey, 'The Disintegration of Property', in *NOMOS XXII: Property*, ed. J.R. Pennock and J. Chapman (New York: New York University Press, 1980), 69–85.

[81] Hohfeld, 'Fundamental Legal Conceptions'.

refrain from entering my home. This obligation is not restricted to whoever was privy to the transaction but extends far beyond that.[82] A shorthand way of saying this, is to say that property rights are rights *in rem*, rather than rights *in personam*. While *in personam* rights bind only a restricted group of persons – namely those privy to an agreement – *in rem* rights bind everyone in a society.[83]

Secondly, property incidents may not, in standard cases, be violated without the owners' consent.[84] A shorthand way of saying this, is that property incidents are protected by property rules. This distinguishes them from entitlements that are protected by liability rules. Entitlements that are protected in the latter way may be violated without a person's consent if due compensation is paid. Note that I limit the application of this distinction to *standard cases*. It is therefore possible that in non-standard cases such violations are justified and do not derogate from the idea of property. Furthermore, the way that property rights are protected also differs from entitlements that are protected through inalienability rules. Unlike human rights, property rights are not inalienable, though as I will explain in a moment, this doesn't necessarily mean that right holders can always alienate their own property rights.

Thirdly, a property right is transmissible.[85] This means that the right can somehow be transferred to another entity, without thereby losing its character.[86] An example will clarify what I mean by this. If my right to

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[82] Lehavi, *The Construction*, chap. 1.

[83] Hohfeld, 'Fundamental Legal Conceptions'.

[84] In what follows I rely on the distinctions developed and defended by Guido Calabresi and A. Douglas Melamed between property rules, liability rules, and inalienable rights in their 'Property Rules, Liability Rules, and Inalienability: One View of the Cathedral', *Harvard Law Review* 85, no. 6 (1972): 1089–1128.

[85] Honoré, 'Ownership', 181.

[86] Alison Clarke and Paul Kohler, *Property Law: Commentary and Materials*, Law in Context (Cambridge: Cambridge University Press, 2005), 21–22; Katz, 'Property Law'.

live in a particular house is transmissible, then someone else can gain this self-same right. This is the case if I own that house myself and sell it to another person, for instance. However, I can also have a right to live in a house because my friends own it and they promised me I could stay there for as long as I like. *This* right is not transmissible; it is a *personal* not a *property* right. I have it because my friends made that promise to me. For you to gain the same right, they would have to make a new promise to you. There is no way of transferring, in other words, my promise-based right to you. Property rights, however, are always transmissible. This characteristic is implied in the very idea that property involves the allocation of rights and responsibilities that a society recognises. One can think of this – metaphorically – as a three-step program. First societies decide what people may and must do to one another, then what they may and must do with respect to objects, then a society allocates these rights and responsibilities.[87] If rights aren't transmissible, then they are not rights and responsibilities that apply with respect to objects. They become personal rights, particular to whoever holds them. Note that the fact that a right is transmissible doesn't imply that the right holder is the one who can transmit it. There is an important distinction between a right holder's power to transfer rights, and a right's *feature* of transmissibility.[88] A right is also transmissible if someone other than the right holder can transfer it. My right to live in a house, for example, may be transferable by someone other than me, for example by a central government or housing organisation.

The final characteristic of property rights is of course that they apply with respect to objects. So far, I have mainly discussed simple objects of property, such as land. As is well known, however, we also speak of property in immaterial things, as in intellectual property, shares, or choses in

[87] Waldron, *The Right*, 1988, 33.

[88] Clarke and Kohler, *Property Law*, 5–6.

action. By objects, then, I do not mean to refer only to physical things. So if it is not the physical aspect of objects that makes them suitable for property, what is? In principle, anything that we can treat as an object in a way that is relevantly analogous to physical things can become an object of property. Whether a society *wants* to treat it as such is a different matter. Honoré explains it this way:

> "When the legislature or courts think that an interest should be alienable and transmissible, they reify it and say that it can be owned. They do not say that it can be owned and is a *res* because of a prior conviction that it falls within the appropriate definition of 'thing.'"[89]

An object counts as a thing in the relevant sense when the rights that apply with respect to that object *can* be made into enforceable, transmissible, *in rem* rights that are protected by property rules, and when a society *wants* to do so.

2.4 Group ownership as sharing in common

A. Why ownership?

Having defined property and ownership in general, I will in this section proceed to outline the more specific conception of group ownership that forms the core of this dissertation. But before I do that, it's worth taking a step back and ask why political theorists should be concerned with ownership at all, of any kind. Why should one focus, that is, on cases where a single entity – in this case a group – gets to decide what may be done with an object? It might be thought that a better strategy is to cast a wider net, and research different institutions of group *property*, including those that offer a more limited set of property rights – and hence a more limited or no

[89] Honoré, 'Ownership', 181.

degree of authority – to the group. There are more property institutions than ownership, after all, and ownership is perhaps not the most prevalent type of property interest that people have in fact, even if it figures so large in the self-understanding of liberal democracies.[90] That self-understanding may be wrongheaded if it's based on a view of what is the most prevalent property institution. Ownership competes with split ownership, where different agents hold different rights to the same object, as well as with mixed property, where different *types* of entities – such as the state, individuals, corporations – hold different rights with respect to an object. Is it therefore not more important to research these limited property interests than the extensive but rare interest that is ownership?

My view, however, is that the idea of group ownership is very useful for understanding and evaluating such limited property interests. In fact I shall be focusing on a particularly extensive kind of group ownership, namely where a single group holds all the incidents – control, use, and income – with respect to a thing. I use this as a simple, paradigm case, analogous to Honoré's simple paradigm case of full individual ownership. This paradigm case is not useful because it covers many *actual* cases, as it very

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[90] According to Thomas Grey, for example, the disaggregation (both actual and potential) of property interests over different agents meant that there was no point to studying ownership. On his view, it is folly to ask about the value of ownership because this institution is virtually non-existent and tends to disintegrate when it does exist. This is because people can – in contemporary capitalist societies – alienate their property rights separately, rather than as a complete package. The result is that ownership is unstable; it disintegrates into more limited property interests, held by different entities. See Grey, 'Disintegration'. I believe this instability, however, is not inherent to the very concept of ownership, but only a characteristic of ownership institutions that indeed do allow the separate alienation of property rights by the right holder. Moreover, even if ownership institutions are rare in fact, that does not mean that there is no value to a normative enquiry about the value of ownership. To the contrary, such an enquiry could determine whether it is right that ownership is rare and unstable in the sense outlined. If not, then that should give people reason to develop more stable ownership institutions.

probably doesn't. That doesn't mean it's not useful in other respects, however. One suggestion, defended by Waldron and Christman, would be to say that ownership helps us to make sense of the past and future of certain property rights.[91] Ownership helps to note to whom certain temporarily granted rights will revert, and how they have ended up where they are now. While true, this suggestion doesn't account fully for my interest in ownership.

Rather, the paradigm case is useful because it provides a starting point from which we can evaluate more complex property institutions. Limited property interests and mixed regimes are highly relevant in any society, but a helpful way of analysing them is by comparing them to the simpler if fictive form of full ownership. In this capacity, full ownership acts as a springboard for evaluation. Once one understands why the simple case of full group ownership might be of value, one can ask whether this value does indeed demand that a group has the authority to decide what may be done with an object, and whether, moreover, it is necessary that this authority is granted by giving a group all the existing property incidents with respect to an object. The question might then well be raised whether more limited property interests might not be enough to realise the same good that is claimed for full group ownership. Questions such as these gain much in clarity by comparing the value of full group ownership to that of a more limited property interest, instead of analysing the many more limited interests directly. In this dissertation, I will not make that comparison but only focus on the first step, which is to explain why group ownership is valuable.

B. Sharing in common

The conception of group ownership that I wish to defend in this dissertation is the institutionalisation of a particular sharing practice, which I will

[91] Waldron, *The Right*, 1988, 55–56; Christman, *The Myth of Property*, 25.

call sharing in common. When individuals share an object in common, they share it on the basis of their collective decisions, on which they all have an equal say. That is, they use and derive an income from that object in a way that is controlled by everyone equally. To say that this type of sharing is institutionalised is to say that there is a system of laws, in the form of a property institution, that makes it possible for individuals to share an object in that way. This is what group ownership does: it arranges property rights and obligations in line with the practice of sharing in common. Concretely, group ownership as the institutionalisation of sharing in common places a group in charge of what may be done with an object, within limits set by law. The authority of the group to determine what people may do with an object binds both its own members and the people outside the group ownership regime. This authority is organised in a democratic way; all member-owners have an equal say on decisions on how to use and derive an income from an object, and on what outsiders may do to it.

By allocating binding authority to the group, my conception of group ownership differs from certain legal forms of co-ownership. Co-ownership regimes are arrangements where multiple people hold the same rights with respect to an object.[92] Unlike in a group ownership regime, however, these rights are often already defined by law, rather than the decisions of all co-owners. Under the common law institution of tenancy in common, for example, multiple individuals have an alienable share in what is in itself an indivisible good.[93] Tenants in common can alienate this share without permission of the group. Thus, their rights are pre-defined and not

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[92] Clarke and Kohler, *Property Law*, chap. 16.

[93] F.H. Lawson and B. Rudden, *The Law of Property*, 3rd ed. (Oxford: Clarendon Press, 2002), 92–97. This form of co-ownership is also often referred to as ownership in common, but I decided to stick with this traditional name to avoid confusion with my conception of group ownership.

subject to the authorisation and change by the group, as in my conception of group ownership. This is just one example, of course. The general point is that the more a property arrangement predefines the use and income rights of individuals legally, the less it will look like group ownership as I have defined that term.

My conception is instead closer to the cooperative society in the UK, the Dutch *coöperatie,* the medieval Roman law corporation, and similar legal forms.[94] In organisations based on such forms, individuals have incorporated and thus created a legal person that can hold property. Furthermore, authority within these incorporated organisations is organised democratically. In this way, then, decisions about what to do with the relevant property are taken democratically too. While these forms may also define certain individual rights by law, they grant more authority to the group than the form of, say, tenancy in common. This makes these legal forms good ways of realising the ideal of sharing in common.

It's worth clarifying, however, that the departing point of my analysis lies not in these existing and historical legal forms, but in a way of sharing. Rather than assessing the benefits of existing legal institutions by asking what sort of sharing practices they make possible, I have moved in the opposite direction and asked why a certain sharing practice is valuable, and what the contours are of an ownership institution that can realise this type of sharing. I consider both directions equally valuable approaches to a normative analysis that links property and sharing, but it is important to be clear on the approach taken. It helps clarify why my analysis will not, for

[94] For very brief descriptions of these three legal forms, see, respectively: Co-operatives UK, 'Simply Legal' (Manchester: Co-operatives UK, 2017), 31–34; Netherlands Chamber of Commerce (KVK), 'Cooperative', 2021, https://business.gov.nl/starting-your-business/choosing-a-business-structure/cooperative/; David Ciepley, 'Is the U.S. Government a Corporation? The Corporate Origins of Modern Constitutionalism', *American Political Science Review* 111, no. 2 (2017): 421.

example, delve into the technical details of existing legal institutions.

There are no special requirements that a group has to satisfy to be seen as a group. It is sufficient that a collection of otherwise unconnected people share one object in the way I have outlined here, for them to count as a group in the relevant sense. My research, however, will be limited to groups of private individuals. Thus, while some forms of public ownership could also count as an institutional arrangement of sharing in common, they are not the types of regimes I am interested in. I want to ask, rather, why it is important that private groups should own objects.

An example of such an arrangement is of farmers who share an irrigation system on the basis of rules they all set up together. These farmers may use the irrigation system individually for their own plots of land; such an entitlement does not in itself conflict with the idea of group ownership. However, if the farmers have such an individual entitlement, it does not count as an individual property right. Recall from the previous section that, to count as a property right, it must be protected by a *property rule*. This means that the right may not be changed without the right holder's consent. In a group ownership regime, however, individual entitlements are defined, authorised, and *subject to change* by the group, independently of whether the right holder consents to this or not. Abstracting from this example, one can say that although members may have rights within a group ownership regime, these are always collectively determined by the members of a group and therefore not protected by a property rule. This is why group ownership regimes cannot be reduced to individual property rights.

Another way of putting this point is to say that the property rights in a group ownership regime are group rights, not group-differentiated

rights.[95] Group-differentiated rights are individual rights that are beholden to the members of a specific group. They are group-differentiated, in the sense that non-members do not have these rights, but otherwise they are held and exercised by individuals. Group rights, by contrast, are held and exercised collectively. They are irreducibly the rights of a group, not of its separate individual members.[96] The difference between these two types of rights can be made intuitive with the help of the example of the farmers and the irrigation system. A researcher studying the use of this irrigation system might conclude that the farmers had group-differentiated property rights to withdraw water from it. The researcher might think: "only the members of a particular group have a right to withdraw water, but the rights to use it are still individual, not group-based." This analysis would miss the fact, however, that the authority to decide what may be done with the irrigation system is not held by any of the individual farmers, or by any external party, such as a government. It belongs to the group of farmers as a whole. Though no individual farmer can decide what may be done with the object, they do have that right as a collective.[97]

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[95] See on this distinction Peter Jones, 'Cultures, Group Rights and Group-Differentiated Rights', in *Multiculturalism and Moral Conflict*, ed. Maria Dimova-Cookson and Peter Stirk (London: Routledge, 2009), 38–57; and Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 2003), 45-48.

[96] Jones, 'Cultures'.

[97] One might think that the authority of the group is still reducible to group-differentiated yet individual rights because it's still *individuals* who have to decide together on how an object may be used, possibly by using their individual voting rights in the group ownership regime. If this line of reasoning would be pursued consistently, then that would also mean that the right of a parliament to adopt legislation is ultimately reducible to the individual voting rights of parliamentarians. Similarly, the rights of a choir would be reducible to the rights of individuals to sing. But that cannot be right. It is only a parliament – that particular type of collective – that can adopt legislation, and only a choir – not the individual singers – that can partake in choir competitions. Speaking more generally: there are rights that a group has that are irreducible to those of individuals, even if the

This example of a researcher mistaking group-authorised individual entitlements for individual *property* rights is only partly hypothetical. In fact, the focus on individual property in political theory may hamper the analysis of existing property arrangements. We can see this in an important article by Lawrence Becker. Upon finding that societies everywhere recognise individual entitlements to objects, Becker draws the conclusion that individual *property* rights exist in every society.[98] I have no view on whether this is true or not. What I do want to caution against, however, is the quick equivocation between individual rights in an organisation based on group ownership, and individual property rights. The latter are fixed and protected by law as transmissible rights that bind everyone in a society, and that cannot be violated or changed without the holder's consent. The former are rights defined by a group and can be modified by this group without requiring a change in the law or the individual permission of the person

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exercise of these rights inevitably involves individuals taking concerted action. See on this Peter Jones, 'Collective Rights, Public Goods, and Participatory Goods', in *How Groups Matter: Challenges of Toleration in Pluralistic Societies*, ed. Gideon Calder, Magali Bessone, and Federico Zuolo, Routledge Studies in Social and Political Thought 86 (New York: Routledge, 2014), 52–72. Note that this does not mean that I think groups have *moral* rights or that groups are an ultimate unit of moral concern. On my view, only individuals can occupy this position. But that says nothing about the conceptual possibility that groups hold legal rights.

[98] Becker, 'Moral Basis', 199. Becker calls it private rather than individual property, but it would appear from his article that he thinks these two concepts are synonymous (as indeed many theorists do). He claims that "The liberty to pursue egoistic goals, and the liberty to acquire and keep both territory and other valuables, will be seen as fundamental human needs. Such needs create a powerful presumption in favour of the justifiability of social institutions (e.g. systems of private property rights) that satisfy those needs. Not all (proposed) human needs create such a presumption, of course. If there are dispositions *toward altruism, toward sharing, toward cooperation*, and toward the achievement of intimacy in social relationships, then the liberties to act out those dispositions will also be fundamental human needs – needs that may create presumptions in favour of social institutions that *conflict* with private property," 200 (emphasis added).

holding the rights. These rights also bind people outside the group, but only because it is the group that has the status of an owner. It can readily be seen that the position of an individual is radically different in these two cases. This is to say nothing yet of the positions of groups in both cases, which are radically different as well.

On my conception of group ownership, the group's authority is democratically organised. I base the democratic character of my conception of group ownership regimes on a normative, rather than on a conceptual argument. I have no intention, then, of arguing that only democratically taken decisions can be attributed to groups.[99] The dissertation as a whole will explain why it's imperative that group ownership is democratically organised, so that a full defence of this characteristic will only be complete towards the end of the book. But to run ahead a little, the most important argument will be that only a democratic group ownership arrangement can secure non-domination for its members. That is, only a democratic arrangement organises power in a way that secures the equal status of every one of its members, a status they hold as beings capable of practical reason.

It will become clearer in chapters four and seven what sort of democratic decision-making structure is necessary for non-domination and how a group ownership regime can implement such a structure. Here I just

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[99] It might be possible to make a conceptual argument for the democratic character of group ownership that is not based on a conception of collective agency, but on the distinction between group ownership and split ownership. If some members have far more formal decision-making power than others, then we should not speak of a group owning anything at all. For at that moment, the positions of the members become so *qualitatively* different, that we would do better to speak of *split ownership*; an arrangement in which multiple entities (in this case individuals) have different property interests in the same object. This is distinct from my concept of group ownership, which is about one entity (a group) holding the authority to decide what may be done with an object. I will not rely on this argument, however.

want to note a brief point that is important for understanding my conception of group ownership, which is that this conception can accommodate decision-making structures with majoritarian rules as well as structures in which member-owners opt for a unanimity requirement (and anything in between, like qualified majority schemes). The choice between these different decision-making rules doesn't matter from the perspective of my definition, as long as it is a choice that the member-owners make themselves. A property arrangement does not count as a group ownership regime if a unanimity requirement is based on rights that individuals have independently of the decisions of the group. Say that the farmers from the earlier example take collective decisions on the use of the irrigation system, and that these decisions only come into force when unanimous. The basis for that requirement might be that all farmers individually own a physical part of the system and can therefore block decisions that they don't like. Or perhaps the farmers have precisely delineated individual property rights to use the system, in which case it would only be with the permission of each individual farmer that the rights to the resource could be changed. In neither case would such unanimous decisions point to a group ownership regime at work. The *individual* farmers' rights would in this case not be set by the group, but independently by law.

Understanding the concept of group ownership in this way helps to define group property. As long as a limited property interest is characterised by a group deciding on the individual entitlements of all of the members, where it is not up to the separate individuals whether their entitlements will be changed, we can speak of group property. It may be that the rights of the group vis-à-vis non-owners are highly restricted, but whatever this restricted interest amounts to, it still belongs to the group and not to the individuals separately.

C. The link with common property regimes

I model the idea of sharing in common partly on the sharing practices that characterise common property regimes (CPRs), as these have been described by Elinor Ostrom.[100] A CPR is a governance arrangement in which a bounded group of interdependent users of a resource manage that resource themselves.[101] "Use" here refers to the appropriation of resource units (such as water, fish, or wood) from a resource system (such as, respectively, a groundwater basin, inshore fishery, or a forest).[102] Ostrom developed her description of such self-governing sharing arrangements in her book *Governing the Commons*, upon analysing a myriad of case studies where natural and agricultural resource systems were not managed by governments or owned by hierarchical business corporations or individuals, but were managed by a group of resource appropriators. They not only shared a resource in the sense that they all used it and derived resource units from it, but they also organised themselves and set up systems of rules to specify how users could appropriate from the resource, which tasks they had to perform in maintaining them, and more.[103]

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[100] Two things are important to note on this term. Firstly, I shall be using the abbreviation of CPR for another term than Ostrom used it for in her book, *Governing the Commons*. There, it refers to a common-pool resource, which is a resource from which it is difficult to exclude people and that is highly rivalrous in use (see also the definition I provide at the end of this section). See Ostrom, *Governing the Commons*, 13. Secondly, in *Governing the Commons*, Ostrom did not yet use the term common property regime consistently to describe the self-governing sharing arrangements she studied, but she did do so in her later articles (in her book these arrangements went by many terms). See e.g. Schlager and Ostrom, 'Property-Rights Regimes'; Ostrom, 'Private and Common Property Rights'.

[101] Ostrom, *Governing the Commons*, chap. 1.

[102] Ostrom, 30–31.

[103] To clarify: what is shared in a CPR is the resource system, not the resource units. Once appropriated, these are usually individually owned. As Ostrom puts it: "[a] resource system can be jointly provided and/or produced by more than one person or firm. The actual process of appropriating resource units from the [common-pool resource] can be

In particular, Ostrom describes how CPRs are organised in three levels of rules.[104] The first level concerns operational rules, meaning the rules governing how individual commoners (members of a CPR) can use a resource and which contributions they had to make to its maintenance. This includes monitoring duties – compliance with the rules that apply inside a CPR are monitored by the commoners themselves. Concrete examples of operational rules are rules specifying how many animals a commoner can bring to graze on a common pasture, what sort of fishing gear they are allowed to use in a common fishery, when they have to work on cleaning the common irrigation system, and so on. These operational rules are shaped by collective decisions made by the group. These decisions are themselves subject to a second system of rules, namely collective choice rules, that stipulate the appropriate ways in which the group can change operational rules. The third tier is made up of constitutional rules that determine who is eligible to take part in collective choice procedures and how collective choice rules can be made and changed.

The parallel with my concept of group ownership will hopefully be clear. The three-tiered system in CPRs shows a group determining the individual entitlements of its members. The operational rules specify what each member's rights and responsibilities are with respect to a resource. They determine how members can use and obtain an income from the resource. These rules are given shape by the entire group, according to collective choice rules that the members also set up themselves. In addition,

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undertaken by multiple appropriators simultaneously or sequentially. The resource units, however, *are not subject to joint use or appropriation*. The fish harvested by one boat are not there for someone else. (...) Thus, the resource units are not jointly used, but the resource system is subject to joint use." Ostrom, 31.

[104] Ostrom, *Governing the Commons*, 52. See also Edella Schlager and Elinor Ostrom, 'Property-Rights Regimes and Natural Resources: A Conceptual Analysis', *Land Economics* 68, no. 3 (1992): 249.

Ostrom writes that long-enduring CPRs also have a recognised degree of authority to determine themselves not only what their members, but also what external actors may do with the resource.[105] In short, in a CPR, a group of appropriators has the authority to decide what may be done with an object, both internally by the members, and externally by everyone else.

What I have tried to do in analysing CPRs is to distil the principles that organise the way in which commoners share an object. The central principle, which also forms the core of my notion of sharing in common, is that a collective determines what may be done with an object. Approaching CPRs in this way is different from asking which actual institutional arrangements commoners use to organise themselves and support their ability to manage a resource. In fact, the ways in which members of CPRs organise themselves differs very much from one CPR to the other. They set up cooperatives, rely on informal norms, licensing systems, and other institutions.[106] Some authors even model CPRs as organisations based on contracts between resource users.[107] What can be concluded from this, I believe, is that users of different types of resources in different parts of the world have creatively made use of the legal and other possibilities that were available to them to realise a similar outcome: namely a sharing practice in

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[105] Ostrom, *Governing the Commons*, 90, 101.

[106] As an example of a CPR that is *partly* organised as a cooperative, see the case of the inshore fishery in Alanya, discussed in Ostrom, 19, originally researched by Fikret Berkes, 'Marine Inshore Fishery Management in Turkey', in *Proceedings of the Conference on Common Property Resource Management* (Washington D.C.: National Academy Press, 1986), 63–83. For a study of the role of informal norms in natural resource management, see Robert C. Ellickson, *Order without Law: How Neighbors Settle Disputes* (Cambridge, Mass: Harvard University Press, 1991).

[107] Dean Lueck, 'Common Property as an Egalitarian Share Contract', *Journal of Economic Behavior & Organization* 25, no. 1 (1994): 93–108; Thráinn Eggertsson, 'Analyzing Institutional Successes and Failures: A Millennium of Common Mountain Pastures in Iceland', *International Review of Law and Economics* 12 (1992): 423–37.

which a group of interdependent resource users decide for themselves, collectively, what may be done with their resource. For my own purposes, then, I am not so much interested in the different legal and informal arrangements commoners actually use to realise this way of sharing, but in the more abstract principles that seems to animate it. I model the idea of sharing in common on these principles. My concept of group ownership, in turn, is the property arrangement that I believe is most faithful to the idea of sharing in common.

Having said that, there are also important differences between CPRs and my conceptualisation of group ownership. First, I differ from Ostrom and other CPR students insofar as I assign the status of property rights only to the rights of the group, and not to the entitlements of individual members to use the resource system.[108] This is in contrast with Lee Anne Fennell's analysis of CPRs, where the presence of individual entitlements is taken as evidence of a *mixed* property regime that combines individual and group property rights.[109] It is also different from the conceptualisation developed by Ostrom and Schlager, who conceptualise the different types of CPRs they find in fisheries in terms of the entitlements of *individual* members to alienate, exclude, manage, withdraw from and access a resource.[110] What makes it common property, it would seem, is merely that these rights are held by other users as well. A final contrasting case are the analyses of David Lueck, Thrain Eggertsson, and indeed Ostrom herself at times, who conceive of CPRs as egalitarian sharing contracts, suggesting

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[108] To be sure, if individuals are allowed by the group to appropriate resource units for themselves, then these units do become their individual property. I mean to say here that the rights of individuals to the resource system are not property rights.

[109] See e.g. Lee Anne Fennell, 'Ostrom's Law: Property Rights in the Commons', *International Journal of the Commons* 5, no. 1 (2011): 9–27.

[110] Schlager and Ostrom, 'Property-Rights Regimes'; Ostrom, 'Private and Common Property Rights'.

that it is individual property rights that allow them to engage in these contractual agreements.[111]

Some of these conceptualisations may better fit the legal reality of CPR organisation than my concept of group ownership does, in that they better describe what sort of institutions commoners are actually using to protect their rights. As I said, however, my aim is not to explain which kinds of institutions commoners use to achieve their particular method of sharing, but to develop a property institution that organises rights and obligations in a way that is in line with sharing in common. And the conception that best fits with that goal is not that of individuals making a contract, nor of individuals having the same (group-differentiated) property rights to an object, nor even of a mixed property regime (at least insofar as it concerns property in the resource *system*). It is rather a conception in which only the group has property rights with respect to the system. The group has the authority of an owner, and individual entitlements of the group's members are derived from that authority.

Another difference has to do with the centrality I award to *equal* collective decision-making rights. Although Ostrom is concerned with self-governing communities of resource users, self-governance is not synonymous with democratic governance on her understanding of the term. This becomes apparent from her discussion of the best practices for long-term survival of CPRs. She argues that CPRs have a good chance of enduring if – among other things – "[m]ost individuals affected by the operational rules can participate in modifying the operational rules."[112] Such a collective choice rule is beneficial because CPR members are then

[111] Lueck, 'Common Property'; Eggertsson, 'Analyzing'; Ostrom, 'Private and Common Property Rights'.
[112] Ostrom, *Governing the Commons*, 90.

> "better able to tailor their rules to local circumstances, because the individuals who directly interact with one another and with the physical world can modify the rules over time so as to better fit them to the specific characteristics of their setting."[113]

The discussion of this principle shows that internal democratic governance is a good strategy for commoners to adopt, but it is not a defining feature that sets CPRs apart from other property arrangements and types of governance. Self-governing means not being governed by an external party. By contrast, it is a central part of my conception of group ownership that individual members have equal rights to participate in collective decision-making. Note that this doesn't mean that everyone who uses a resource must have this right. It may be, after all, that the group decides to share its property with outsiders who are not granted decision-making rights. This is no more a derogation from group ownership than sharing individual property is a derogation from individual ownership.

A final point of clarification on the relation between group ownership as sharing in common and CPRs concerns the scope of both concepts. Research on CPRs is often concerned with natural and agricultural resources that have the characteristics of common-pool resources. These characteristics are that use of the resource is highly rivalrous, while exclusion from use is very difficult.[114] This focus does not, I believe, show the boundaries of what can be covered by CPRs; arrangements in which people jointly use and collectively control other resources could also plausibly be described as CPRs. Nevertheless, it is just as well to clarify that my concept of group ownership is not restricted either to cover ownership of

[113] Ostrom, 93.

[114] Ostrom, 30. See also Elinor Ostrom, 'How Types of Goods and Property Rights Jointly Affect Collective Action', *Journal of Theoretical Politics* 15, no. 3 (2003): 239–70.

natural resources or of common-pool resources, but can be extended to all kinds of objects.

2.5 The distinctive features of sharing in common

To further clarify what sharing in common and group ownership look like, it will be helpful to contrast it with a few other ideal typical forms of sharing and the property regimes on which these types of sharing are based. In this way I can bring out the distinctive features of group ownership that I will defend in the chapters to come. The contrasting types of sharing are identified as such because they involve multiple persons having rights with respect to the same object. They differ from sharing in common insofar as these rights are not determined by binding, collective, and democratic decisions. I will show very briefly why this can make them less attractive arrangements than sharing in common realised through group ownership. Two central considerations keep returning to the fore: sharing in common can facilitate cooperation, and it can empower persons by placing them in control of the rules that govern their lives.

A. Collective decision-making

Group ownership as the instantiation of sharing in common is different, firstly, from an *open access regime*. In the literature on natural resource management, open access regimes are defined as arrangements where there is no or next to no regulation on how a natural resource may be used.[115] An open access regime is a type of sharing in the minimal sense that multiple people may use a resource, in the sense that they have no obligation not to, but – unlike in the case of sharing in common – there is no structure for

[115] Thráinn Eggertsson, 'Open Access versus Common Property', in *Property Rights: Cooperation, Conflict, and Law*, ed. Terry Lee Anderson and Fred S. McChesney (Princeton: Princeton University Press, 2003), 73–89.

collective decision-making in place. In addition, there is no limit to *who* may use a resource. The high seas could quality as a resource that falls under this type of arrangement. There are no property rights at the basis of open access regimes; in fact, it might be more accurate to describe them in terms of the absence of property rights, along with other institutions that might regulate how a resource is used.

Open access is not the only type of sharing where a mechanism for taking collective decisions is absent, however. A more interesting type of sharing to contrast with sharing in common, is where individuals in *bounded* communities all have the right to use an object, but they have no right to (collectively or otherwise) determine *how* an object may be used. It might be argued that the institution of native title in Australia falls under this definition. Native title gives aboriginal communities rights to make use of land in certain ways, namely in those ways that are in keeping with their customs and traditions.[116] They hold these rights exclusively; other citizens don't have the same rights. However, the members of aboriginal communities do not have a right to determine for themselves how to use their land, and are therefore unable to change their land-related customs.[117]

Though my aim here is mainly to bring out the difference between sharing in common and these other types of sharing, it's worth noting briefly already that a democratic, collective decision-making arrangement on how an object may be used, would probably be an improvement in the case of the high seas and in the case of land held by aboriginal communities. In the case of the high seas, it would mean that there is some regulation of what happens and that no one would have more of a right to determine

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[116] Richard Bartlett, 'Humpies Not Houses, or the Denial of Native Title: A Comparative Assessment of Australia's Museum Mentality', *Journal of Australian Property Law* 10, no. 2 (2003): 83–107.
[117] Bartlett.

what this regulation would look like than anyone else. It would help people to preserve the high seas, but in a way that would be equally controlled by everyone. In the case of native title, it would mean that aboriginal communities could enjoy self-determination as a living community, that is, as a community that changes its ways as its members see fit. This would be a better situation than the one they are in now, where ways of using land are tested by comparing them with the Court's idea of what counts as traditional. This, as Richard Bartlett has argued, is an arrangement fit for museums.[118] It is not fit, however, for humans who should be in control of their own lives. They should not be bound down by the traditions their ancestors once had or were thought to have, but should be able to use their own insights to govern their community together.

B. Binding decisions

Another type of sharing is characterised by individuals voluntarily giving other people access to their individually owned property. I will refer to this as *voluntarist sharing*. It often takes place on a highly informal level, as when I lend you my car or book. In addition, and more interesting for the present purpose, voluntarist sharing also takes place in the more structured environment of collaborative consumption and the non-profit sector of the platform economy.[119] Here, individuals may share their property with strangers, but in a way that is governed by norms that apply to and are sometimes also created by the entire community of people engaging in the sharing. The shared object can be anything from a place to sleep (in couch surfing), to a place in a car in a carpooling arrangement for strangers, or

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[118] Bartlett.

[119] See on this Juliet B. Schor and Connor J. Fitzmaurice, 'Collaborating and Connecting: The Emergence of the Sharing Economy', in *Handbook of Research on Sustainable Consumption*, ed. Lucia Reisch and John Thøgersen (Edward Elgar Publishing, 2015), 410–25.

excess capacity on people's personal computers used for collaborative projects.[120] In his study of such sharing arrangements, Yochai Benkler shows how the participants of a carpool arrangement between strangers had different norms that they created themselves to ensure people's safety and to ensure the fairness of the arrangement in terms of who is picked up first, and so on.[121] This type of sharing is, then, at least partly governed by collectively defined rules.

The difference with sharing in common, however, is that voluntarist sharing, even when governed by collectively defined norms, is not characterised by *binding* collective decisions in the relevant sense of the word. An individual may not go against the norms laid out by a carpool arrangement, but they can at any moment withdraw their car from the pool if they so please. When sharing something in common, however, individuals may choose to leave the arrangement, but it is not up to *them* whether they then retain any interest with respect to the resource; this is up to the group. The group defines what the rights of individuals are, and in that sense its decisions are binding.[122]

In this case, too, I would like to briefly indicate what makes the distinctive characteristic of sharing in common an attractive one. A voluntarist sharing arrangement is only as equal as the individual ownership

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[120] Yochai Benkler, 'Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production', *The Yale Law Journal* 114, no. 2 (2004): 273–358.

[121] Benkler.

[122] It's for the same reason that my conception of group ownership is different from certain forms of co-ownership in common law, such as tenancy in common. As I said in section four, under this regime individuals have an alienable share to what is in itself an indivisible good. Individuals can alienate this share without the permission of the group. It follows that their individual rights with respect to an object are not entirely defined by the group; they are set by law. In that sense, then, the group's decisions are not binding. See Lawson and Rudden, *Law of Property*, 92–93.

arrangements allow it to be. If people own similar things individually, it is likely that they can take decisions in a way that accords an equal voice to everyone. Even in that case, however, decision-making may be subject to hold-out problems, where a few individual owners refuse to cooperate with the rest. If people's individual property rights are not similar, moreover, then there may be salient inequalities in the bargaining process, leaving some people with greater power over the rules of a sharing arrangement than others. These features make it the case that, firstly, individuals are not always able to cooperate, and, secondly, they may not always do so on equal terms. By contrast, in a democratic sharing in common arrangement, when that is characterised by majority rule, cooperation is facilitated and people have an equal opportunity to influence the rules that govern their cooperation. The question to be answered in the following chapters is when this facilitation of cooperation between equals is more valuable than individual control over individually owned goods.

C. Democratic decision-making

A sharing arrangement can allow multiple people to make use of or derive income of an object under collectively determined rules, and still fail to resemble sharing in common. This is the case when the rules are determined in a hierarchical way, with certain group members having no or no equal say on how an object may be used. When the authority of the group-owner is not organised democratically, the regime does not realise sharing in common. One can think here of CPRs where some resource appropriators have more power than others. Bina Agarwal describes cases of CPRs in forests in India, for example, where women were excluded by men from important meetings on forest use or were silenced or not taken seriously when they

did manage to speak up in such meetings.[123]

The problems with this hierarchical arrangement are manifold, but I will only note two here. Firstly and most importantly, women were in this case made dependent on men in a non-reciprocal way. They had to depend on the men's good will to keep the forest in good enough order and to devise use-rules that fitted the particular needs that women – as prime caretakers in that community – had when it came to forest use. Such dependence made the women less than the men's equals. They could not secure the conditions necessary to meet their needs for themselves but had to hope that others set up rules conducive to that aim. On some occasions the rules really didn't fit women's needs, and they were punished for breaking rules they had had no say in. Secondly, the unequal ability to influence decisions meant that women's particular knowledge was not used when designing rules. Agarwal hypothesises that this meant that rules were, on the whole, less well fitted to the local environment than they could be. As women used the forest in a different way from men, they had important specialised knowledge to bring to the table that could make rules on forest use more effective. In short, hierarchical decision-making in this case might also have hampered the forests users in achieving high benefits from cooperation.

2.6 Conclusion

Group ownership is an institution that realises a particular way of sharing, namely sharing in common. When people share an object in common, they use and derive an income from that object according to collective, democratic, and binding decisions. Group ownership realises this form of sharing by allocating the authority on how an object may be used with a group,

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[123] Bina Agarwal, 'Participatory Exclusions, Community Forestry, and Gender: An Analysis for South Asia and a Conceptual Framework', *World Development* 29, no. 10 (2001): 1623–48.

and by ensuring that this authority is democratically organised. This results in a sharing practice that places individuals in a unique normative position when compared with other sharing practices. I have shown, albeit in a very intuitive and rough way, what makes this normative position a prima facie attractive one. My conception of group ownership can facilitate cooperation in certain cases, while also empowering the people engaged in that cooperation, so that they relate to one another as equals and not in a hierarchical way. In the later chapters of my dissertation, it will become clear that these two features contribute to and are constitutive of member-owners' non-domination, and that this makes group ownership a justified and highly valuable type of property. This argument, however, presupposes that property institutions are indeed defensible because and to the extent that they contribute to and are constitutive of a certain ideal. It presupposes, that is, something about the form that a defence of property should take. I will defend this presupposition in the next chapter, where I will analyse the different shapes of theories justifying property.

3. The Shape of a Defence of Property

3.1 Introduction

My argument for group ownership builds on substantive views on what sort of good ought to be secured through property institutions, as well as on methodological views about the argumentative form that a defence of property institutions should take. The substantive commitment is to the ideal of non-domination, an ideal that I will outline and defend against objections in the next chapter. The present chapter, however, is concerned with the presupposed methodological commitment in my argument. This is the stance that a property institution can be justified only by arguing that it *causally promotes* an important value, interest, or protection of a right, or that it is *constitutive of* a value, interest, or right.[124] Put differently, plausible justifications of property can be instrumental in nature, and take the following form: "property institution *x* is justified because its effects contribute causally to the realisation of *y*;" or they are constitutive, in which case

[124] One might object that these are different justificatory strategies rather than different *methods* in political theory. I take no position on this issue. This chapter uses terms such as "method," "approach," and "form of argumentation" interchangeably, as a convenient way of clarifying the distinction between a theory's form or argumentative strategy and the substantive commitments that fill this form.

their shape looks like this: "property institution *x* is justified because it constitutes the whole or a component of *y*;" or they combine both types of arguments, which I shall do in later chapters.

The commitment to these two forms of argumentation may seem so intuitive that it is hardly registered as such. Yet the history of property theory is rife with arguments that at least *appear* to take neither form. Arguments that rely on the notions of historical entitlement and principles of just acquisition, for example, don't claim to defend property institutions for their consequences or because they are somehow constitutive of another value. Particular property rights are justified, on such accounts, because they were obtained through some process with which people can rightly acquire them and transfer them to others. In addition, libertarian theorists claim that people are born with natural or – as I shall call them – *original* property rights that exist prior to any acquisitive act and quite apart from considerations concerning their instrumental or constitutive value.[125] On their view, property rights form the first and not the subservient principles of justice.[126] John Locke famously combined the ideas of historical entitlement and original property rights when he argued that the world is originally owned in common by all, but that each person owns themselves, and that they can gain private property in the world through

[125] I use the term "original" rather than "natural" to distinguish this approach from property defences that rely on an idea of natural rights but don't identify property as one of these rights. Eric Mack, for example, speaks of a natural "ur-claim" to live our life in our own way, which he believes can only be protected by giving individuals exclusive rights over a thing. The right to liberty is the natural right in this case, and individual ownership an institutional means to realise it. See Eric Mack, 'The Natural Right of Property', *Social Philosophy and Policy* 27, no. 1 (2010).

[126] Peter Vallentyne, 'Introduction: Left-Libertarianism - A Primer', in *Left-Libertarianism and Its Critics: The Contemporary Debate*, ed. Peter Vallentyne and Hillel Steiner (New York: Palgrave, 2001), 1–20.

the acquisitive act of labour.[127]

Were we to apply the approaches of historical entitlement and original property rights to the analysis of group ownership, the defence of this institution – and the institution itself – might look very different. This is true independently of what the substantive commitments look like; just the employment of a particular form of justification already closes off certain ways of defending and shaping the idea of group ownership. For example, if the historical entitlement view is correct, then group ownership is only justified where a historical chain of acts of acquisition and transfer have led to it. On this view, it will be quite irrelevant whether this form of ownership secures non-domination, for example, or indeed whether it would promote any other value, like community feeling, human flourishing, or individual autonomy. It's not any particular value that the historical entitlement view objects to, but the very *form* that instrumental and constitutive theories of justification take.

It is therefore important to consider these alternative methods of justification and ask whether they are plausible ways of defending property institutions. In this chapter, I argue that constitutive and instrumental approaches together encompass all plausible arguments concerning the defence and evaluation of property institutions. Neither type of argument can account for all that is normatively relevant about property on its own, so that a complete assessment (which I don't pretend to provide) would always include both instrumental and constitutive arguments. However, each of these approaches *is able* to defend property institutions. This is – in broad strokes – the argument of sections two and three. By contrast, the alternative views based on historical entitlement and original property rights are either incapable of defending property institutions on their own,

[127] Locke, *The Second Treatise*, paras 25–51.

or do not differ from instrumental or constitutive theories methodologically. This will be the argument of sections four to seven.[128]

3.2 Instrumental and constitutive defences

To understand the instrumental and constitutive views, it will be helpful first to expand on what they are supposed to be views about. In normative political philosophy, property theories are concerned with the justification and evaluation of property institutions. Property imposes obligations on everyone in a society (it establishes rights *in rem*), and therefore stands in need of a justification. Many normative political theories advance arguments as to why a certain type of property is desirable or undesirable, based on its relation to goods that are considered important.[129] (Goods is a convenient stand-in term here, meant to capture rights, interests, benefits, goals, and values, which can be defined individually, collectively, or aggregately.) In addition, these theories determine whether the creation of this property type is required, merely permitted, or impermissible on a favoured account of justice, and under what conditions – related to the

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[128] This chapter covers multiple theories, all of which are complex enough to have entire books devoted to them. I believe this shorter treatment is justified, however, because my analysis is restricted to the question of the formal methods that these theories adopt, rather than to all the different substantive arguments that are developed using such methods. In addition, in my criticism of historical entitlement and original property type views I restrict myself to analysing and critiquing those theories only insofar as they depart from the constitutive and instrumental approaches.

[129] This description does not include historical entitlement theories like the one developed by Robert Nozick in his *Anarchy, State, and Utopia* (New York: Basic Books, 1974). As I noted in the introduction, such theories are not concerned with the way property helps secure certain interests or values. Instead, Nozick aims to define the conditions under which it would be (im)permissible to restrict anyone from acquiring property (see *Anarchy*, 174-182). Theories of original property rights (such as self-ownership and world-ownership theories) might also be thought to differ from this description, but as I will show later on in this chapter, the difference is often illusory.

distribution and/or acquisition of this type of property – that is so.[130]

It will be seen immediately that the *content* of such arguments will vary widely, depending on the property institution that is at stake, the identified goods, and the theory of justice that is adopted. But these arguments can also take on different *shapes*, depending on how they conceive of the link between property and the moral values and principles that underly property's justification and evaluation. The relevant question here is not "*What* makes property desirable?" but "*How* is property desirable?" Or more specifically: how do property institutions relate to the goods that make them of value?

Instrumental arguments conceive of this relation differently from constitutive arguments. The principle at work in an instrumental theory is that property institutions must be evaluated on the basis of their consequences. The link between the institution and its value conferring aspects is causal; through its contingent empirical effects, property promotes a certain good. These effects are contingent even if in the world as we know it, they are very likely to always obtain. This is because property is not a component of the good. It might be difficult to achieve basic nourishment for everyone in a world without property, for example, but it is not part of the idea of basic nourishment that people have property rights. It is in principle possible to be nourished without any institution, let alone that of property.

Instrumental theories can be formally rendered in the following way, where each element points to a different choice that a theorist has to make:

[130] By "account of justice" I don't mean to refer only to theories of distributive justice. It refers instead more generally to accounts about the virtues that institutions, relationships, and policies must meet to be justified.

1. Property institution *x* is
2. uniquely/not uniquely
3. permitted/required/impermissible,
4. because of its possible/probable/certain empirical effects
5. on the good *y*,
6. defended in theory *z*.

Many theories take this shape. Utilitarians and their intellectual heirs are straightforward adherents of the instrumental approach. They defend property institutions because and to the extent that these contribute to optimum welfare levels. David Hume and Jeremy Bentham laid the foundations for such arguments, by claiming that private property was crucial for stability and prosperity.[131] The modern economics of property rights and law-and-economics movements have formalised such views and elaborated on them in significant detail.[132] Their aim is to establish which property institutions are the most efficient in different given environments. Interestingly enough, many authors working in this field have by now abandoned the classic assumption that individual ownership is always the most efficient property institution. In fact, we find influential instrumental defences of property arrangements that are very much like my concept of group ownership, demonstrating that group-based property is sometimes

[131] David Hume, *A Treatise of Human Nature* (London: Penguin Books, 1985), bk. 3, part 2, section 2.; Jeremy Bentham, *Principles of the Civil Code* (Edinburgh: William Tait, 1843), pts 1, chapter 8.

[132] For three classic papers in these connected fields, see Harold Demsetz, 'Toward a Theory of Property Rights', *The American Economic Review* 57, no. 2 (1967): 347–59; Smith, 'Exclusion versus Governance'; and Ostrom, 'How Types'. For a contemporary introduction to the field of the economics of property rights, see Terry Lee Anderson and Fred S. McChesney, eds., *Property Rights: Cooperation, Conflict, and Law* (Princeton: Princeton University Press, 2003).

superior to other institutions in terms of its effects on welfare.[133]

Utilitarian arguments are instrumental at the highest order level. Here, to justify a property institution it is enough to show that it promotes a value (or promotes it optimally). Alternatively, instrumental arguments can also take a lower order position in a broader framework. In a liberal contractualist framework, to give but one example, an argument defending property will demonstrate how property contributes to a particular value, but this demonstration will not be enough to actually justify it. It would be necessary to ask, in addition, whether the argument would be accepted by citizens deliberating together under conditions of equality. If the value is not one that such citizens would want to promote, or if the promotion of this value would lead to side-effects to which citizens would not submit, or if it requires means that are deemed unacceptable, then the argument fails to justify property. Such arguments are instrumental on a first-order level and are restricted by the second-order commitments to liberal contractualist principles. They partly take the shape of "*x* is good because it promotes *y*," but we must imagine that the arguments are offered to citizens deliberating under conditions of equality, who then have to decide on their acceptability. In the six point-schema I just presented, the precise contractualist defence of the relevant good would take place under step six.

In addition to utilitarian theories, there have also been many liberal and Hegelian instrumental arguments in property theory. These defend

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[133] There is a vast body of literature on the relative efficiency of sharing arrangements, of which I will only cite a few classic articles here, related only to sharing arrangements in natural and agricultural resources: Ciriacy-Wantrup and Bishop, 'Common Property'; Netting, 'What Alpine Peasants'; Netting, *Balancing on an Alp*; Feeny et al., 'The Tragedy'; Rose, 'The Comedy of the Commons'; Ostrom, *Governing the Commons*; Elinor Ostrom, Marco A. Janssen, and J. M. Anderies, 'Going beyond Panaceas', *Proceedings of the National Academy of Sciences* 104, no. 39 (2007): 15176–78; Ostrom, 'How Types'; Ellickson, 'Property in Land'; Smith, 'Exclusion versus Governance'. For a helpful introductory essay, see Eggertsson, 'Open Access versus Common Property'.

property for other reasons than (just) its contribution to welfare. Theorists have been interested in the importance of private property for liberal negative freedom, political liberty, personhood, autonomy, and human flourishing.[134] Insofar as their views conceive of private property as an expedient rather than a conceptually necessary way of achieving these values, they display an instrumental character.

The effect of private property on negative liberty forms a good illustration. As is well known, liberal negative freedom consists of the absence of interference; I am free insofar as I am not hindered to engage in my actions.[135] Private ownership promotes the negative liberty of owners, though it takes such freedom away from the non-owners.[136] Private home ownership in particular seems to carve out a space in which others may not interfere with the owner's actions. By contrast, homeless persons face hindrances to their actions all the time.[137] An argument defending home ownership because of its positive effects on people's negative freedom is an instrumental argument. This is so because we can imagine a person enjoying

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[134] E.g. Hegel, *Elements of the Philosophy of Right*, paras 40–53; Milton Friedman, *Capitalism and Freedom* (Chicago: Chicago University Press, 1962), chap. 1; Margaret Jane Radin, 'Property and Personhood', *Stanford Law Review* 34, no. 5 (1982): 957–1015; Margaret Jane Radin, 'Residential Rent Control', *Philosophy & Public Affairs* 15, no. 4 (1986): 350–80; Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988); Jeremy Waldron, 'Homelessness and the Issue of Freedom', *UCLA Law Review* 39 (1991): 295–324; Christman, *The Myth of Property*, chap. 9; John Christman, 'Distributive Justice and the Complex Structure of Ownership', *Philosophy & Public Affairs* 23, no. 3 (1994): 225–50; Gregory S Alexander, 'The Social-Obligation Norm in American Property Law', *Cornell Law Review* 94, no. 4 (2009): 745–820; Gregory S Alexander et al., 'A Statement of Progressive Property', *Cornell Law Review* 94, no. 4 (2009): 743–44; Dagan, *A Liberal Theory of Property*.

[135] Isaiah Berlin, 'Two Concepts of Liberty', in *Liberty*, ed. Henry Hardy (Oxford: Oxford University Press, 2002), 168–200.

[136] G. A. Cohen, 'Illusions about Private Property and Freedom', in *Issues in Marxist Philosophy IV*, ed. J. Mepham and D.H. Ruben (Brighton: Harvester, 1981), 225–28.

[137] See Waldron, 'Homelessness'.

freedom from interference without actually owning any property. All that is required for this type of freedom, after all, is simply that others *happen* to refrain from interfering with you, not that they are *restricted* from doing so (let alone that they are so restricted because of property provisions).[138] Yet I may justifiably believe that on average, people are far less likely to interfere with me when I own a home than when I don't, and so the instrumental argument stands.

A constitutive defence, by contrast, does not rely on property's empirically verifiable consequences. Instead, such arguments conceive of property institutions as the good in question, or as a part of a good. Property is desirable, on this view, because it is *constitutive* of a certain good. This makes constitutive defences non-contingent; they do not only apply in the world as we know it, but across all possible worlds.

To better understand this type of argument, it will be helpful to expand a little on an example of a constitutive argument outside of the field of property. Republicans rely on arguments of this kind in their discussions on non-domination. Non-domination consists of the guaranteed absence of arbitrary interference.[139] I am dominated not just when I'm actually interfered with on an arbitrary basis, but also when someone has the *capacity* to do this to me with impunity. As such it is different from negative liberal freedom, which is concerned with *actual* or *probable* interference.[140] Negative liberal freedom is something I can cogently possess in an institutional

[138] Pettit, *Republicanism*, chaps 1 and 2.

[139] Pettit, chap. 2; Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998).

[140] Pettit, *Republicanism*, chaps 1 and 2; Ian Carter, 'How Are Power and Unfreedom Related?', in *Republicanism and Political Theory*, ed. Cécile Laborde and John W. Maynor (Malden, MA: Blackwell, 2008), 58–82; Matthew H. Kramer, 'Liberty and Domination', in *Republicanism and Political Theory*, ed. Cécile Laborde and John W. Maynor (Malden, MA: Blackwell, 2008), 31–57.

void, if people happen to behave themselves nicely and leave me alone. By contrast, non-domination requires that there is a guarantee in place; that there are institutions which prohibit arbitrary interference. These institutions don't promote non-domination in a probabilistic sense. Rather, without an institutional guarantee, guaranteed absence of interference simply cannot exist.[141]

The challenge for constitutive defences of property is to explain why (a particular type of) property is similarly necessary for a certain good to obtain. These defences can be formally represented in the following way:

1. Property institution *x*
2. is constitutive of the good *y* or the negation of the good *y*,
3. rendering it permitted/required/impermissible
4. on the theory *z*.

Constitutive arguments mainly focus on the rights (liberties, claim rights, powers, and immunities) of property holders and not so much on the other property incidents, such as obligations and liabilities. This gives a clue as to what types of goods are at stake in these arguments; they have to be goods that are constituted by rights. The three relevant characteristics of rights in this context are that they (1) invest actions and positions with rightfulness. As an owner, I am within my right to exclude you from my property, independently of whether I am able to do so or not. Furthermore, rights (2) offer assurance. My rights are not protected because someone happens to feel like protecting them or because it's convenient. Rather, I have a claim that these rights are always protected. Moreover, some property rights are powers which (3) allow the holder to change some of their and other people's rights with respect to an object. All of these aspects of rights are

[141] Pettit, *Republicanism*, 108.

constitutive of an agent's *normative* situation. A person's normative situation consists of their rights and obligations, which describe what they may do and what others may do to them, and the conditions under which these rights and obligations may change. This is distinct from (though of course related to) a person's *empirical* situation, which describes what they can do and what actually happens to them and their belongings, rather than what they are allowed to do and what others are allowed to do in interacting with them and their belongings.[142]

Contemporary adherents of the constitutive view all defend ownership because it is constitutive of an owner's control over their normative situation, as well as over the normative situation of others, with respect to their property. I define control over a normative situation as *authority*.[143] My authority as an owner means that I am in charge of what you may or may not do with my property – in charge, that is, of your rights and obligations with respect to that object. I am also – within the limits of the law – in charge of my own rights and obligations. No private person may tell me what to do with my property; that is up to me. Defenders of the constitutive approach take this authority to be valuable in itself, and not merely for the consequences it promotes.

Thus, Arthur Ripstein says that the norm that we are in charge of what we rightfully own is not in the service of some other ideal, but *is* part of the ideal that an agent is in charge of themselves, which – on his view – means that only that agent can define the purposes to which they put their

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[142] Thus, David Owens argues that "[our] authority interest in a thing may be distinct from, without being wholly independent of, our control interest in that thing" in 'Property and Authority', *The Journal of Political Philosophy* 27, no. 3 (2019): 284. An authority interest is the interest in the right to control and change people's normative situation, while a control interest is their interest in determining what actually happens with that thing.

[143] See also my description of authority in chapter 2, section 3.A.

rightful belongings to use.[144] Furthermore, Christopher Essert argues that everyone should have property rights in a private dwelling, because this is the only way to grant the holder authority with respect to a space that is at least sufficient for them to live their life as a moral agent.[145] As moral agents, Essert argues, people should be in charge of a space in which they can determine what they do and who they engage with in private, and be guaranteed that they will not suffer interference in doing so. David Owens also claims that property rights secure our interest in having authority over what others may do with things that belong to us.[146] It is important that I, as an owner, have a *right* to determine what you may do with my property, even when this doesn't give me actual control over the empirical situation, that is, control over what you actually do with my property.[147]

Ownership does not contribute to this authority in an instrumental way. As I wrote in the last chapter, ownership gives one the right to decide what may be done with an object. This right is upheld independently of the particular content of the owner's decisions or of whether this right promotes good consequences in a particular instance. The protection and recognition of the owner's authority is robust across differing circumstances. Property is not a contingently convenient way of realising this robust authority. Instead, the fact that owners are rightfully and robustly in

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[144] Ripstein, *Force and Freedom*, chap. 4; Arthur Ripstein, 'Property and Sovereignty: How to Tell the Difference', *Theoretical Inquiries in Law* 18 (2017). In *Force and Freedom*, Ripstein both interprets Kant's theory of property and advances it as an attractive view. For simplicity's sake, I will not try to distinguish between Kant and Ripstein in this chapter but will just refer to the arguments in *Force and Freedom* as if they are Ripstein's (this also means I will judge them as normative arguments, and not as an interpretation of Kant's texts).
[145] Christopher Essert, 'Property and Homelessness', *Philosophy & Public Affairs* 44, no. 4 (2016): 266–95.
[146] Owens, 'Property and Authority'.
[147] Owens, 284.

charge of what they own is something that cannot be realised without – quite simply – having the right to this authority. Put differently: ownership doesn't *cause* people to have authority, but simply *is* the position of authority – it is the position of having the right to determine how others may use your property.

3.3 Combining constitutive and instrumental arguments

Taken on their own, both approaches face an important limitation. They cannot individually cover all that is normatively relevant about property, because instrumental arguments cannot fully explain why authority is valuable, and constitutive reasons fail in the same way when it comes to interests in our empirical situation. It therefore makes sense for these two approaches to ally and provide a comprehensive evaluative toolbox for property theories. Yet this need to ally seems to go unrecognised in the current debate. This is partly because constitutive theorists believe that instrumental arguments not only differ from their own approach, but that they are unable to defend property rights and the basic norms they entail. Instrumental theorists, in their turn, may think that constitutive arguments add nothing to their own justifications. My aim in this section is therefore to explain why both approaches are important for the evaluation of property. To this end, I'll defend the instrumental method against objections put forward by Essert and Ripstein, both of whom argue that the method cannot explain adequately why the violation of property rights is wrong. I then consider and reject a potential argument that instrumentalists could raise against constitutive theories.

A. The general rule and particular cases

The first objection holds that instrumental theories cannot explain why the violation of a property right is always at least *pro tanto* wrong. Instrumental theories defend property institutions because their general observance in a society will promote a certain good, for example the good of autonomy. If most people comply with the rules, then the general effect will be positive for people's autonomy in that society. But of course there will be cases where this value is better served if one violates a property right. After all, on an instrumental view the relation between property and autonomy is not a conceptually necessary one, but a contingent one that may fail to obtain, especially in individual cases. The challenge for instrumental theories is to explain why in such cases one should still comply with the rules, or why non-compliance would be wrong in at least one respect. As Essert asks: "In a case like that, what reason would there be not to abandon the right and try to serve the value directly?"[148]

Such a reason is not difficult to find. According to an instrumental view couched in a democratic or contractualist framework, for example, you have a duty to observe the rules of property because they have been accepted or would be accepted by citizens deliberating together under conditions of equality. Importantly, they have accepted (or would accept) these as *rules* that comprise the practice of property, rather than as guidelines or rules of thumb.[149] As Rawls explained in a discussion on rule utilitarianism, rules that comprise a practice ought to be observed even when that would not lead to the best possible outcome. It is not open to a person to wonder whether respecting a particular property right would lead to the

[148] Essert, 'Property', 268.

[149] On this distinction, see John Rawls, 'Two Concepts of Rules', *The Philosophical Review* 64, no. 1 (1955): 3–32. The discussion in this and the following paragraphs relies heavily on Rawls' discussion of rule utilitarianism in that essay.

results that citizens intended to achieve when adopting the relevant property institution. More generally, it is not open to them to base their actions on the particular merits of the case. Instead, they should adhere to the general rules of property, because these rules directly provide them with reasons for acting in a particular way.[150]

In parallel contexts, this has prompted the question of why the deliberating citizens would opt for a nearly exceptionless rule.[151] If their interest is in autonomy, welfare, or any other value, then why not just adopt guidelines that allow people to disregard the rule when its observation brings no benefits? To answer this, it helps to imagine a society in which we have such conditional rules. These rules are all part of the institutions of 'noperty' and 'nownership.'[152] In this society people have a duty to refrain from using anything anybody else 'nowns' *only* when their refraining actions have a positive effect on the value that nownership is supposed to serve. Noperty, it will readily be seen, is nothing like property. To name just a few differences, noperty would not afford the same security that people need, would doubtlessly lead to huge information costs as people have to take a lot of time to interpret the situation they are in, and would produce a tendency on the part of 'non-nowners' to interpret situations in a way that is beneficial for them (thus affording nowners even less security). So while nownership may initially seem like a superior way of instrumentally promoting the goods of ownership, it turns out that it actually does a

[150] See Rawls, 16.
[151] Essert does not express this worry himself, but he refers approvingly to accounts that have raised it in the context of promising. See 'Property', 269, n. 7. In the article that Essert cites, Ulrike Euer notes that 'Rawls's approach pushes the question back as to why, in the Original Position, we would accept a principle of fidelity that holds even if there is no sanction and no benefit.' 'Promising Part 1', *Philosophy Compass* 7, no. 12 (2012): 838.
[152] This discussion is inspired by Rawls' discussion of "telishment" as an alternative to the practice of punishment in his 'Two Concepts of Rules', 11.

very poor job. It is for that *instrumental* reason that the deliberating citizens opt for unconditional rules, and when they do so, any citizen living in that society must obey that rule.

To clarify, the argument is not that if you observe property rights you are always doing the right thing. To do the right thing is to act on all-things-considered judgments, and may sometimes involve a violation of property rights. The point is rather that an instrumental theory can explain why such a violation would be wrong in at least one respect, without relying on constitutive arguments.

Essert is dissatisfied with these types of instrumental defences, however, because they are still contingent on a higher level of abstraction. Property is only justified, on these accounts, because it promotes certain goods. Consequently, if it would turn out that these goods can be better served without property, then purely instrumental accounts should recommend that we abandon property institutions.[153] In itself, this observation does not yet form an objection to instrumental views. Essert admits that its force depends on "our thinking that something would be lost were we to abandon property rights, that they are justified not just in virtue of their membership in an institution promoting some other value."[154] As will hopefully be clear, I do agree that something would be lost and that constitutive arguments can express what that something is. Yet I don't think that even *this* claim implies an objection to instrumental arguments so much as a recognition of their limits. If instrumental theories can add to the constitutive approach by bringing important moral considerations to bear on the design and evaluation of property institutions, as I will shortly argue they can, then they should not be abandoned. Rather, the two approaches must ally.

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[153] Essert, 'Property', 268-269.
[154] Essert, 268.

B. Defending property's basic norms

Ripstein also argues that instrumental arguments fail to defend property rights, but he attributes this failure to a more fundamental cause than Essert does. Such arguments cannot explain what he views as the basic norm of property, which holds that "if something is not yours, you must not interfere with it."[155] He takes issue, in particular, with instrumental theories that attempt to explain this basic norm by pointing to its effect on autonomy or welfare.[156] They fail at this because ultimately the "norm of property stands in the way of achieving the values those accounts contend it is supposed to serve."[157] Property grants people an area of discretion where they and not another person can decide to what purpose they will put their belongings. According to Ripstein, this discretion is antithetical to values such as autonomy and welfare. These values would be much better served if people were obliged to always use their property to secure other people's autonomy and welfare. In addition, and like Essert, Ripstein also believes that the implication of instrumental theories is that interference with another person's property is not always wrong. In particular, it is not wrong if such interference would lead to more autonomy or more welfare. Instrumental theories therefore always struggle to explain why, as Ripstein puts it, "priority was attached" to the interests of the owner over the interests of the persons the owner excludes.[158]

Ripstein claims that his view is not open to the same objection. As I noted briefly, the ideal he defends is that people are in charge of themselves; they may choose their own purposes. This ideal can only be further

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[155] Ripstein, 'Property', 249.

[156] Ripstein uses the term "usefulness" as an overarching category to capture efficiency, utility, and related values. My choice to describe this as welfare involves no important substantive difference.

[157] Ripstein, 'Property', 250.

[158] Ripstein, 252.

defined, he clarifies, in a contrastive way: no one is in charge of me, and no one may determine the purposes that I choose. On this account, the norm that people are in charge of their property and that non-owners may not interfere with it, is not a norm that is added to or that imperfectly substitutes a norm obliging people to maximise a value. It just is the same norm.[159] He contends that values like autonomy and welfare are not sufficiently contrastive in this sense. Theories based on these values cannot explain why someone should not interfere with what I own, because the theories don't *just* want to argue that someone else should not do this. Ripstein's ideal and the basic norm of property come down to the same norm; instrumental theories can achieve no such connection. He even argues that where this does appear to be the case, this is only because autonomy and welfare have been defined in an ad hoc way to make them fit this norm, rendering the argument circular.[160]

There are several things to note in response. The first thing is to question the importance of the criterion that Ripstein judges instrumental theories by. Even if the basic norms regulating property are not the same as the norms internally regulating the concepts of autonomy and welfare, then I cannot see why that would be such a problem. Ripstein himself

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[159] In his own words: "It is not in the service of some idea that each person is in charge of him or herself; it is instead in the service of the idea that no person is in charge of anyone else. In a system in which no person is in charge of another person's property, this basic norm is not something added in the service of something else; it just is that system." 252.
[160] Ripstein, 251. In substantiating this claim, Ripstein refers to the way Robert Nozick defines freedom in terms of being unhindered to do what we have a right to do. When these rights are then given content through property, it does seem that the supposed connection between property and freedom is circular. This seems like an unfair example to use, however. The libertarian understanding of how property protects freedom is well known for its circularity (see on this Cohen, 'Illusions about Private Property and Freedom'; and G. A. Cohen, *Self-Ownership, Freedom, and Equality* [Cambridge: Cambridge University Press, 1995], chap. 3) and is not representative of freedom-based defences of property more generally.

offers no reason for why that would be a problematic feature of a defence of property. I will say more about the relevant criteria for evaluating property theories later on in this section.

The second thing to note is that I am unconvinced that Ripstein's basic norm actually is the central norm of property. His view turns on the importance of the right to exclude, but this right is neither the central feature of property nor of ownership. It will be remembered that there are many limited types of (use, control, and income) property rights, not all of which amount to the right to exclude. In addition, and as I noted in the last chapter, Larissa Katz has argued that even when it comes to ownership, the right to exclude is not central.[161] We would call some entities owners even though they don't have the right to exclude others, while in other cases some people do have the right to exclude outsiders but would not count as owners (think of a renter, for example). The central idea of ownership, as I noted in the previous chapter, is that a person may decide how an object may be used. This idea also corresponds with Ripstein's notion of owners having discretion over how they use their resources.[162] How is this idea defended in instrumental accounts that invoke the values of autonomy or welfare?

Autonomy denotes the idea that a person is the decider of their own life. They live in accordance with their own authentically held values. Autonomy can be frustrated in different ways. It requires on the one hand a degree of external freedom, meaning that no other individual is in charge of a person. On the other hand, a degree of internal freedom is necessary,

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[161] Katz, 'Exclusion'.

[162] Nevertheless, Ripstein seems to want to reject Katz' argument and hold on to a stronger connection between (physical) exclusion and authority over how an object may be used than I believe is conceptually necessary to give the idea of authority content. See Ripstein, 'Property', 249.

meaning that a person is in charge of themselves and that they abide by their reflectively held reasons. One of the ways that ownership contributes to autonomy is by giving individuals the right to decide for themselves for what purpose they will use certain objects. In this way, owners are able to exercise some control over some aspects of their environment and are free from the control of others with respect to that environment. There is, then, a very strong link between autonomy and the prerogative of ownership. Property rules are of course not the only rules that allow persons to lead an autonomous life. But they are part of a network of rules that can promote this value.

In thus linking autonomy and ownership, I have not defined autonomy in an ad hoc or circular way. It is not an ad hoc argument to say that autonomy requires that people can be the decider of their own lives and their own plans; those ideas form the very core of this value.[163] It is therefore plausible to claim that ownership contributes to autonomy. By contrast, the norm that Ripstein believes would better promote autonomy – which was that everyone should always work to maximise other people's autonomy – actually seems antithetical to that idea. To be the decider of my own life, to pursue my own values, it is necessary that my life is not completely governed by obligations to promote the interests of others.

Finally, this defence faces no severe difficulties in showing why property rights ought to be respected. Contrary to what Ripstein claims, autonomy-based property theories don't argue that owners somehow have priority over non-owners. Instead, they argue that because property rights are so important for people's autonomy, it is crucial that everyone has property rights. In a property-owning democracy, the norm that owners –

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[163] John Christman, 'Liberalism and Individual Positive Freedom', *Ethics* 101, no. 2 (1991): 343–59; John Christman, *The Politics of Persons: Individual Autonomy and Socio-Historical Selves* (Cambridge: Cambridge University Press, 2009).

and not the non-owners – should decide how a thing may be used does not come down to prioritising owners' autonomy over non-owners' autonomy. Instead, the point is to ensure that everyone has property rights that will be respected, since that is what will promote autonomy for all.

The connection between property and welfare is also stronger than Ripstein presupposes. The idea that a commitment to welfare requires that people will use their property *with the aim* of maximising aggregate welfare, as he claims, is one that would be rejected by welfarists themselves. It is a classic argument in economics that welfare is best promoted if individuals pursue their own good, defined by their own purposes.[164] This is why property institutions are so important from the perspective of welfare economics; they grant individuals the discretion necessary to pursue their private goods, and thus contribute to the public good of welfare. By contrast, a rule that obliges people to always aim at promoting welfare directly would be counterproductive. Again, this link between property and the value at stake is not ad hoc. It is not ad hoc, for a theory that is concerned with efficiency, to insist on adopting the most efficient means; it is part of the very idea of welfare that we try to achieve maximum preference satisfaction with as little cost as possible.

So far, I have argued that instrumental theories are better at explaining property's central internal norm than Essert and Ripstein suppose them to be. But as I noted briefly, it is not entirely clear why the ability to explain those norms should be the only or even the most important criterion for evaluating property theories. Essert and Ripstein are looking for a non-contingent, unwavering defence of the rule that owners can exclude non-owners from their property. That is to say, they are looking for a way of justifying (what they think is) the basic norm of property, that will hold

[164] One important statement is in F. A. Hayek, 'The Use of Knowledge in Society', *The American Economic Review* 35, no. 4 (1945): 519–30.

in all possible worlds. But it is not obvious to me that instrumental theories are attempting to do the same thing. They are not looking for the most robust defence of property norms, but rather attempt to establish what sort of institutions a given, concrete society should adopt and why. It seems to me that the ability to handle *this* question well, is a criterion that is at least as important for the evaluation of property theories. And it is precisely in this department that constitutive theories face an important limit. What this limit comes down to, is that such theories are unable to take on board all the relevant reasons for adopting a particular institution.

To illustrate, imagine that someone defends private property because it promotes people's access to basic nourishment. This argument is clearly contingent. People could – perhaps under circumstances different from many contemporary societies – achieve basic nourishment without any property institutions, or at least without private property. Yet the contingent character of the argument hardly affects its importance. Basic nourishment is such an important goal that we would almost always want to help more people achieve it if possible. If we can do this by adopting the institution of private property (as this example stipulates), then that would be a prima facie reason to do so. It might be that this is not the most robust defence of private property, in that it does not hold under all possible worlds. But if it does hold in this one, then that is surely an important consideration to take on board. We are not looking for the most robust defence of property, but for the best institutions to adopt in a given society.

The example I just gave is only one instance of a more general issue with constitutive theories, which is that they cannot incorporate contingent effects into their justification. This is problematic, because even *if* such empirical effects are not all there is to property, we can hardly deny that property rules do have empirical effects. We therefore need a theory able to evaluate them.

C. Authority and status

At this point, instrumental theorists might want to argue that the empirical effects of property institutions are the *only* thing that normative theories should evaluate. That is, they might want to argue that the only way in which property institutions can be of value is if they causally promote a value. On such a view, the constitutive defence of ownership is a charade. True enough, ownership does not *cause* people to have the normative authority that constitutive theorists prize; this relationship is indeed constitutive. However, an instrumentalist might argue that normative authority over one's property only matters because of its effects. If people have the right to decide what may be done with their property, then they can pursue the goals they like and they can gain some control over their life. These are good *consequences* of the authority of owners. If their authority only matters because of such consequences, then the argument that constitutive theorists offer for ownership is instrumental after all.

The challenge is therefore to determine whether the normative authority of owners is also valuable for reasons that do not have to do with its effects. I believe there are such reasons, and that they come to the fore when considering scenarios in which people enjoy a certain beneficial empirical situation, but without having control over their normative situation (that is, without having authority), and vice versa.

I'll begin with two scenarios outside the context of ownership. Imagine that I can control fairly well what people do with my body. Wherever I go, I can make sure I'm not assaulted or bumped into.[165] This is not because I am recognised to have authority over my body. In this scenario, I

[165] Libertarians may claim that this is not an example outside of the field of ownership, and that authority over one's body effectively comes down to self-ownership. For my present purpose it doesn't really matter either way, but see my critique of the libertarian defence in self-ownership in section 5.

have no rights with respect to my body at all. However, with my incredible physical strength I can keep people away by force or simply by intimidating them. I enjoy empirical control, but no normative control. For the second scenario, imagine that I am actually not capable of controlling what people do to my body. However, people just happen to leave me alone because they feel like it, and so nothing bad happens to me. I enjoy a reasonably good empirical situation but without having empirical or normative control.

I believe the lack of authority is troubling in both cases. One reason for this is that the good empirical situation I appear to enjoy in these cases is not secure. If I had a recognised right to decide what may be done with my body, then I could be more certain of the absence of interference I currently enjoy as a result of contingent circumstances. But that is not all that authority does. Another reason that the lack of authority is troubling in these scenarios is that I am not recognised as a person whose voice *must* be respected. People do what I want for prudential reasons in the first scenario, fearing that I would otherwise harm them. In the second scenario, they just can't be bothered to bother me. However, they do not consider the reasons for their restraint as normatively binding, as something that they would have to do regardless of how I react or how they feel. This says something about my status in these cases. I am not recognised as someone whose view matters independently of how other people feel about that view. I cannot stand up for myself and claim that what I want to happen with my body should happen and that it should happen independently of how other people feel about it. In addition, when I use my body just as I please, this is not considered as *my right*; it is simply something that others happen to allow me to do.

This seems wrong, because it violates the status I ought to enjoy as a person. Instead, people in this scenario think of me more like a thing;

something with which you can *in principle* do what you want. In the next chapter, I will explain what sort of status I believe persons – as beings capable of practical reason – ought to occupy. A more extensive account of why the lack of recognition is problematic in the sketched scenarios will therefore have to wait a little longer, and will only become clear once I've set out my substantive commitment to non-domination. However, I believe a variety of theoretical views can converge on this point about the wrongness of a lack of recognised authority over one's body. What they need for this is an account of respect, that is, an account of how persons *ought* to be treated in virtue of being persons.

Now consider a reverse example in the context of ownership, where a person does enjoy authority, but this does not give them (sufficient) empirical control or lead to good consequences. Think of someone whose family heirloom is robbed from them. They have no empirical control over what happens to that heirloom, but the society they live in does recognise that they have been wronged. It does recognise, that is, that the owner should not have been treated that way, that they ought to still have their heirloom. Such recognition is valuable in itself; it shows that the owner is a person that you cannot treat in any old way, but that they must be respected. The value of authority cannot, then, be reduced to its empirical consequences. And that means that constitutive defences of ownership as the realisation of normative authority, are not reducible to instrumental argumentation.

In conclusion, like the constitutive approach, the instrumental approach cannot account for all reasons that one might value ownership institutions. Both methods help explain why such institutions ought to be adopted, and I shall use both to defend group ownership in the chapters to come. For now, I want to argue that there are no other plausible argumentative strategies for defending property institutions.

3.4 Original property

As I said in the introduction, not all property theories correspond to either the instrumental or the constitutive format. Theories based on principles of acquisition and historical entitlement, world- and self-ownership are all accounts that claim and appear to adopt a different approach to the justification of property. What these theories have in common is that they provide a "natural" or pre-conventional defence of property. They all hold that people have or may gain property rights in the absence of a general societal agreement to adopt property institutions, and even in the absence of a politically constituted society.[166] To avoid confusion: these theories do not just hold that people have a moral right to own property. This is a general right that is presupposed by their arguments, but their more radical claim is that that people (can) have specific property rights with respect to specific objects in the state of nature.[167]

These arguments fall into two different categories. One type of argument states that property rights are something that we are born with; something humans have independently not only of the conventions that a society adopts, but independently even of their own actions. I will refer to

[166] Locke, *The Second Treatise*, paras 25, 28; Nozick, *Anarchy*, 174–82; A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2000), chap. 10; Peter Vallentyne, 'Critical Notice', *Canadian Journal of Philosophy* 28, no. 4 (1998): 609–26.

[167] Note that to fit this category the property rights that one can obtain in the state of nature must be conclusive rights, not provisional rights, as they are in Kant's theory. Kant's theory of acquisition only gives rise to provisional rights, but – due to the defects of the state of nature – such rights cannot be conclusive until people enter a civil state and adopt property laws omnilaterally. Kant, 'Doctrine of Right', pt. 1, chapter 1, paragraphs 8 and 9 (Prussian Academy pagination: 6:256 - 6:257). For further elaboration on the provisionality of property rights in Kant's theory, see Ripstein, *Force and Freedom*, chap. 4. On the defects of the state of nature, see the same work, chapter 6.

such views as theories of *original property*.[168] Locke defended an idea of original property when he claimed that "every man has a property in his own person; this nobody has any right to but himself."[169] He thus inspired the libertarian philosophers of today, who all defend some idea of original self-ownership.[170] The second type of argument, by contrast, concerns property rights that one can gain through a process specified by the theory itself. I follow the convention of calling these *historical entitlement* theories.[171]

The two types of arguments are often combined and sometimes even seen as inextricably linked. Locke's theory is again a key example, as he argued that people's labour naturally belongs to themselves, and that it is through mixing that self-owned labour with other goods in the world that people can acquire property rights in these goods.[172] It will be helpful, however, to judge the two types of theories separately, and indicate how they are insupportable in and of themselves. That way, I can address both the theories that combine original rights and principles of historical entitlement, and theories that adopt only one of these strategies. I will focus on theories of original property rights in the remainder of this section and return to historical entitlement in section six.

The formal rendition of original property theories looks like this:

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[168] See note 125 above for my reasons for using this term rather than natural property rights.

[169] Locke, *The Second Treatise*, para. 27.

[170] See on this commitment in left libertarianism, Vallentyne, 'Left-Libertarianism'. For the approach from the political right, see Nozick, *Anarchy*.

[171] Waldron, *The Right*, 1988, chap. 7.

[172] Locke, *The Second Treatise*, paras 27, 28. For criticisms of the idea that original self-ownership has a role to play in principles on the acquisition of property, see Nozick, *Anarchy*, 174–75; Waldron, *The Right*, 1988, 184–91; Fried, 'Left-Libertarianism'.

1. All human beings have moral property incidents *x*
2. with respect to objects *y*,
3. which ought to be mirrored by legal property incidents *z* with respect to objects *y*.

Different theories will specify the exact rights and other incidents and the objects to which they apply in different ways. Adherents of this approach have generally focused on two different concepts of original property, namely self-ownership and world-ownership.[173] Self-ownership involves the idea that human beings have exclusive property rights with respect to their bodies. Such rights are only constrained to ensure that they are compatible with the same self-ownership for all.[174] Libertarians argue that this is the most appropriate way of describing moral restrictions on what states and individuals may do to other individuals. When people have any rights over me that are not grounded on my consent, then this constitutes partial slavery on the libertarian account.[175]

The idea of world-ownership is that people have symmetrical original rights with respect to material resources external to their bodies. A venerable tradition in this context is to argue that human beings "initially" own the world in common. This is a notion that can be traced back at least to Greek Antiquity, and that includes Thomas Aquinas, John Locke, Hugo Grotius, Samuel Pufendorf, and Thomas Paine as some of its most important historical adherents.[176] Today, left-libertarian authors develop

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[173] Vallentyne, 'Left-Libertarianism'.
[174] Cohen, *Self-Ownership, Freedom, and Equality*, 68.
[175] Nozick, *Anarchy*, 172; 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): 201–15.
[176] Thomas Aquinas, *Summa Theologiae*, 1485, pts 2.2, question 66, articles 2, 3, and 7; Locke, *The Second Treatise*, para. 27; Thomas Paine, 'Agrarian Justice', in *Political*

increasingly sophisticated conceptions of world-ownership, which they combine with their own conceptions of self-ownership to give a full account of people's fundamental rights.[177] Theories of world-ownership are not beholden to libertarian theorists, however. Recently, Mathias Risse has developed such an account from a liberal egalitarian perspective, outlining what rights with respect to natural resources individuals have in the state of nature, and what the normative implications of these original rights are for contemporary societies.[178] For the sake of simplicity I will nevertheless talk

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Writings, ed. Bruce Kuklick, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 2000), 319–38. On ownership in Greek Antiquity, see Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution*, Ideas in Context (Cambridge: Cambridge University Press, 2007), 108–9. For a discussion of Grotius' and Pufendorf's conceptions of world-ownership, see Mathias Risse, *On Global Justice* (Princeton: Princeton University Press, 2012). For other historical essays on world-ownership, see Peter Vallentyne and Hillel Steiner, eds., *The Origins of Left-Libertarianism: An Anthology of Historical Writings* (New York: Palgrave, 2001).

[177] Hillel Steiner, 'The Natural Right to the Means of Production', *The Philosophical Quarterly* 27, no. 106 (1977): 41–49; Cécile Fabre, 'Justice, Fairness, and World Ownership', *Law and Philosophy* 21 (2002): 249–73; Michael Otsuka, *Libertarianism without Inequality* (Oxford: Clarendon Press, 2003); Arabella Fisher, 'A Left-Libertarian Proposal for Egalitarian World Ownership', *Critical Review of International Social and Political Philosophy* 18, no. 6 (2015): 599–619. See also the collection of contemporary statements in Vallentyne and Steiner, *Left-Libertarianism and Its Critics*.

[178] Mathias Risse, 'The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth', *Ethics & International Affairs* 23, no. 3 (2009): 281–300; For criticisms, see Arash Abizadeh, 'A Critique of the "Common Ownership of the Earth" Thesis', *Les Ateliers de l'éthique* 8, no. 2 (2013): 33–40; and Anna Stilz, 'On Collective Ownership of the Earth', *Ethics & International Affairs* 28, no. 4 (2014): 501–10. I don't include the Kantian idea of world-ownership here, because I follow Ursula Vogel's argument that Kant's conception of world-ownership was more of a thought construct that Kant developed to think about equality than a view that is supposed to specify which property rights people have. Indeed, Kant doesn't argue that individuals are somehow born with property rights; these are acquired. See Ursula Vogel, 'When the Earth Belonged to All: The Land Question in Eighteenth-Century Justifications of Private Property', *Political Studies* 36 (1988): 102–22. On property as an acquired right, see Kant,

about defenders of original property rights as if they are all libertarians.

Legal property institutions are justified, libertarians argue, insofar as they mirror the original property rights in their conceptions of self- and world-ownership. This raises the question, however, of how these *original property* rights are defended. The mirroring of original property is after all only the second step in the justification; what shape does the justification of original property rights take? A quick glance at the literature shows that this first justificatory step is often either instrumental or constitutive in nature. Thus, Risse defends his preferred conception of world-ownership by arguing that it allows people to satisfy their basic needs, while at the same time respecting their autonomy.[179] Consequently, his view collapses back into an instrumental argument.

Hillel Steiner takes a more complex approach to his defence of world-ownership.[180] He begins his defence with the assumption that individuals have an equal, natural right to the greatest degree of liberty compatible with an equal degree of liberty for everyone else. He defines liberty in a negative way, as the absence of interference that makes an action impossible. As actions involve the use of objects, it follows that one can only be free (suffer no interference) to engage in an action involving an object if no other person is making use of that same object. This is why, in a nutshell, if all individuals have a natural right to liberty in the way that Steiner defines

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'Doctrine of Right', pt. 1, chapter 1, paragraphs 8 and 9 (Prussian Academy pagination: 6:256 - 6:257); and Ripstein, *Force and Freedom*, chaps 3 and 4.

[179] Risse, *On Global Justice*, chaps 6, section 2. Risse also defends his conception by arguing that it is a minimal standard that people from different cultures would certainly agree to. Combined with his arguments about autonomy and the satisfaction of basic needs, this claim about the minimal basis for agreements seems to be in line with my conception of second-order instrumental defences of property. Risse justifies his conception of world-ownership by arguing that people, when deliberating as equals, would accept a conception that would protect the satisfaction of their basic rights.

[180] Steiner, 'The Natural Right'.

it, they must have a claim to an equal part of the world, over which only they have the authority to determine what must be done with it. Their actions don't conflict in such a scenario, and they enjoy equal degrees of non-interference. Whether Steiner's argument is convincing or not is not my concern here. My point is merely to show that this isn't an alternative approach to the defence of property. Steiner ultimately argues that equal individual property holdings form a necessary component of a system that secures people's equal freedom. This is a constitutive argument.

If all libertarian theories rely on constitutive and instrumental arguments in the same way as Steiner and Risse do, then their approach is not a distinctive one. The addition of a mirroring step in original property theories doesn't change this assessment, as it doesn't add much to the instrumental and constitutive arguments used. In fact, this step can muddy the waters, as it places an unnecessary mediating concept between the legal institution of property and the good that it is supposed to serve or constitute. Take the ideal of self-ownership, for instance, which is often defended as a safeguard of individual autonomy.[181] Such arguments specify a relationship between three concepts: the good of autonomy; the concept of original self-ownership as the authority that individuals naturally have to decide what may be done with their body; and finally the *legal* institution of self-ownership. It's not clear, however, what purpose the second concept is supposed to serve. Why not simply argue that the legal institution of self-ownership promotes a certain good? Why assert a middle layer of original property rights? The same question can be asked about Risse's conception of world-ownership. Risse takes great pains to explain why a certain conception of world-ownership rights that individuals have in the state of nature is a good one, claiming that it serves autonomy and secures the satisfaction

[181] Vallentyne, 'Left-Libertarianism'; Otsuka, *Libertarianism*; Vallentyne, Steiner, and Otsuka, 'Why Left-Libertarianism'.

of basic needs in actual contemporary societies. But why take the detour through the state of nature to make that argument? Why not simply ask which contemporary legal institutions serve the goods that one is interested in? The rhetoric of original rights may obscure the fact that this method of defending property is structurally similar to the approaches I outlined in section two.

Here a libertarian might object, however, that my characterisation of original property arguments has so far neglected one of their most distinctive features. This is the idea that, as Peter Vallentyne argues, libertarians view property rights as the *first* and not the subservient principles of justice: "Libertarianism (both left and right) construes basic individual rights as *property* rights."[182] People's fundamental rights are property rights, and people's derivative rights are rights derived from those property rights. The place of property rights in theories of original property is therefore different from its place in instrumental and constitutive methods. Rather than arguing that property somehow promotes a fundamental right or that it is constitutive of its realisation, libertarians would claim that people's fundamental rights just *are* property rights.[183] Rights to life and freedom, for example, can all be conceptualised as property rights on this view. The distinctive methodological claim that I must therefore scrutinise is that people's basic rights have all the characteristics of property rights, and that this is a more plausible way of representing the relation between property

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[182] Vallentyne, 'Left-Libertarianism', 2 (emphasis in the original). And a page earlier: "Like left-libertarianism, right-libertarianism holds that the basic rights of individuals are *ownership* rights."

[183] See also Rutger Claassen, 'Justice as a Claim to (Social) Property', *Critical Review of International Social and Political Philosophy* 21, no. 5 (2018): 631–45.

and fundamental rights than that the constitutive and instrumental theories propose.[184]

3.5 Against fundamental property rights

In this section I argue that it is implausible to hold that people's fundamental rights *all* have the characteristics of property rights. I will do this by criticising one particular claim, namely that people's fundamental right of individual freedom is best conceptualised in terms of self-ownership. This section does not establish, then, that *no* fundamental rights could be conceptualised as property rights, as this would require an analysis of all the conceptions that libertarians have proposed. However, the arguments in this section do show what libertarians have to prove to make their claim plausible and why this will be difficult to prove.

To answer the question of whether all fundamental rights are property rights, it's helpful to recall one of the key characteristics of property rights that I discussed in the last chapter, which is that property rights are transmissible.[185] A right is transmissible if it can be transferred to another person than the current right holder, without the character of the right changing. The challenge for libertarians, then, is to show that fundamental rights are transmissible, and that they are not what Honoré called "simple rights."[186] Simple rights are not transmissible. This doesn't mean that they

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[184] This is different from arguments that focus on the particular *substance* of the rights that libertarians propose, for example by asking whether it is desirable that people own their bodies. See for an argument of this kind: Richard J. Arneson, 'Self-Ownership and World Ownership: Against Left-Libertarianism', *Social Philosophy and Policy* 27, no. 1 (2010): 168–94. My focus will instead by on the form of the original property claims, to see whether they form an alternative approach.

[185] See chapter 2, section 3.B.

[186] Honoré, 'Ownership', 181.

are unwaivable or inalienable; some simple rights can be waived.[187] Rather, it means that the right cannot be gained by another person, or at least not without becoming a different right altogether.[188] My right to my good reputation is like that.[189] I can waive it and allow you to print slanderous stories about me, but no one else could gain the right to *my* good reputation as I currently enjoy it. Libertarians, then, have to argue that the fundamental freedoms they are concerned with are not only waivable, but transmissible. They have to argue that it is a fundamental right of mine, that you can somehow gain my fundamental rights. Otherwise, my fundamental rights are not property rights.

The distinction between transmissible and waivable rights sharpens the challenge set for libertarians who defend self-ownership. This idea is often defended by referring to some notion of bodily integrity, personal autonomy, or negative liberal freedom that self-owners supposedly enjoy.[190] Yet someone who believes any of these interests are important concerns could in principle want to protect them through simple rights that might be waivable but not transmissible.[191]

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[187] This point seems to be missed by for example Vallentyne, who believes that property rights are different from other rights by virtue of being *waivable*. He therefore believes that libertarianism sets itself apart from other egalitarian views by not conceiving of basic rights as waivable rights (and therefore giving individuals more control over their own rights). See e.g. his notes about constraints on torture in Vallentyne, 'Left-Libertarianism', 3. This is a mistaken presupposition, however; a right can be waivable without being transmissible.

[188] Clarke and Kohler, *Property Law*, 5–6.

[189] Clarke and Kohler, 5.

[190] Fried, 'Left-Libertarianism'.

[191] Larissa Katz argues that it is conceptually impossible to have transmissible rights to one's body, because it's impossible that rights with respect to one's own body do not change in character – meaning the normative position that they imply – when they are transferred. See her essay 'Property Law'. I take no position on whether this is correct or not, but will not rely on it here.

Such a theory would have the virtue of not implying that people *have a fundamental right* to sell themselves into slavery. As both critics and proponents of full self-ownership have pointed out, a defence of this idea implies a defence of the institution of slavery.[192] Importantly, and contrary to what Vallentyne argues, this implication does not depend on the inclusion of the right to sell one's body in the bundle of self-ownership rights.[193] Even a partial bundle that doesn't include this right, would still have to imply a type of (partial) slavery. This is because every right (and other incident) in that bundle is transmissible. If all my rights to my body are transmissible, that means that someone else could at least in principle gain all these self-same rights. Transmissibility implies that someone must be able to actually make the transfer, but it doesn't say who should be able to make it.[194] Libertarians who are still on board at this point, will likely want this to be the individual self-owner. They therefore must not only argue that people have certain fundamental rights to exercise control over (parts of their) body, but that it is an equally fundamental right that they are able to give up this control, and that someone else can gain it.

Vallentyne, Hillel Steiner and Michael Otsuka staunchly defend this view. They believe that "the affirmation of this right of transfer is more in keeping with our status as autonomous, rational choosers than its denial. To *whom* would a duty not to sell oneself into slavery be owed?"[195] I believe there are two arguments in this quote. Firstly, the question they ask points to a kind of formal argument based on Hohfeld's classification of legal incidents. The argument holds that if *I* cannot sell myself into slavery, then

[192] Arneson, 'Self-Ownership and World Ownership'; Vallentyne, Steiner, and Otsuka, 'Why Left-Libertarianism'.

[193] Vallentyne, 'Left-Libertarianism', 3–4.

[194] See chapter 2, section 3.B.

[195] Vallentyne, Steiner, and Otsuka, 'Why Left-Libertarianism', 212, n. 21 (emphasis in the original).

someone else has a claim-right on me. If someone else has such a claim-right, then I am not a self-owner, but at least partially owned by someone else.[196] But this view rests on a misuse of Hohfeldian terminology. The authors claim that the opposite of a right to sell myself into slavery is a duty not to do this. This is wrong, because the right to sell oneself is a *power*; it is a right to change rights and duties. In the absence of such a power, I have a *disability*, not a duty.[197] If I have a disability, that usually implies someone else has an immunity from legal (or moral) change of their normative position, at least change that would be instigated by me. However, if I am unable to sell myself into slavery, then I hold both the disability and the immunity from change *myself*. Consequently, no one has a right over me in this respect. It is therefore not true that a lack of fundamental rights to sell myself into slavery implies that I am someone else's slave.

This argument shows it is a mistake to think, as Vallentyne, Steiner, and Otsuka seem to do, that people are either self-owners or are owned by others. Other invocations of this refrain are also incorrect. Nozick, for example, argues that people either own their own labour and whatever it fetches in the market, or they are slaves, and there is no other way about it.[198] As we can see here, however, it is possible for me to lack property rights in my body, without holding that anyone else has a (property) right over me. Nor does this mean I am somehow left without a right to bodily integrity or autonomy; these could be protected through simple rights.

The other part of the quote points to a more substantive argument, which is that by giving people the right to sell themselves, we respect their status as autonomous and rational choosers. Vallentyne argues that such rights respect the *exercise* of people's autonomy, rather than their right to

[196] Vallentyne, 'Critical Notice'; Vallentyne, 'Left-Libertarianism'.
[197] Hohfeld, 'Some Fundamental Legal Conceptions'.
[198] Nozick, *Anarchy*, 172.

have and continue to have autonomy.[199] He supports his claim by drawing attention to what an important decision it really to become a slave, writing that "it will typically be one of the most important choices in the agent's life."[200] Libertarians respect individuals' ability to make that choice. This argument – while very brave – fails to convince. One might get the impression here that libertarianism respects people's rights to be the decider of their lives. On the libertarian view, however, people have no fundamental claim to this. After all, the decision to escape from self-imposed slavery is arguably an even *more* important and life-changing decision than the choice to enter it. But a consistent libertarian position would be that slaves who change their mind must be returned to their owner. Moreover, this position is defended by pointing to the slave's own initial fundamental rights.

What of more limited forms of self-ownership, that only allow people to alienate a part of themselves? I fail to see why this would be a fundamental freedom. This is because in certain empirical conditions, the right to sell body parts, for example, leads people to have less control over their lives. To illustrate, Lawrence Cohen notes that in poorer Indian communities, where the selling of kidneys is all but formally accepted, people are under severe pressure from loan sharks to put their kidneys up as collateral, where formerly other types of collateral had been accepted too.[201] Because the sale of kidneys is so lucrative, moreover, loan sharks demand their loans back earlier and more aggressively than they did before. Madhav Goyal observes that women, in particular, are under increasing pressure from their

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[199] Vallentyne, 'Left-Libertarianism', 4.

[200] Vallentyne, 4.

[201] Lawrence Cohen, 'Where It Hurts: Indian Material for an Ethics of Organ Transplantation', *Daedalus* 128, no. 4 (1999): 135–65.

family members to put up their kidneys as collateral.[202] This shows that the ability to sell one's kidneys, far from increasing freedom, has constrained people's choices, in particular those of women. It may be that the actual legalisation of markets in kidneys and other body parts would increase people's formal freedom, but I don't see how an advance in formal freedom can possibly be construed as a fundamental human right if it leads to such a severe restriction of actual control over one's life. It seems to me that this actual control is the fundamental issue.

Naturally, there may be other circumstances where the addition of the option to sell a body part does not constrain but really expands the options already available to people. In that case, instrumental accounts could explain why such property rights are important. They can maintain this flexibility and base their view squarely on the empirical effects of the introduction of such rights. By contrast, the libertarian view is inflexible; it must maintain that the right to transfer body parts to others is a fundamental right, not a derivative one which can be granted in some situations but not in others. I hope to have shown, however, that there is no good argument for this position.

My argument shows that not all of people's basic rights can be construed as property rights. Self-ownership, in particular, is an implausible rendering of the basic rights that people have. The question arises, however, whether libertarians might not be able to endorse a weaker view, which is that at least *some* basic rights can be construed as property rights. The argument in this section shows what proponents of such a view have to prove: that a right is at once basic and transmissible, meaning that

[202] Madhav Goyal, 'Economic and Health Consequences of Selling a Kidney in India', *Journal of the American Medical Association* 288, no. 13 (2002): 1589–93.

someone else should be able to gain a right of fundamental importance from the initial right holder. I hope to have shown why that is a tough order.

3.6 Historical entitlement and just acquisition

I turn now to the second type of pre-conventional argument, based on historical entitlement. Theories of historical entitlement argue that property rights are justified because they are obtained in some process sanctioned by the theory. This needs to be clarified a little. Nearly all theorists and all legal systems will recognise some notion of historical entitlement. If you were to ask me: "Why do you own this book?" I could acceptably answer: "It was a present from my mother." If there are property rights, then there is some way of gaining them. Right holders can therefore point to their history to show how something came to be theirs. However, that is not, or not only, what historical entitlement theories are about. They don't just explain how I can come to own a particular book, but also – and more importantly – why it is justified that I own it. To stick with the example, historical entitlement theories want to answer this question: "Why is it *right* that you own this book?" An instrumental theory might approach this question by showing how a rule that allows for book ownership is beneficial for people. This is not the approach of historical entitlement theories, however. They would answer that this is justified because such rights have been or could have been procured in a just way.[203]

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[203] I write "have been or could have been," since on this matter there seems to be some disagreement between different authors. Nozick writes "that from a just situation a situation *could* have arisen via justice-preserving means does *not* suffice to show its justice" (emphasis in the original). Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 151. This is why he makes room for a principle of rectification. According to John Simmons, however, we can say that the current distribution of holdings is just even if we have no clear view of how it came about, as long as there is no evidence to the

Such theories have to specify what this just way is. Nozick claimed that they do this with the help of two principles: a principle of justice in acquisition (PJA) and a principle of justice in transfer (PJT).[204] PJAs describe how an entity can get property rights with respect to initially unowned goods, whether this is in the state of nature or in the world we inhabit now, where some things are not yet the object of property rights.[205] They have the following form:

1. Agent *a*
2. is entitled to property rights *b*
3. with respect to object *c*,
4. by virtue of having performed action *d* with respect to object *c*
5. without transgressing proviso *e*.

Different theories will specify these five elements in different ways. Locke famously argued that individuals (a) come to own (b) natural resources (c) by mixing their labour (d) with it, without letting any resources go to waste (e), but his theory is just one example that fits this model.[206] Other authors may argue that a different action or proviso is required, or that it applies to other objects or leads to less than full ownership.[207] PJTs are concerned

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contrary. A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2000), p. 213.

[204] Nozick, *Anarchy*, 150. Nozick in addition argues for a principle of rectification, but I have left that out for the sake of brevity, since the principle's goal is simply to ensure that all holdings are procured in accordance with PJA and PJT.

[205] Or they describe how one can gain *private* property rights in a world that is owned in common by all its inhabitants. This would also count as the inauguration of real, transferable property rights. See e.g. Locke, *The Second Treatise*, para. 25.

[206] Locke, para. 27.

[207] With this last point, my description of PJAs differs somewhat from that of Nozick and Waldron. Both authors describe PJAs as something that will grant an agent ownership of an object ("holdings," in Nozick's uncomplicated language). (Nozick, 151. Waldron, *The*

with transfers that take place after the original acquisition, and can be rendered as follows:

> For any set of property rights *b* that were first created in accordance with PJA, right holders can voluntarily transfer those rights to another agent according to procedure *f*, without this changing the character of those rights.

This definition shows that the PJA is the central linchpin of any theory of historical entitlement. Without it, a chain of transfers cannot get off the ground.[208] This is why most authors have focused on PJAs rather than on PJTs, and I will follow suit.[209] Together, these principles cover all that can be said about the justice of property rights in a historical entitlement theory. That is to say, *all* property rights that were obtained in accordance with the favoured PJA and PJT are just, and there are no other just ways of obtaining a property right.

This format captures what we might call a "pure theory" rather than a derivative theory of historical entitlement. By this I mean a theory that does not defend a PJA on the basis of instrumental or constitutive

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Right, 263.) This has led other authors to argue specifically against the idea that original acquirers would gain such extensive rights, but not to reject outright the idea that such acts could inaugurate any property institution at all. (See e.g. Allan Gibbard, 'Natural Property Rights', *Noûs* 10, no. 1 (1976): 77–86; Christman, *The Myth of Property*, chap. 3; Leif Wenar, 'Original Acquisition of Private Property', *Mind* 107, no. 428 (1998): 799–819.) To show why the argument cannot work for *any* set of property rights, it is necessary to adopt my more inclusive definition.

[208] Waldron, *The Right*, 1988, 262.

[209] Nozick, *Anarchy*, 178–82; Gibbard, 'Natural Property'; Lawrence C. Becker, *Property Rights: Philosophic Foundations*, 1977; Wenar, 'Original Acquisition'. Though see Waldron's discussion of PJTs in *The Right to Private Property* (Oxford: Clarendon Press, 1988), 260–62 and G.A. Cohen's *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), chap. 3, in which he analyses Nozick's claim that 'Whatever arises from a just situation is just.' (Anarchy, p. 151).

arguments.[210] It is perfectly possible that, for example, an instrumental property theory includes some rules regarding just acquisitions and just transfers as a derivative part of their theory. Such a theory might argue that a certain principle of acquisition contributes to the effects desired from property. If theories of historical entitlement were only bent on clarifying this derivative role that principles of acquisition can play, then they would not form a separate approach to the justification of property. Nor would they concern the type of fundamental (rather than highly applied) topic that exercises political philosophers in their research on property. In a pure historical entitlement theory, however, PJAs are not justified because of their instrumental benefits; PJAs must do the normative work themselves. To be clear, I do not focus on pure entitlement theories because they are the most common defences of the idea of historical entitlement. Rather, this serves the analytical aim of establishing whether there is a plausible way of defending property institutions that forms an alternative to the instrumental and constitutive approaches.

It might seem strange, however, to discuss historical entitlement as a separate approach to the *justification* of property institutions. As principles indicating how one can get property, PJAs and PJTs seem to be much more about the distribution of property than about a defence of the institution itself. I believe, however, that pure historical entitlement theories conflate these issues. That is because they do not defend the institution of property before proceeding to defend particular distributions. Instead, historical entitlement theories can be used only to defend *specific* property rights with respect to *specific* objects. Such theories defend particular appropriations, and these take up all the justificatory space in their theories of property.

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[210] As will become clear below, two examples of attempts to defend such a pure theory are Nozick, *Anarchy*, 150–60; and Simmons, *Justification and Legitimacy*.

Importantly, pure historical entitlement theories don't defend these appropriations by arguing that they are agreed to, either on an individual or collective level. As Waldron makes clear, such theories defend unilateral acquisitions, that take place in the absence of any social conventions allowing such acts.[211] John Simmons takes issue with this description of original acquisition, claiming he sees "no reason to deny that a principle concerns the process of 'just acquisition' simply because it specifies that taking possession requires the permission or cooperation (e.g., in making contracts or establishing conventions) of other persons."[212] Yet, if conventions and contracts are what sanctions the original acts of acquisition, the theory of historical entitlement is not doing any work. The PJA is then not an independent moral principle. It is instead the fact that people have accepted a PJA (for instrumental reasons?) that turns a simple action into an action that can change the normative situation people are in. I think that would be a very good way of defending principles of acquisition, but it is not a separate approach to defending property rights. In fact, it would be in direct opposition to Locke's core aim in defending his PJA, which was "to shew how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners."[213]

It's worth digressing slightly and ask what a defence of group ownership would look like if it took the form of a pure historical entitlement theory. I believe it should be possible on most accounts for a group to gain property rights through a chain of transfers started off by original acquisitions performed by individuals. Furthermore, if a group is a collective agent and performs the required acquisitive action as a group, then it should be

[211] Waldron, *The Right*, 1988, 263.

[212] Simmons, *Justification and Legitimacy*, 195, n. 2.

[213] Locke, *The Second Treatise*, para. 25.

able to gain property rights as an original acquisition as well.

While ultimately unsustainable, I believe this "historical group ownership view" is not wholly without intuitive attractions. It seems to figure in explanations of why one might believe that certain groups have a right to exclude newcomers. Consider, for example, the case of a small fishery in the Sri Lankan village of Mawelle, described by Paul Alexander.[214] For a long time, fishing here was done mainly for subsistence by a small group of fishers, all of whom came from Mawelle. This changed in the late 1930s, when due to changed market opportunities and demographic pressures the number of fishers rose steeply, leading to a risk of resource depletion. To prevent this, the fishermen (old and new) decided to put a stop to any new entrants. It seems to me that *they* should be allowed to set this limit, and it seems intuitively plausible that at least part of the explanation is that they were there first. What applies to them, applies to numerous other groups regulating the use of fragile natural resources. So the historical entitlement is not a view without any attractions, but as I'll argue now, it is deeply implausible.

3.7 PJAs and the justification of new obligations

The main problem with PJAs is that they stipulate a principle according to which people can impose obligations on others, without properly justifying that principle to the people who are bound by it. Consequently, historical entitlement theories cannot justify property institutions.

According to historical entitlement theories, there are certain actions that allow me to gain property rights in an object. This implies that I can change the normative situation of everyone else in the world. I can

[214] Paul Alexander, 'South Sri Lanka Sea Tenure', *Ethnology* 16 (1977): 231–55. I base my discussion of this case on the summary of Alexander's findings by Ostrom in *Governing the Commons*, 149–57.

impose a duty on you to refrain from using an object, without your consent. Moreover, I can change your normative situation for no other reason than that I wanted it to change.[215] Waldron shows that this makes the imposition of duties both unilateral and wilful; all that is required for me to create an obligation for you, is that I commit the requisite action.[216] The duty you thereby gain is not reducible to moral duties you already had independent of my action. That is to say, your duty to stay off my property is not reducible to your duty to be kind to other people and consider their feelings, or to refrain from interfering with their person. Instead, historical entitlement theories want to claim that a new obligation is imposed through and because of an acquisitive act.

Why should people have to accept such an obligation, or the rule by which it is imposed? Gerald Gaus and Loren Lomasky argue that a PJA is justified if it can be shown that the people bound by it "stand symmetrically with respect to what is gained and what is forgone."[217] In other words, if the PJA benefits everyone, then the imposition of new obligations is acceptable. But this is clearly an instrumental argument; the PJA is defended for its positive consequences. The same goes for Richard Epstein's theory, in which he defends a first-come-first-serve PJA by claiming it promotes efficient resource use.[218] These are not pure historical entitlement theories, but rather collapse into an instrumental defence of property and the rules by which one can gain property. Gaus, Lomasky, and Epstein may disagree

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[215] Waldron, *The Right*, 1988, 269-270.
[216] Waldron, 270.
[217] Gaus and Lomasky, 'Are Property Rights Problematic?', 487.
[218] Richard E. Epstein, 'Past and Future: The Temporal Dimension in the Law of Property', *Washington University Law Review* 64, no. 3 (1986): 667–722. For a critique of his view, see David Haddock, 'First Possession Versus Optimal Timing: Limiting the Dissipation of Economic Value', *Washington University Law Review* 64, no. 3 (1986): 775–92.

with other instrumental theorists about the values that property institutions should promote, or about how important acquisition rules are in a political theory of property, but they *agree* on the fundamental method required for defending property institutions.

Nozick adopts a different strategy. He recognises that acquisition takes away people's Hohfeldian liberty to use objects, imposing an obligation on them that they didn't have before.[219] Yet he believes this is unproblematic if the acquisition doesn't make the person with the new obligation worse off than they were before.[220] The bare fact that someone loses a liberty is not what makes their situation worse off, on his view.[221] Instead, it must be the case that people "lose the opportunity to improve [their] situation by a particular appropriation or any one."[222] It would then be up to the PJA to specify the relevant standard through which a worsening (or lack thereof) must be measured. Acquisitions that accord with a PJA so understood, are not justified for instrumental or constitutive reasons. Nozick's "non-worsening" proviso posits a constraint on acquisitions, rather than a goal that they generally satisfy or a good that they form part of.[223]

Interestingly enough, Waldron, even while rejecting Nozick's

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[219] Nozick, *Anarchy*, 175.

[220] Nozick, 175-6.

[221] Nozick, 176.

[222] Nozick, 176.

[223] This is in contrast to what Barbara Fried has argued about Nozick's theory in her essay 'Does Nozick Have a Theory of Property Rights?', in *The Cambridge Companion to Nozick's Anarchy, State, and Utopia*, ed. Ralf M. Bader and John Meadowcroft (Cambridge University Press, 2011), 230–52. Fried argues that Nozick at times adopts a consequentialist defence for property, arguing that it is justified if it improves people's situation. Nozick's actual argument, however, only states that acquisitions are justified if they do not make anyone worse off; they therefore specify a condition that acquisition must satisfy without – as a consequentialist theory would do – specifying a goal that must be promoted.

broader argument, seems to concede the argument that the creation of new obligations is unproblematic if the obligations are not burdensome. He writes that "[t]he unilateral creation of a new universal obligation would not be of very great concern if the obligations created were not onerous ones."[224] He therefore argues that PJAs could be acceptable if they instated strong provisos, demanding – for example – that one leaves enough and as good for others, or restricting the duration of property rights, or by otherwise mitigating the effects of unilateral acquisition.[225]

That is a view I reject. The way in which PJAs allow individuals to unilaterally impose obligations is not automatically made acceptable by making it less cumbersome. As free and equal persons, we need not accept an obligation just because it is not onerous, as if that would give us no cause to complain. A small request may make no difference to my life, but that is not enough to show that I am bound by it.

To illustrate, imagine that we walk into the office canteen together. All the tables are free and offer the same view and level of comfort. Just as we're about to sit down, a couple arrives and demands that we sit at a different table. This is not because the table is important for them in any way; they have just decided to command us around on a whim. We therefore have no independent moral duty to allow them to sit there. If there is any such duty, it arises entirely from the fact that they want to impose it. Furthermore, there are clearly enough other tables left and they are just as good, so really it should make no difference for us in any way. Does that mean we are under an obligation to do as they say? Clearly not. We may humour them if only to avoid a pointless conflict, but we are not morally bound to do so. Why not, if the request was no trouble? Very briefly, I believe that the background idea here is that it is demeaning of our person to have other

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[224] Waldron, *The Right*, 1988, 267.

[225] Waldron, 281.

people tell us what to do, and let this become binding on us just because they want it to be. It is inconsistent with our status as free persons, who can formulate their own reasons for action.

Simmons seemingly wants to deny this point. He argues that the unilateral and wilful imposition of new obligations on persons (such as I described in my example) is quite a familiar and generally accepted phenomenon in everyday life.[226] He gives the following examples:

> "For instance, I may make a legal will, unilaterally imposing on all others an obligation to respect its terms (which they previously lacked), for the very purpose of limiting others' freedom to dispose of my estate in ways contrary to my wishes. I may occupy a public tennis court to practice my serve, or we may take the softball field in the park for our game, unilaterally imposing on all others obligations to refrain from interference, and do so for the very purpose of enjoying our activities unhindered by such interference. Or I may rush to the patent office and register my invention, unilaterally imposing certain obligations of restraint on all others, for the very purpose of limiting others' freedom to likewise take advantage with their competing inventions."[227]

None of these examples support Simmons' view, however. This is because in each case, the imposition of obligations is only made possible through a set of background rules over which the people involved exercise a degree of control. Citizens elect politicians who design laws on inheritance and intellectual property, and who develop regulation for the use of public spaces. Moreover, citizens and politicians are involved in processes of justification where they have to offer reasons for accepting these laws and regulations, for instance by claiming that they promote or are constitutive of a valuable end. PJAs can be justified in the same way, of course, but then they are not

[226] Simmons, *Justification and Legitimacy*.
[227] Simmons, 220.

part of a pure theory of historical entitlement anymore. Simmons goes further, however, and claims that "it is easy to imagine natural, noninstitutional analogues for each case I mentioned," where people can impose the same obligations but in the absence of background conventions allowing this.[228] He describes no such analogues, however, thus skating over the very point that is at issue.

What proponents of pure historical entitlement have to show is that it is acceptable for someone to impose a moral duty on another person and that this duty is (1) irreducible to the moral duties someone already has; (2) is not agreed to by the duty bearer; and is not imposed in accordance with a set of background rules that are (3) controlled by the people who are bound by these rules or are (4) justified to the people who are bound by these rules, through instrumental or constitutive reasons. The first condition is necessary because otherwise the theory adds nothing to the obligations we already have. I always have a duty not to remove someone forcibly from their place, for example, or not to deprive them of something they absolutely need. These duties are not wilfully imposed, meaning that I do not gain them just because somebody wants me to. The other conditions are about the unilateral character of initial acquisition. In addition, the third and fourth condition ensure that the argument doesn't defend a PJA as a derivative principle that is part of an instrumentalist or constitutivist theory. I have seen no argument to support this type of duty creation.

This doesn't make PJAs useless. They may have a place as a derivative rule within a broader liberal-instrumental or constitutive theory. For example, a theory that defends property institutions because of their contribution to people's autonomy, can defend an acquisition principle that

[228] Simmons, 220.

fits with this overall goal. The law of adverse possession qualifies as such a principle. It gives people property rights with respect to an object after a certain amount of time has lapsed, and this will help them to develop stable personalities and future plans, which is important for their autonomy and personhood. This rule specifies how someone may acquire property rights, and it is intended to serve the overall goals that property is meant to serve on an autonomy-based theory. Such a theory would employ instrumental arguments and not be based on historical entitlement in the fundamental sense criticised here. As I noted, Gaus, Lomasky, and Epstein all defend PJAs in just this instrumental way.

It is very likely also a derivative PJA that can explain why the fishers from Mawelle I mentioned in the last section should be able to govern the use of their fishery. It is not merely the fact that they were there first that justifies their claims. Rather, it is the recognition that a rule which would allow them to govern the fishery would be a rule that promotes economic development and is constitutive of people's ability to exercise control over their direct environment, while developing and sustaining ties to it. This rule would be one that could be accepted by all, and the imposition of obligations would only be acceptable because it was sanctioned by such a rule.

3.8 Conclusion

Property institutions can be defended using instrumental arguments and constitutive arguments. The former defend institutions by pointing to their empirical effects on a good, while the latter argue property rights are justified if they form or are part of a good. Neither argument is reducible to the other – in fact, the shape of these arguments makes them conducive to a concern with very different types of goods. Instrumental theories can account for the role that property institutions have in affecting people's empirical situation, that is, what they can actually do and be, and what

happens to them. Constitutive theories, by contrast, are directly concerned with protecting a certain normative situation, meaning the rights and obligations that people have. In particular, these theories defend ownership because of the normative authority it accords to persons. By contrast, theories of original property and pure historical entitlement cannot defend property institutions. Theories of original property either collapse into instrumental and constitutive accounts, or implausibly hold that fundamental rights are best conceptualised as property rights. Principles of just acquisition, which figure so largely in historical entitlement theories, are only supportable when viewed as derivative principles in an instrumental or constitutive theory.

I shall therefore only use the instrumental and the constitutive approach to defend group ownership. In particular, my instrumental argument will be that group ownership helps realise the material preconditions for non-domination. Group ownership can help people to use resources together in an efficient and sustainable way. As a result, people can use these resources to gain the capabilities they need to withstand arbitrary power. My constitutive argument, in turn, is that group ownership is constitutive of the authority that people require to enjoy non-domination. The institution can give people equal authority over decisions that concern their basic capabilities. Thus, it provides security against the arbitrary power of others over these capabilities.

Of course, these arguments will only justify group ownership if the ideal of non-domination is one that societies should strive to achieve. In the next chapter, then, I will define the concept of non-domination and defend it as a highly important value for the evaluation of property institutions.

4. Domination and Non-domination

4.1 Introduction

Group ownership institutions are valuable because they can help realise non-domination. But what does non-domination mean? Why is it valuable, and why is it a suitable concept, together with its antonym of domination, for evaluating ownership institutions? These are the central questions of this chapter.

Domination and non-domination are core concepts in the republican literature,[229] where they are used to evaluate power relationships.[230]

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[229] Philip Pettit coined the term non-domination in *Republicanism*, 21–27. Other authors may prefer to speak of independence, but the concern will be similar.

[230] I find this a more helpful way of describing the concepts than focusing, as many authors have done, on the idea of freedom. Discussions on non-domination as an ideal of freedom often ask whether the concepts answers to "linguistic intuitions" about what the concept of freedom means (see e.g. Richard Dagger, 'Autonomy, Domination, and the Republican Challenge to Liberalism', in *Autonomy and the Challenges to Liberalism*, ed. John Christman and Joel Anderson [Cambridge University Press, 2005], 177–203; Christian List and Laura Valentini, 'Freedom as Independence', *Ethics* 126, no. 4 [2016]: 1043–74). This seems to me to be an unproductive enterprise. Any concept that has historically been used under the term of "freedom" and that is internally consistent surely has a claim to being called that way, and these are criteria that the republican tradition certainly fulfills (on the history of the ideal of non-domination as an ideal of freedom, see

Such relationships are dominating and therefore objectionable when someone has arbitrary power over another person. Power is arbitrary when it can be exercised at the discretion of the powerholder, "just as their own whim or judgement leads them."[231] The distinctively republican claim is that the capacity to exercise such arbitrary power is wrong independently of how it is exercised.[232] To be sure, it is worse to be in a power relationship where people abuse you in fact than to be in a relationship where people have this capacity but don't use it. Republicans need not deny that some exercises of power are worse than others. But they argue that quite apart from that, there is something wrong with having to depend on another person's will

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e.g. Pettit, *Republicanism*, chap. 1; Skinner, *Liberty Before*; Annelien de Dijn, *Freedom: An Unruly History* [Cambridge, Massachusetts: Harvard University Press, 2020]). The more interesting question is whether the concept of non-domination articulates an ideal that societies should pursue, and its antonym an evil that they should avoid. To further this discussion and not get stuck in linguistic analysis, I find it helpful to use the terms domination and non-domination as such, and describe clearly what they stand for without trying to subsume them under the term freedom.

[231] Pettit, *Republicanism*, 57. This view also accords with the conceptions of domination laid out in Henry S. Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy*, Oxford Political Theory (Oxford: Oxford University Press, 2003), chap. 3; Frank Lovett, *A General Theory of Domination and Justice* (New York, NY: Oxford University Press, 2010), chap. 4; Rainer Forst, 'A Kantian Republican Conception of Justice as Nondomination', in *Republican Democracy: Liberty, Law and Politics*, ed. Andreas Niederberger and Philipp Schink (Edinburgh: Edinburgh University Press, 2013), 154–68; Christopher McCammon, 'Domination: A Rethinking', *Ethics* 125, no. 4 (2015): 1043–50; Dorothea Gädeke, 'From Neo-Republicanism to Critical Republicanism', in *Radical Republicanism: Recovering the Tradition's Popular Heritage*, ed. Bruno Leipold, Karma Nabulsi, and Stuart White (Oxford University Press, 2020), 30–40. Though these conceptions differ on how power ought to be checked (a debate to which I will turn in section 3 of this chapter), they all agree that it should at least *not* be entirely up to the power holder.

[232] See e.g. Pettit, *Republicanism*, 22, 52–53; Quentin Skinner, 'Freedom as the Absence of Arbitrary Power', in *Republicanism and Political Theory*, ed. Cécile Laborde and John W. Maynor (Malden, MA: Blackwell, 2008), 83–101; Lovett, *A General Theory*, 43–47; Gädeke, 'From Neo-Republicanism', 30.

in this way. The paradigmatic examples through which republicans articulate their worry are those of a slave under the power of a slaveholder, a wife under the power of her husband in a traditional, patriarchal marriage, and a subject under an authoritarian regime. The argument is that there is something wrong with being in the subordinate position in these cases, and that this is true even if the persons who have power happen not to exercise it. Republicans therefore argue that people should enjoy *non-domination*, meaning robust protection against arbitrary power. Power relationships are justified when no one has the capacity to subject another person to their arbitrary will. To secure this end, protection against arbitrary power must be guaranteed through a society's institutional set-up.[233] That is to say, such protection may not be the product of merely contingent circumstances.

The republican view faces significant opposition. Various theorists deny that there can be anything wrong with power relationships in and of themselves. They argue that it is only the way in which power is (likely to be) exercised that is the proper subject of normative evaluation.[234] Stronger

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[233] Philip Pettit, 'Freedom as Antipower', *Ethics* 106, no. 3 (1996): 576–604; Pettit, *Republicanism*, 58; Skinner, 'Freedom'.

[234] In democratic theory this is known as an instrumental approach to the defence of democracy, involving a focus on the likely outcomes that democratic and other regimes have rather than on the inherent features of such regimes. For examples of this view, see Philippe Van Parijs, 'Justice and Democracy: Are They Incompatible?', *Journal of Political Philosophy* 4, no. 2 (1996): 101–17; Ronald Dworkin, 'What Is Equality? Part 4: Political Equality', in *Philosophy and Democracy*, ed. Thomas Christiano (Oxford: Oxford University Press, 2003), 116–37; Richard J. Arneson, 'Democratic Rights at the National Level', in *Philosophy and Democracy*, ed. Thomas Christiano (Oxford: Oxford University Press, 2003), 95–115. Theorists of freedom such as Ian Carter and Matthew Kramer explicitly argue against the republican view that power relations can be problematic as such. On their view, what matters is whether the way in which power is used or is likely to be used will constrain people's option set. See Carter, 'Power and Unfreedom'; and Kramer, 'Liberty and Domination'. While on Carter's view any such limitation will be problematic, for Kramer the quality of the option will be important in the evaluation of an option set limitation. See Ian Carter, 'The Independent Value of Freedom', *Ethics* 105, no. 4

still, critics of republicanism argue that many if not all of the concerns republicans have with arbitrary power can be explained as a concern with the probable way in which such power will be used, and a desire to make the good use of this power more secure.[235] Another important criticism of republicanism is that the view is indeterminate; it doesn't have the resources to substantively evaluate institutions and policies. Instead, critics claim, it can only evaluate the power relationships under which such policies and institutions are adopted.[236]

These arguments form a serious challenge to my defence of group ownership as an institution that can help realise non-domination. In this chapter, I aim to counter this challenge. I shall argue that the capacity to exercise arbitrary power is wrong in and of itself, that non-domination is therefore an important ideal, and that the concepts of domination and non-domination are determinate enough to evaluate the substance of institutions, including ownership institutions.

To this end, I shall argue that the complaint against arbitrary power is irreducibly a complaint against a position in a relationship. The distinctive evil of domination consists in a violation of a person's status, by which I mean the standing that they ought to occupy in a society. No matter how arbitrary power is exercised, to be subjected to it is to be made the inferior in a social relationship, dependent on the superior's good will. There is an indignity to this dependence; it violates the respect that is due to a being

(1995): 819–45; Matthew H. Kramer, *The Quality of Freedom* (Oxford: Oxford University Press, 2003).

[235] Kramer, 'Liberty and Domination'; Robert E. Goodin, 'Folie Républicaine', *Annual Review of Political Science* 6, no. 1 (2003): 60–61; Jeremy Waldron, 'Pettit's Molecule', in *Common Minds: Themes from the Philosophy of Philip Pettit*, ed. Geoffrey Brennan (Oxford: Oxford University Press, 2007), 154–55.

[236] Christopher McMahon, 'The Indeterminacy of Republican Policy', *Philosophy & Public Affairs* 33, no. 1 (2005): 67–93.

that is capable of practical reason. This will be the argument of section two.

Understanding the particular evil of domination in this way will help me to specify this concept further and articulate its constituent conceptions of power and arbitrariness in section three. These conceptions must be specified such that the resulting understanding of domination does indeed form a status violation, while the elimination of the problematic characteristics of arbitrary power should restore status. On this basis, I argue that power relationships are dominating if an agent has the structurally constituted and structurally asymmetrical capacity to shape another agent's option set, in a way that is not under the control of the subjected person. This may sound very abstract for now, but it will become clearer as the chapter progresses. I shall also defend this conception against alternative views, which argue that domination does not necessarily consist of structurally constituted power, is not necessarily unequal, or is not arbitrary in virtue of a lack of control. None of these views, I argue, gets the complaint against domination right. Instead, they focus on the adjacent rather than the core evils of domination.

In sections four and five, I define the concepts of non-domination and basic non-domination. I conceptualise non-domination as a social status, namely the status of being robustly in control of the terms of the relationships that one is in, together and on an equal basis with everyone else in those relationships. This requires an institutional set-up through which such control can be exercised, and through which power relationships can be evaluated and transformed. Basic non-domination is a more specific ideal than non-domination. People enjoy basic non-domination when they have the capabilities that people reasonably require to be able to withstand arbitrary power, and are in control of the decisions that structure these capabilities. I argue that the realisation of basic non-domination should be the priority in a society's attempt to transform its power relationships. In

addition, I will show how institutions can contribute to this ideal in both a constitutive and instrumental way.

In section six, I address an objection that one could raise to my framework, namely that it is indeterminate when it comes to evaluating the substance of ownership institutions, rather than the decision-making process under which they are adopted. In particular, the objection holds that my framework can only demand that ownership institutions must be democratically adopted. I show that this argument is mistaken, and that republicans can object even to democratically adopted ownership institutions on substantive grounds.

4.2 Domination as a status violation

As a preliminary general definition, we can say that a person is dominated if they are subject to another agent's arbitrary power, meaning power that is not under the control of those subjected to it. To understand what is objectionable about domination, it helps to make matters concrete and zoom in on particular cases of arbitrary power that have become paradigmatic in the republican literature. These include the domination of a slave by a slave holder; of a wife by her husband in a "traditional," patriarchal marriage, for example as in eighteenth century Europe; and of a subject of an authoritarian regime, by the ruling dictator. In each case, a person is subject to someone else's power, who *can* exercise that power more or less at will. Slave owners, husbands, and dictators can determine what their subordinates may, can, and will do, as well as subject them to violence at their own discretion. Their subordinates have no control over that power, either on an interactional level, by determining what the other person does, or on a higher-order level, by setting the rules that restrict what the person in power may do.

It's clear that this makes the subordinates highly vulnerable to

harm. Slaveowners can exact terrible demands and inflict horrible punishments on their slaves, a husband can abuse his wife, and dictators can make their subjects disappear, for instance, for no other reason than that they wanted to. So whatever else is bad about such relationships, the likelihood that power will be exercised in harmful ways is certainly one of them. But as republicans argue it's not the only problem with relationships of arbitrary power. That is to say, the wrongness of these power relationships is not reducible to their (likely) outcomes. Instead, there is something wrong just with being in the position where someone *can* exercise arbitrary power over you, regardless of whether they do so or not.[237]

The non-instrumental wrong of dominating relationships is that they involve a violation of a person's status, by which I mean the standing that they ought to occupy in a society in virtue of their personhood.[238] The status of the subordinates in the paradigmatic cases of domination doesn't belong to a being that is capable of practical reason.[239] People can reason about and set their own goals, and they can think about how to pursue them. They are also capable of reasoning about and judging rules that govern their behaviour. Here I don't have in mind an ability to engage in very complex or high-minded considerations on one's goals and desires, or a very sophisticated ability to judge intricate policies, laws, and institutional setups. The ability to have desires and to form some sort of judgment on them, and the ability to see how certain rules have implications for one's

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[237] See e.g. Pettit, *Republicanism*, 22, 52–53; Skinner, 'Freedom'; Lovett, *A General Theory*, 43–47; Gädeke, 'From Neo-Republicanism', 30.

[238] Pettit, *Republicanism*, 87; Gädeke, 'From Neo-Republicanism', 25–30.

[239] I relate the issue of inequality in standing to a deliberately general concept of practical reason, as the capacity in virtue of which people ought to be respected. In so doing I hope to encompass different more fine-grained views on what the normative basis of non-domination is, such as Pettit's conception of discursive rationality as well as Dorothea Gädeke's discourse-theoretical conception of normative authority. See on this Gädeke, 'From Neo-Republicanism', 25–30.

behaviour, as well as the ability to judge those rules, also count towards a capacity for practical reason. This is a highly general and very short treatment of that idea, but I believe it suffices to show what is wrong with domination. It's wrong to treat persons as if they don't have the capacity for practical reason, and set goals and rules *for them*, determining *for them* what they may, can, or will do. A person who is treated in that way is not treated as a person at all, but as an object with which you can do what you want.[240]

This is true even if the dominating party happens not to take bad decisions, for example by commanding that a slave does work that they would have liked to do anyway if they were free. It's the very position that the slave is in, where someone else decides these matters for them, that is problematic. As Philip Pettit puts it:

> "To have the full standing of a person among persons, it is essential that you be able to command their attention and respect: if you like, their authorisation of you as a voice worth hearing and an ear worth addressing."[241]

The social standing – or respect – that should be properly accorded to a person is that the power to which they are subjected is authorised by and justified to them. This has to take place, moreover, not because the agent

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[240] In describing the core concern with domination in this broadly Kantian way, I follow Pettit's own explicit reliance on a Kantian idea of respect as well as Kantian republicans who urge this line of interpreting the republican ideal. See Philip Pettit, 'Joining the Dots', in *Common Minds: Themes from the Philosophy of Philip Pettit*, ed. Geoffrey Brennan (Oxford: Oxford University Press, 2007), 280; and Forst, 'A Kantian'.

[241] Philip Pettit, 'Keeping Republican Freedom Simple: On a Difference with Quentin Skinner', *Political Theory* 30, no. 3 (2002): 350. See also Pettit, *Republicanism*, 91, although here Pettit relates domination to social standing in a probabilistic way, by focusing not on the relationship between dominator and dominated, but on what the position of being dominated in one relationship might entail for relationships with others.

in power feels like it, as a husband may sometimes feel like consulting his wife, but because one's social status commands it.[242] On this view, your equal status is secured or violated not in virtue of the way power happens to be exercised over you, but in virtue of the *position* you occupy in a social relationship. That is to say, it is violated or secured because of what people can and may do to you, over and above what they actually do to you. This is why republicans emphasise that the very capacity to exercise arbitrary power over someone else is problematic, not just its exercise.[243]

The status violation of domination can manifest itself in a number of ways. Two manifestations that are often emphasised in the literature are a sense of uncertainty or insecurity experienced by the dominated, and a need they feel to engage in strategic behaviour, such as self-censorship and self-abasement.[244] I want to argue now that these are adjacent evils of domination, and should not be confused with the core concern of a violation of status.[245] This is because the problematic character of the types of

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[242] Pettit, *Republicanism*, 91; Philip Pettit, 'Free Persons and Free Choices', *History of Political Thought* 28, no. 4 (2007): 709–18.

[243] Pettit, *Republicanism*; Pettit, 'Free Persons and Free Choices'; Philip Pettit, 'Republican Freedom: Three Axioms, Four Theorems', in *Republicanism and Political Theory*, ed. Cécile Laborde and John W. Maynor (Malden, MA: Blackwell, 2008), 83–101; Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012); Lovett, *A General Theory*.

[244] Pettit, *Republicanism*, 85–86; Pettit, 'Keeping Republican', 349; Lovett, *A General Theory*, 132–33; Andreas T. Schmidt, 'Domination without Inequality? Mutual Domination, Republicanism, and Gun Control', *Philosophy & Public Affairs* 46, no. 2 (2018): 175–206.

[245] I will argue in the next section that this confusion of the adjacent with the core evils of domination plagues the accounts of domination developed by Lovett, *A General Theory*, chap. 5; and by Schmidt, 'Domination without Inequality?'. It's also what makes certain objections to republicanism - namely those that see it as a way of providing a more secure or extensive set of options - unconvincing. For examples of the type of view criticised, see Carter, 'Power and Unfreedom'; Kramer, 'Liberty and Domination'; Waldron, 'Pettit's Molecule'. I will also address this in the next section.

uncertainty and strategic behaviour that republicans note flows from the inequality in standing.

If you're subjected to arbitrary power, you may be beset with uncertainty. You're never sure of what the dominating agent will do, or what will provoke them, and may therefore suffer anxiety and feel unable to know which of your plans you can bring to fruition. Uncertainty in itself is not morally problematic, however; it's a particular kind of uncertainty that must be objected to here. Many things are uncertain in life; the weather, how other people react to you, and so on. This may give people anxiety or make it harder for them to plan events, but it's no cause for moral concern. However, the uncertainty that comes with occupying a lower social rank truly is objectionable. A woman may be unsure about whether the weather will permit her to go out and that can be a bit annoying. But the complaint about being unsure whether her husband will permit her to go out or not, is different. There is an indignity in having to hope rather than assume that your husband will let you do what you want. This kind of uncertainty makes you acutely aware of what is objectively speaking the case: that you occupy lower social standing than he does.

A similar argument applies to the subjectively felt need of the dominated to engage in self-censorship. Self-censorship occurs when the dominated, in an effort (not always successful) to anticipate the unpredictable behaviour of their superiors, choose to do or not do some things that *might* invoke their superior's displeasure. As with the problem of uncertainty, the need to engage in strategic behaviour is not in itself problematic. Refraining from certain behaviours to gain an advantage for yourself or out of consideration for others is not a bad thing. It becomes problematic when it is done because you're in the position of an inferior in the relationship, and have to keep a "weather eye on the powerful," never being able to "sail on

in the pursuit of your own affairs."[246]

Dominated persons may also experience a need to engage in self-abasing behaviours, like forelock tugging and other forms of excessive deference that the dominated engage in to try to avoid their superior's displeasure. This manifestation of domination is closely connected to the problem of status violation, as it's a way of expressing the fact that you occupy a lower social position. As such, the deferential behaviour that characterises relationships of domination is distinct from signals of respect and admiration that you might give as an equal among others. When people do enjoy this equal standing – when, that is, they are in control of the power that governs them equally with everyone else – they

> "can look others in the eye without reason for the fear or deference that a power of interference might inspire; they can walk tall and assume the public status, objective and subjective, of being equal in this regard with the best."[247]

But here, too, it's important not to mistake the experience of domination for the problem of domination itself. To be sure, people may be highly conscious of their unequal standing, and behave in problematic ways that seem to them fitting or safe considering their lower position.[248] But even when people are not conscious of it, or when they are brazen enough to act as if they occupy the same social position as everyone else, knowing full well how vulnerable they are, there is something wrong about the very *fact* that they don't occupy the social position that properly belongs to a person. There is something wrong about being in a position where your will is of

[246] Pettit, *Republicanism*, 86.
[247] Pettit, *On the People's Terms*, 84.
[248] Pettit, *Republicanism*, 61.

no consequence to the people in charge. The core evil of domination consists in a violation of status.

4.3 The characteristics of domination

I have so far worked with a fairly general concept of arbitrary power. Now that I've specified the key moral complaint against domination, however, there is a clearer view on what arbitrary power must look like. To wit, a specification of this concept must track those relationships in which, firstly, a powerholder can exercise power at their own discretion and, secondly, this power violates the status of the person subjected to it. It must be the case, in other words, that the very ability of powerholders to use their power is already problematic, and problematic in the specific sense of violating equal standing.

On the basis of these considerations, I will argue in this section that power relationships are dominating if and only if

a. an agent or set of agents *A*
b. has or have the capacity to shape the option set of agent(s) *B*,
c. and this capacity is structurally constituted,
d. structurally asymmetrical,
e. and not under the control of the subjected agent(s) *B*.

A. Agential

Domination is a concept that describes relationships between *agents*.[249] It may be possible that certain social *structures* limit the scope of actions that people can undertake, but that doesn't mean that these structures dominate anyone. Domination is not any old way of limiting what people can

[249] Lovett, *A General Theory*, 47–49.

or may do, but describes a violation of status. It describes a position that someone is in when someone else can limit their action space on an arbitrary basis. A "relationship" between a structure and a person cannot violate a person's standing. It is the fact that people are holding up such a structure that constrains what the subjected agent can do, or that the structure places people in a position to lord it over others, that marks people as inferiors and superiors in a social relationship. This is not to say that structures are not important in the assessment of domination. To the contrary, I shall argue below that domination always consists of the structurally constituted arbitrary power of an agent. This is also the case in all the paradigmatic instances of domination. Slavery, marriage, and authoritarianism are all institutions that secure the dominating power of the slaveholder, husband, and dictator. This means that there are republican reasons to object to social structures, but not on the grounds that they themselves dominate anyone.

B. Power as the capacity to shape option sets

Before clarifying which characteristics can make power objectionable, I have to specify the conception of power itself that I am working with. I define power over someone as the capacity to determine at least to some extent what that person can and will do. Power in this sense may be accompanied by authority (which I defined in the previous chapter as the right to exercise control over one's normative situation – their rights and obligations[250]), but it need not be.[251] It's true that the paradigmatic instances of

[250] See chapter 3, section 2.

[251] This position is different from the one defended by Henry Richardson in *Democratic Autonomy*, 34. Like Richardson, I also think the conception of power that Pettit works with – the capacity to interfere with someone – is too indiscriminate, but I don't think this should be solved by restricting domination to power that is exercised under a claim of authority. Rather, the concept must be restricted in a way that more closely tracks the core complaint against domination, namely by excluding those forms of power that – while arbitrary – are not constitutive of a person's low social standing.

domination are cases in which the dominating agent has the power to impose and change obligations. However, if the core evil of domination is that it constitutes a violation of someone's status as a practical reasoner, then it's clear that authority-based power is not the only kind of power that is problematic. Consider, for example, the incidence of partner violence in a society where husbands are not recognised to have authority over their wives, but where politicians are – because of wrongheaded ideas about the public-private distinction – highly reluctant to adopt rules about what they consider to be intimate relationships. In this society, the capacity of men to subject their female partners to abuse with impunity whenever their partners displease them (or not) violates women's status. This is so even though the power of husbands is not accompanied by any recognised right to change their partners' rights and obligations.

This way of defining power avoids an important problem in Pettit's seminal conception of domination as the capacity to *interfere* with a person's choices on an arbitrary basis.[252] Interference on his account refers to the intentional restriction of someone's already existing option set. This can be done by removing, replacing, or misrepresenting the relevant options, or by otherwise making people think (correctly or not) that they cannot undertake a certain option anymore, in a way that worsens the subjected person's choice.[253] The idea of interference thus presupposes a baseline set of options, which Pettit suggests must be set by the relevant social context. One can then measure whether an action amounts to a restriction of this baseline set of options, and whether this restriction also worsens a person's choice.[254] But how is this baseline set? Who determines what it

[252] Pettit, *Republicanism*, 52.
[253] Pettit, 53; Pettit, *On the People's Terms*, 33.
[254] "Context is always relevant to determining whether a given act worsens someone's choice situation, since context fixes the baseline by reference to which we decide if the

looks like? The baseline of options that people consider normal in a given society is shaped in a context of power relationships, and those may be dominating. If so, then such a baseline doesn't seem like an appropriate standard against which to measure arbitrary power.

The conception I put forward, however, includes both the capacity to change option sets relevant to a certain context, *and* the capacity to shape that context. Both capacities are part of the more encompassing capacity to shape the options people have or think they have. Put differently, it includes both the capacity to tinker with an existing option set and the capacity to create option sets. As such, my conception captures more ways in which people can arbitrarily determine what others may, can, and will do. Note that the capacity to shape a person's option set doesn't only refer to the capacity to shape what people can do *in fact*. Like Pettit's conception of power, mine also makes room for "the deceptive or non-rational shaping of people's beliefs or desires."[255] People can be made to believe that certain options are not open to them, or that they are good or bad, for example because of indoctrination or other forms of mind control and manipulation.

It might be thought that my conception of power is too broad, as innumerable actions can count as shaping an option set. Pettit's proposal at least has the advantage of pointing to a more or less concrete received benchmark by which to evaluate actions. As I will explain now, however, dominating power has three further characteristics that narrow down the scope of the concept considerably. These characteristics make the

effect is indeed a worsening." Pettit, *Republicanism*, 53. See also Pettit, *On the People's Terms*, 113.

[255] Pettit, *Republicanism*, 53.

measurement of domination more concrete and do so in a way that tracks rather than obscures power relationships that violate people's status.

C. Structurally constituted

The power of slave owners, dictators, and husbands in a sexist society is structurally constituted, not opportunistic. *Opportunistic* power is "based on favourable circumstances, and vanishes once these circumstances change."[256] To be sure, there may be particular opportunities in which the paradigmatic dominators find their power easier to exercise than at other moments, but ultimately their power both predates and outlasts these particular moments.[257] This is because it's constituted by social structures such as laws, social norms, practices, and pervasive ideologies that legitimate, normalise, or otherwise enable the dominator's power. The power of the husband, for example, is constituted by the legal institution of marriage, the ideology of a strict separation between the private and public realm, the limited opportunities made available for women to gain economic independence, and sexist views about women as inferior beings.[258] That the paradigmatic cases have this shape is no coincidence. I follow Dorothea Gädeke's recently defended view that *all* types of dominated power must be structurally constituted.[259]

Not all republicans agree with this way of narrowing the range of dominating power relationships. Frank Lovett and Philip Pettit explicitly claim that dominators can be "contingently rather than robustly powerful"

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[256] Dorothea Gädeke, 'Does a Mugger Dominate? Episodic Power and the Structural Dimension of Domination', *Journal of Political Philosophy* 28, no. 2 (2020): 206.
[257] Gädeke, 205, 213.
[258] Social structures include, then, both formal norms such as laws and informal norms such as ideas about what is "normal" for someone to do to a woman. See Gädeke, 205.
[259] Gädeke, 'Does a Mugger Dominate?'; Gädeke, 'From Neo-Republicanism', 30–36.

and that domination can hence be opportunistic.[260] This occurs, for example, when an armed mugger confronts you in an abandoned park.[261]

The problem with such a view, however, is that opportunistic power can never be eliminated entirely. To illustrate, opportunities to threaten or use violence against others are endemic; I could do it right now if I walked over to my partner sitting in the other room. It is hard to see how this opportunity could be taken away from me in a way that is morally acceptable (that is, not through brainwashing or maiming me, or some similar draconic measure). Lovett's and Pettit's conceptualisation therefore invites the charge that the ideal of non-domination is impossible to realise.[262] Indeed, Matthew Kramer argues that really all republicans can care about is to minimise the probability that power will be exercised in a negative way. They cannot argue for the elimination of arbitrary power because there simply is no way of eliminating it entirely.[263] His argument implies that even if there is something distinctively problematic about power relation-

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[260] Frank Lovett and Philip Pettit, 'Preserving Republican Freedom: A Reply to Simpson', *Philosophy & Public Affairs* 46, no. 4 (2018): 375.

[261] Lovett and Pettit, 375.

[262] Kramer, 'Liberty and Domination'; Nikolas Kirby, 'Revising Republican Liberty: What Is the Difference Between a Disinterested Gentle Giant and a Deterred Criminal?', *Res Publica* 22, no. 4 (2016): 369–86. Kirby solves the problem in a way that overlaps but is not identical with the solution I have chosen here, based on Gädeke's conceptualisation. On Kirby's view, the capacity of a person to interfere with another is not arbitrary if the person subjected is in control – together with everyone in a similar position – of the rules regulating how interference will be dealt with. Thus, a married woman is not dominated if she's in charge of the rules that govern whether her husband can interfere with her or not, and what sort of punishment will be pursued if he does. On my view, this is a necessary but not yet sufficient condition for someone to enjoy non-domination. Kirby's solution should be part of an entire package of institutions and practices that enable the woman to exercise robust control over the relationships she's in, on the basis of her status, in a way that is equal to everyone else in those relationships. This will become clearer as the chapter proceeds.

[263] Kramer, 'Liberty and Domination'.

ships as such, the solution republicans propose is an impossible ideal, making the republican perspective irrelevant for actual social analysis and change.

But this is only true if one focuses on opportunistic power. For it *is* possible to combat the structures that make it the case that husbands, slaveholders, dictators have *robust power* over their subjects. And it's only such robust power that constitutes a violation of our status. For consider, in a gender equal society where women are well protected against abuse, husbands may still be able to force their wives into certain actions. But in such a society this *ability* only becomes problematic once a man acts on it. This is because the fact that he has opportunistic power over his wife – just that he has it, not that he exercises it – doesn't say anything about her position in that society. She enjoys equal standing with other citizens, as she is in control of the rules that govern marriage together with everyone else, enjoys equal protection under the law, and is not disempowered by informal sexist social norms. These institutions secure her social standing, even if it remains impossible to absolutely prevent her husband from abusing her. Contrary to what Kramer argues, then, domination is not only distinctively problematic, but its elimination is also actionable.

D. Structurally unequal

The social structures that make a husband, slaveholder, and dictator powerful, do so in an asymmetrical way. They empower these parties and simultaneously disempower the wife, slave, and subject. After all, it's not as if the dictator enjoys the same power to make anyone disappear as everyone else. Again, I follow Gädeke's view in arguing that this is *always* the case.[264] Dominating power is not just structurally enabled, but also structurally asymmetrical. By this I mean that the inequality in power cannot be

[264] Gädeke, 'Does a Mugger Dominate?'

explained through contingent factors – such as a difference in physical strength or wit – but through the social structures present in that society. The social structures that enable domination "not only make some powerful, they also constitute the markers of vulnerability that render a particular group subject to their domination."[265]

Gädeke's criteria of structural constitution and structural asymmetry separate objectionable from non-objectionable power relationships in a way that maps onto the core criticism against domination, namely that it's a violation of status. Her criteria imply that in the USA, for example, the very *ability* of men to rape women, of police officers to kill Black persons, or of floor managers to harass workers, are all constitutive of domination. In each case there are social structures (sexist, racist, capitalist) in place which make some people vulnerable and others powerful, in a way that makes their standing unequal. By contrast, the very *ability* of men to rape other men, of a Black person to kill a White police officer, or of a CEO to harass a male CFO, is not constitutive of dominating relationships. The *mere capacity* to engage in these behaviours in no way constitutes a violation of anyone's standing, even though it would certainly be a bad thing if people acted on that capacity. The "potential victim," so to speak, is not made the lesser in the relationship simply in virtue of the other person's *capacity* to do something to them. To the contrary, these potential victims enjoy equal standing before the law and are in control, together with other citizens, of what the law looks like. In addition, they are not disempowered vis-à-vis the "potential offender" by informal discriminatory social norms.[266]

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[265] Gädeke, 209.

[266] Gädeke's proposal thus solves the problem – noted also by Richardson – that the conception of domination developed by Pettit is too indiscriminate to have critical bite. See Richardson, *Democratic Autonomy*, 34; Gädeke, 'Does a Mugger Dominate?', 203, 218.

The view that domination must be structurally unequal goes against Andreas Schmidt's recent argument that republicans should not only be concerned with power asymmetries, but also with relationships in which people hold equal power over one another.[267] These relationships are problematic when people depend on each other's will in a way that places them in a precarious position. Schmidt refers to such relationships as cases of mutual domination, and argues that even mutual and equal dependence on another person's will is problematic in a way that different republicans have stressed: it makes people feel uncertain and can induce the need to engage in strategic behaviour, such as ingratiation.[268] One of the examples with which he supports his view is the following:

> "MAD ("mutually assured destruction"): A has sufficient nuclear missile capacity to annihilate B and vice versa. If A sets off nuclear missiles that would annihilate B, B still has sufficient time to set off their own nuclear missiles that would then annihilate A. The same is true, mutatis mutandis, if B rather than A initiates a nuclear attack."[269]

MAD doesn't showcase inequality, but surely it is still problematic to be dependent on someone in this way. Schmidt argues that you might face uncertainty, especially if the counterparty is not rational but "vindictive, greedy, and impulsive," or if they bear a different risk attitude.[270] This uncertainty may even induce you to ingratiate yourself with the other person. Thus, Schmidt links the adjacent evils of domination to relationships of mutual dependence.

Schmidt's view fails, however, to carry the distinctively republican point that it's the fact that a person *has* arbitrary power, and not the fact

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[267] Schmidt, 'Domination without Inequality?'
[268] Schmidt, 189–94.
[269] Schmidt, 188.
[270] Schmidt, 191.

that they are likely to exercise it, that is morally problematic. Not coincidentally, all of Schmidt's examples are like MAD, where people depend on another person's will for something that is quite important. Moreover, people face uncertainty to the extent that the undesired exercise of power is quite probable. This raises the suspicion that if the cases of mutual will dependence are about trivial matters, or if the probability of interference is actually quite low, that the objectionable nature of the power relationship disappears. Consider the following adapted example:

> Mad for pie: two customers walk up to a counter in a bakery at the same time. There is only one piece of banana cream pie left. Both customers know that if they signal to the baker first, they will get that piece of pie. The other customer will just have to pick some other flavour.

This case has all the structural features of MAD, but none of its horrible potential consequences. Whatever uncertainty the customers face as a result of their *equal* mutual will dependence is morally trivial. This is so even if one of the customers tries to ingratiate themselves with the other, for instance by giving them a compliment in the hope they'll get to be first in the queue. This conclusion will be unsurprising, since uncertainty and strategic behaviour are the adjacent rather than core evils of domination. It follows that mutual and equal will dependence may be problematic in some circumstances, but for reasons that have to do with the probable exercise of power and its bad consequences, not with the relationship itself when viewed in isolation from how power is likely to be exercised. Domination is necessarily unequal, problematic dependence is not.

It might be objected that my response to Schmidt is unfair, because domination – so the objector would reason – is in any case only problematic when people's important interests are at stake. Indeed several authors argue that the concept of domination should be restricted to include only

those situations in which someone has arbitrary power over another person's basic interests.[271] Otherwise, one might encounter the problem of "cheap domination" as Christopher McCammon calls it, meaning that the concept of domination would cover relationships that are unproblematic,[272] such as when a neighbour can determine whether you may swim in their swimming pool or not, at their own discretion.[273]

On my view, however, the problematic nature of domination is not a function of the options that the powerful agent can constrain or leave open. To be sure, domination may be worse to the extent that the options under another person's control are more important to the subjected agent, but the wrongness of the relationship is in no way reducible to that. The problematic nature of domination is instead found in the violation of status that is occasioned by structural power asymmetries, and this power can concern control over even seemingly trivial choices. Let me illustrate with an adapted example of the pie in the bakery.

> Pie for whites: a Black person goes into a bakery somewhere in the south of the USA in the sixties to get a pie. Though segregation has formally ended, the customer knows that there are shop owners who continue to exclude Black people and are supported in that by strongly ingrained local social norms and practices. Thus the shop owner might but also might not refuse to sell pie to them. As a Black

[271] See Cécile Laborde, 'Republicanism and Global Justice: A Sketch', *European Journal of Political Theory* 9, no. 1 (2010): 48–69; and, in a qualified way, Ian Shapiro, 'On Non-Domination', *University of Toronto Law Journal* 62, no. 3 (2012): 293–336. Christopher McCammon also accepts a qualified version of this thesis, adding that any type of arbitrary power that would come with high costs in the case of non-cooperation is a form of domination. See his 'Domination'.

[272] McCammon, 'Domination', 1033.

[273] McCammon, 1034.

> person, the customer cannot be sure of how they will be treated, but must submit to the shop owner's decision either way.

Pie is not plausibly viewed as a basic interest, so the wrongness of the position that the Black person is in is not reducible to that worry. But there *is* something wrong with the position they're in. It's not right that someone else can determine what you eat or drink or where you do that and determine that in a robust rather than opportunistic way. Children experience that kind of insecurity when asking their parents for a sweet. To have to be in that dependent position as an adult when relating to strangers, is to have a social position that doesn't properly belong to a person. The wrongness of domination therefore doesn't depend – in the first instance – on the importance of options that can be constrained. Instead, domination is a concept with which to evaluate the agency behind the constraint of options.

E. Arbitrariness as a lack of control

The power of dominators in the paradigmatic cases is entirely at their own discretion. It's clear that this discretion must somehow be diminished, but how? Republicans offer different views on this issue, all of which track their different conceptions of *arbitrariness*.[274] On my view, which follows – among others – Pettit and Rainer Forst, power is arbitrary when it is not under the control of those who suffer it.[275] This is the only conception of arbitrariness that gets the complaint against domination right. In the next

[274] For discussions contrasting different views see Richardson, *Democratic Autonomy*, chap. 3; Lovett, *A General Theory*, chap. 4; Samuel Arnold and John R. Harris, 'What Is Arbitrary Power?', *Journal of Political Power* 10, no. 1 (2017): 55–70; Gädeke, 'From Neo-Republicanism', 36–40.

[275] Pettit, *Republicanism*, 55–56; Pettit, *On the People's Terms*, chap. 1; Forst, 'A Kantian'; McCammon, 'Domination'; Gädeke, 'From Neo-Republicanism'. I don't mean to suggest that there are no differences between these views, but they do have in common that they focus on control.

section, I shall say more about the sort of control over power that is required to make it non-arbitrary. Here, I will focus on clarifying the problems faced by alternative understandings of arbitrariness.

The first of these views is defended by Lovett, and holds that power is arbitrary to the extent that it's not regulated by effective and stable rules, that are common knowledge among everyone involved.[276] Lovett makes no substantive demands on what these rules should look like, and opposes the view that these rules ought to be under the control of the people whose behaviour they govern.[277] He argues that stable, commonly known, and effectively enforced rules will reduce the uncertainty that people suffer, as well as the need to engage in self-abasing behaviour to placate one's superior. Under such a system, slaves, for instance, will know where they stand because their master is constrained by the rules of slavery. They are therefore more certain of their position and will have no need to engage in flattery or in self-censorship; the way they are treated is determined by the rules and not by how well they please or displease their master. Lovett concedes that his conception of arbitrariness would dub a rigorously enforced racist regime as non-dominating.[278] But he believes this is no problem for his view; it just means that domination is not the only wrong that people can suffer.

The problem with Lovett's view is that it gets the complaint against domination wrong. As I argued earlier, it's not uncertainty and strategic behaviour as such that are problematic, but the uncertainty and the types of strategic behaviour that come with being subjected to another's will, by virtue of your lower social position in that society. One can reduce the symptoms of domination while still leaving the fact that makes them

[276] Lovett, *A General Theory*, chap. 4.
[277] Lovett, 115–17.
[278] Lovett, 101.

objectionable intact, that is, by leaving persons in a position that violates their status. Even if laws are very clear and stable, you will enjoy lower status than others if you have no say in determining what these laws are. You are not viewed, in such a case, as a person to whom restrictions on actions have to be justified, or as a person who could bring forward their own views on what ought to be done. You are not viewed, in short, as a person at all. And although someone living under such rules may be more certain of where they stand, it's a kind of certainty that codifies rather than transforms their lower status, in making concrete and rigorously enforcing the rules in which they have no say, and that stamp them as a lesser being.

As for the supposed elimination of self-abasement, I doubt that this will be achieved in rigorously enforced systems of oppression. The humiliating behaviours that Afghan women had to engage in when the Taliban was at the height of its power clearly did give expression to their lower social status. Self-abasement through excessive deference can be a codified practice and rigorously enforced, and is no less of an indicator of unequal standing for it. The need for self-censorship might be lessened because of clear rules, to be sure, but then no republican denies that clear rules are important. The question is whether that is enough to secure non-domination. I do not see how it can be.

Lovett argues that adherents of the control account must hold that a reduction in uncertainty does nothing to affect the levels of domination present in that society.[279] Indeed I agree with this view, but I don't see how Lovett can raise it as an objection. Proponents of the control account may invoke the same response that he does in addressing the case of a rigorously enforced system of oppression, which is that domination is not the only thing of importance in the world. In a comparison between two situations

[279] Lovett, 116.

of domination, one with rigorously enforced rules and the other without, the former might win out. And even this seems quite controversial to me. Imagine that an armed rebellion against an authoritarian regime weakens this regime without being able to overthrow it. With the police and military focusing on diminishing the rebellion, their enforcement of restrictions on freedom of speech and movement slackens. Following Lovett's view, one might make the case that the right course for reducing domination is to fully restore the dictator's power, since this will restore the rigorous enforcement of clear and commonly known rules. And that should be no surprise: Lovett's conception of arbitrary power would leave intact all the paradigmatic cases of domination, including slavery and the domination of women by their partners, and just make them more predictable.

Samuel Arnold and John Harris defend the alternative view that power is arbitrary when it isn't forced to track the objective interests of the people subjected to it.[280] Although they propose no account of what these objective interests are, they argue that relationships of power are usually found problematic or not to the extent that they don't secure the interests – however understood – of the relevant parties. Arnold and Harris therefore argue that the productive way forward for republicans is to develop an

[280] Arnold and Harris, 'What Is Arbitrary Power?' Arnold and Harris claim that this is the view that Pettit defended in his 1997 book *Republicanism*, and that he substituted this for an account of arbitrariness as a lack of control later in *On the People's Terms*, but this is a misunderstanding on their part. For although Pettit does indeed argue that interference must be forced to track the interests of the people subjected to it, he makes clear that this is a point about having the right *procedure* as a check on power, and that the procedure is one in which the subjected persons have control over the interference. Pettit writes that "An act is arbitrary, in this usage, by virtue of the controls – specifically, the lack of controls – under which it materialises (…)." *Republicanism*, 55. Pettit also claims explicitly that he has not changed his view on this matter but that he only adopts different terminology to make his point clearer in *On the People's terms*, 58.

account of what these interests are.[281]

But here Arnold and Harris skate over a crucial point. Who will define what counts as an objective interest? The concepts of domination and non-domination are concepts for evaluating and transforming actual social relationships, not for merely describing in an abstract way what would count as good relationships, as an exercise in ideal theory.[282] This means that on the research program that Arnold and Harris defend, republicans have to think of political institutions through which people can articulate their objective interests; theorists cannot rest content in articulating what these objective interests are themselves. It seems logical that the institutions that will be proposed will amount to some form of democracy, meaning that people are given control over the power that binds them. The objective-interest view thus collapses into a control-conception of arbitrariness.

But this is not the only problem with their view. More pressing is that they, too, get the complaint against domination wrong. Take the case of a dominated wife. Does a married woman only have cause to complaint because her husband's power might not track her interests? I would argue that no one should have that kind of power over another, regardless of whose interest it's exercised in. I believe that if the woman complains against her state, it's because she doesn't want to be treated like a child by her husband, who takes all the decisions but ensures they are in her best interest. She wants to occupy the position of an adult, who can take decisions of her own, good or bad. To restore her status as an equal, it's necessary that whatever power is exercised over her is justified to her, and that

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[281] Arnold and Harris, 67.

[282] James Bohman, 'Critical Theory, Republicanism, and the Priority of Injustice: Transnational Republicanism as a Nonideal Theory', *Journal of Social Philosophy* 43, no. 2 (2012): 97–112.

she is the one that determines what counts as a good justification, not her husband.[283]

4.4 Non-domination

Non-domination is a status that a person enjoys, that is due to them because they have the capacity for practical reason. In other words, non-domination refers to the standing you have in a society when people respect you as a person. Describing non-domination in terms of the status of being respected is a Kantian way of clarifying the republican ideal, which Pettit does as follows:

> "Respect is not primarily a matter of adopting an attitude, though it certainly has attitudinal requirements. And it is not primarily a matter of behavior—a matter of enacting prescribed action-types—though again it has behavioral requirements. Respect has two components: negatively, it requires a framework in which people are denied control over one another; and positively, it requires a disposition to engage with one another in reason-mediated or reason-friendly ways. Respect in this sense is a practice that we can pursue only with other reasoning creatures."[284]

Respect, then, is a practice that carves out a certain status for persons, namely one in which they may not be under the control of others, and where others engage with them in recognition of the fact that they are persons capable of practical reason. As I argued earlier, the capacity for practical reason – to think about and set one's own goals and to think about and judge rules – forms the normative basis for non-domination. In this section I explain further, in highly general terms, what the status of non-domination entails and what is necessary for its realisation.

The negative requirement of non-domination is that people have

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[283] Forst, 'A Kantian', 155.

[284] Pettit, 'Joining the Dots', 280.

no structurally enabled and asymmetrical power over you that you don't control. This must be robustly and not just contingently true. An opportunistic ability to withstand power relationships is not enough to secure the right status. Someone may be very good at hiding from or charming a dictator, for example, but whatever power they have, they have it as a result of contingencies that can dissipate. They still are in the position where the dictator could put them to death at will. Another way of putting it is to say that contingent power is not sufficient to confront the structural and structurally unequal power of the dominator.[285] This dominating power has implications for a person's position in a society, that mark them as an inferior. No contingent power can counter that; at best it can remove some of the harmful consequences of that position.

An important implication is that, to enjoy non-domination, it's not enough that no one has structurally asymmetrically constituted arbitrary power over you *now*. The robust enjoyment of your position as an equal requires that no such power could take hold. Thus, there is a gap between a situation in which no one dominates you, and a situation in which you enjoy non-domination.[286] The absence of domination is not equivalent to enjoying non-domination. Non-domination is the status – thus, the *structural* position – of not being under the power of others, not the happenstance enjoyment of not being under such power (which we may refer to as "no domination").[287]

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[285] Gädeke, 'Does a Mugger Dominate?', 208–9.

[286] Many thanks to Dorothea Gädeke for pointing this possibility out to me.

[287] An illustration may clarify what I mean by this. Imagine a "state of nature" type of situation, where there are no structurally unequal power relationships (yet). In such a situation, people are not dominated, but they also don't enjoy non-domination. This is because someone could, as a result of changing circumstances, alliances, and social norms, gain structurally constituted and structurally unequal arbitrary power over other people. These persons do not have the institutional set-up through which they could challenge and transform such power together. Therefore, the fact that they are not dominated now,

This gives some insight into what is positively required for non-domination. To ensure that you are not dominated now and that no such power can take hold, people have to be robustly in control of the relationships that they are in. People who stand in a relationship to one another have to be in control together and on an equal basis of the terms of that relationship. The robustness-demand requires that this control is exercised through an institutional set-up. This is how the argument for non-domination grounds the need for an overarching political organisation, that must be democratically controlled and subject to the rule of law.[288] It is through this institutional set-up that people can address and transform dominating power relationships together.

Note, then, that the type of control required for non-domination usually shouldn't be sought at the interactional level. This is the strategy of Schmidt, for example, who is concerned with the sort of control an individual can exercise over another individual independent of the institutional

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is not a robust fact. It depends on the circumstances that happen to obtain at the moment, rather than on *structural* features of their situation.

[288] Gädeke, 'From Neo-Republicanism', 40–44. See also Pettit, *On the People's Terms*, 183–84. Pettit writes that non-domination "requires independency on the will of others, even the goodwill of others. And for that deep and inescapable reason, free status is something that we can make available to one another as individuals only by collectively organizing ourselves in a state – strictly speaking, a just and democratic state." 184. This theme can also be found in *Republicanism*, where Pettit argues against the idea that non-domination could be realised outside of the state, through a strategy of mutual deterrence in which people happen to be equally powerful. Pettit's core argument against this view is that the people involved will still have the ability to coerce one another in a way that is not under the control of the other person, and therefore remains arbitrary (*Republicanism*, 94). The view I go along with here, based on Gädeke's conception of domination as a structurally enabled and structurally *unequal* type of power, views the situation of mutual deterrence in a different light. The problem with mutual deterrence is not that there is domination – there isn't, because power is not held asymmetrically – but because the enjoyment of no domination is not secure.

context, just by using the resources that happen to be available to them.[289] Rather, it has to be the case that people can exercise a higher-order level of control over the rules that bind them.[290] I shall explain later on in this chapter why this is not *enough* for non-domination to be realised, but want to note here that it is necessary.

Having clarified what should be under the control of citizens, and that this control should be robust and institutionally arranged, I finally want to say more about what I mean by control. I will focus here on the sort of control that is necessary in national politics. Among other things, non-domination requires that citizens have an equal opportunity to influence the outcome of political decisions. The right to influence political decisions must moreover not be merely formal – as when someone has the right to vote but is unable to access information, get to the voting booth, or get the right documentation for voter registration – but effective. Furthermore, it must be the case – structurally – that your say has influence that is equal to that of everyone else. If the wealthy surreptitiously rule in what is a nominal democracy, then the country is not governed by everyone equally, but instead governed by the economic elite. At that point, state power is not under the control of everyone, but is effectively an instrument of the wealthy's domination of the rest of the citizenry.

Having an equal and effective opportunity for influence does not mean having the decisive say on a decision. That is, the type of control required for equal standing is not control in the sense of making sure that decisions completely accord with your individual point of view. Instead, it has to be the case that, even when political decisions don't reflect what you wanted, you can nevertheless plausibly construct the decision leading up to

[289] Schmidt, 'Domination without Inequality?'

[290] See Kirby, 'Revising Republican Liberty', although he doesn't make the point in terms of security of status.

it as one in which you had an equal say with everyone else. When that is not the case, as it wasn't in my example of the surreptitious oligarchy, then the procedure fails what Pettit calls the "tough-luck test."[291] The fact that you lost out in the decision is then not a result of tough luck, simply born of the fact that others had a different view than you, but is a result of the fact that some people have unequal power over the process. Losing out in that case is not just annoying, but is a sign that you don't have equal control, and therefore do not enjoy the status that you should.

Besides having an equal say on the actual decisions taken in a democracy, authors like Forst, Gädeke, and Alan Coffee argue that citizens should also have an equal voice in deciding whether the considerations that count in favour of one decision or other, are good considerations.[292] In Pettit's theory, considerations in favour of political decisions must be based in line with certain standards of what counts as good or not, that are implicit in people's local practices.[293] The problem with this view is that such standards may themselves form an oppressive social structure, such as when, as Coffee argues, they reflect unequal gender norms.[294] It is therefore necessary that these standards themselves are the subject of evaluation, and of evaluation by everyone equally. Everyone should have a voice in determining what counts as a good reason for political decisions. Proper consideration of the fact that people are capable of practical reason requires that they have the possibility to, quite simply, evaluate the reasons prevalent in a

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[291] Pettit, *On the People's Terms*, 177.

[292] Forst, 'A Kantian'; Alan Coffee, 'Two Spheres of Domination: Republican Theory, Social Norms and the Insufficiency of Negative Freedom', *Contemporary Political Theory* 14, no. 1 (2015): 45–62; Gädeke, 'From Neo-Republicanism'.

[293] Philip Pettit, 'The General Will, the Common Good, and a Democracy of Standards', in *Republicanism and the Future of Democracy*, ed. Yiftah Elazar and Geneviève Rousselière (Cambridge: Cambridge University Press, 2019), 13–40.

[294] Coffee, 'Two Spheres of Domination'.

society, and propose their own. They should be viewed, as Forst puts it, as "agents of justification," meaning that the power relationships ought to be justified to them, with the people themselves determining what counts as a good justification.[295]

Moreover, to secure equal standing, this justification must proceed in a general and reciprocal way.[296] People may not carve out exceptions for themselves, or adopt rules that discriminate between persons, but rules must apply to everyone equally. This will go some way to ensuring that the considerations put forward in favour of political decisions are considerations that people consider truly justifiable.

4.5 Basic non-domination

In this thesis I argue that group ownership helps to realise people's *basic non-domination*, which can be distinguished from the more demanding ideal of *full non-domination*.[297] To enjoy full non-domination is to be in control of all power to which one is subjected, equally with everyone else who is also subjected to that power.[298] This is a difficult ideal to attain even in the best of circumstances. It is therefore worth establishing what the priorities should be from a republican perspective. What should a society that aims to realise just power relationships do first of all? Articulating this priority will come down to articulating a concept of basic non-domination.

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[295] Forst, 'A Kantian', 159.

[296] Forst, 159.

[297] I base my distinction between these two types of non-domination on similar distinctions that have been developed drawn by Rainer Forst, James Bohman, and Cécile Laborde. See Rainer Forst, 'Towards a Critical Theory of Transnational Justice', *Metaphilosophy* 32, no. 1-2 (2001): 160–79; Forst, 'A Kantian'; James Bohman, 'The Democratic Minimum: Is Democracy a Means to Global Justice?', *Ethics & International Affairs* 19, no. 1 (2005): 101–16; Laborde, 'Republicanism and Global Justice'.

[298] Forst, 'Towards', 172; Forst, 'A Kantian', 160; Laborde, 'Republicanism and Global Justice', 51.

On my view, this priority should not (or not in the first instance) be defined by standards external to the ideal of non-domination, but by the central concern that animates it: the concern with subjection to an arbitrary will. Basic non-domination involves (1) having the abilities that are reasonably necessary to withstand arbitrary power, and (2) being in control of the decisions that structure these abilities. This may sound like a circular standard, but I hope to show now that it isn't. I shall discuss first what it means to be reasonably able to withstand power, and then explain what it means to be in control of that ability.

Very generally speaking, you need at least three things to be able to withstand arbitrary power. Firstly, you must be able to meet certain basic needs to do with sustaining your bodily health, such as the need to secure adequate nourishment and shelter. These are needs that, if you couldn't satisfy them, would make you immediately vulnerable to parties who could do that for you.[299] For example, if I'm hungry and unable to do something about it myself, I may submit – seemingly voluntarily – to someone's arbitrary commands just to get some food. Secondly, you must be able to recognise the power relationships that you are in, and recognise arbitrary power – in particular – for what it is. For this you need to have certain mental capacities that allow you to reflect on your relationships, and you need access to reliable information, at least about your direct environment. Otherwise, you would be vulnerable to manipulation and possibly unable to check the power that is exercised over you, whether by politicians or private parties.[300] Thirdly, you need access to tools and fora that allow you to

[299] These are needs of which, as Thomas Scanlon put it, the satisfaction is not optional but necessary in a human life. See Thomas Scanlon, 'Preference and Urgency', *The Journal of Philosophy* 72, no. 19 (1975): 655–69. See also Frank Lovett, 'Domination and Distributive Justice', *The Journal of Politics* 71, no. 3 (2009): 824.

[300] Laborde, 'Republicanism and Global Justice', 53.

make demands and complaints about the relationships you are in, and to contest and transform those relationships together with other citizens. For this you need certain civil and political rights, such as the right to vote, freedom of speech, and the right to seek legal redress, but also the ability to actually make effective use of those rights.

How can one measure whether people have these abilities? One way of approaching this question would be to assess how many and what sort of resources a person has, and determine how well they can withstand power directly on that basis. The problem with this approach, as Amartya Sen has famously argued, is that people are not equally able to convert resources into desired abilities.[301] The amount and type of resources that people possess is therefore not a reliable indicator of their ability to withstand arbitrary power. To give a simple illustration: in a largely agrarian economy a person may own just as much land as all other citizens, but still be unable to secure their socio-economic independence because of, for instance, their disability. In spite of their land, then, they remain dependent on the arbitrary will of persons who may (but also may not) help to secure their subsistence. This example shows that in assessing whether or not a person is independent from arbitrary power, it's not helpful to look at resources as such; one must see what a person can do and be with those resources.

Therefore, the capacity to withstand arbitrary power is best conceptualised as a set of *capabilities and functionings.*[302] A capability is an

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[301] Sen, 'Equality of What?'

[302] See the original statement and defence of the concept of a capability in Sen's 'Equality of What?' In my analysis, I shall not use the concept of capabilities to conceptually modify the ideal of non-domination or to supply an additional ideal to it. That is to say, the ideal of non-domination is not based on capability theories about what freedom and well-being is, nor do I mean to argue (or deny) here that capability-based well-being is a goal that must supplement non-domination in the design and evaluation of ownership institutions. Rather, I use the concepts of capabilities and functionings to operationalise the

effective opportunity to do or be something, and a functioning is an achievement of such an opportunity.[303] I shall refer to the capabilities and functionings that one needs to be able to withstand arbitrary power as *basic capabilities*. By measuring whether a person has a basic capability, one measures whether they can actually perform do or be those things that are necessary not to be too vulnerable to arbitrary power. Following what I said earlier, the list of basic capabilities can be divided into at least three subsets. Firstly, people need to have the opportunity to sustain fundamental biological human needs, such as the capability to be adequately nourished, sheltered, hydrated, the capability to access healthcare, and so on. Secondly, there are capabilities and functionings that one needs to be able to reflect on one's relationships, and recognise and address arbitrary power relationships in particular. These include for example the capability to access non-biased information and the functionings of being literate and educated. Finally, basic capabilities will include political and civil rights that allow people to effectively take part in the democratic governance of their society on an equal basis, and that make them an equal subject of the laws of that country. As I noted earlier, this includes the effective ability to vote, to exercise one's freedom of speech, to seek legal redress, to contest political decisions, and so on. People need these capabilities to be able to address and transform relationships of arbitrary power together.

This account of people's basic capabilities is admittedly highly general and certainly not exhaustive. That is to some extent a necessary feature of the very idea that is at stake. What exactly counts as a reasonable ability to withstand subjection, and which capabilities and functionings make up that ability, is not something that can be determined in theory. This is

idea of a reasonable capacity to withstand arbitrary power, so as to make it clearer what is required for this capacity in practice.

[303] Robeyns, 'Capabilitarianism', 405.

partly because what counts as a requirement for not being vulnerable to subjection will vary depending on contextual factors.[304] Certain capabilities might be required to resist arbitrary power in one society, but not in another. Furthermore, a republican theory requires that principles about what counts as a basic capability are determined by the members of the relevant society themselves, through a process of democratic deliberation. This also places limits on what a republican theory can properly prescribe. Nevertheless, it is possible to formulate a few highly general standards for what a plausible set of basic capabilities must include in most societies, and to offer this list as a proposal to actual democratic assemblies taking decisions on these matters.[305] This general account of basic capabilities will be sufficient for my purpose in this dissertation, because the cases that I discuss in chapters six and seven all involve group ownership-based organisations that promote capabilities that are uncontroversially basic in the sense I have outlined here. That is to say, they all promote capabilities that are important for people's capability to withstand arbitrary power.

It matters how these basic capabilities are secured. For basic non-domination, it's not enough that people enjoy a basic capability by leave of someone else.[306] Instead, people should be *in control* of the decisions that

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[304] On the importance of contextual factors in determining whether people are able to withstand subjection to arbitrary power, see Pettit, *Republicanism*, 158.

[305] See, on this way of conceiving of the link between philosophical work on capability lists and democracy, Rutger Claassen, 'Making Capability Lists: Philosophy versus Democracy', *Political Studies* 59, no. 3 (2011): 491–508.

[306] Sen has argued that for the measurement of whether someone enjoys a capability or not, it doesn't matter whether the attainment of this capability depends on an arbitrary will. I follow him on this conceptual point, though I shall of course argue that the particular way in which a capability is attained *does* matter, conceptually and normatively, from the perspective of basic non-domination. See Amartya K. Sen, 'Reply', *Economics and Philosophy* 17, no. 1 (2001): 54. For the view that the concept of capabilities ought to be amended to make their provision independent of an arbitrary will, see Philip Pettit,

affect and structure the provision of their basic capabilities. Citizens should not only be able to access healthcare, for example, but should also be in charge of the rules and regulations concerning whether care is provided, what sort of care that is, and so on. They must be in control of such decisions together and on an equal basis with everyone else whose capability to access healthcare is similarly at stake. By contrast, it would be unacceptable if people could only receive healthcare by the grace of their benefactors, or only under conditions on which they have no say. This would leave persons very vulnerable to an arbitrary will. To counter such vulnerability, basic non-domination requires that people are in control of the preconditions of their own empowerment. They shouldn't just be able to withstand arbitrary power, but must also be the ones who secure that ability on a higher-order level.

Note that I don't mean to argue that people are absolutely unable to resist domination if they don't enjoy basic capabilities, or if these are not provided in a way that is under their own control. People can resist power even under the most desperate circumstances, as happened during slave rebellions, for example. In addition, even help that is only provided out of people's goodwill, and that is therefore not under the control of the recipients, can be of value in overcoming domination. Here one can think of the help that Black slaves got from White abolitionists. My conception of basic non-domination is not, however, about the circumstances under which it is at all *possible* to withstand problematic power relationships. Rather, I define basic non-domination as the robust enjoyment of a *reasonable* capacity to withstand power. In so doing, I aim to say something about the conditions under which persons in a given society might generally be thought to be robustly able to secure their status as an equal.

'Capability and Freedom: A Defence of Sen', *Economics and Philosophy* 17, no. 1 (2001): 1–20.

Institutions can contribute to basic non-domination in an instrumental and in a constitutive way. This is because basic non-domination consists of, on the one hand, the *empirical* position of enjoying certain basic capabilities, and on the other hand the *normative* position of having equal authority over decisions concerning those capabilities.[307] Institutions can therefore promote non-domination instrumentally by making sure that people can attain their basic capabilities. Institutions do this by, for example, promoting the efficient and sustainable use of resources that people rely on for these capabilities. Indeed, I will argue in chapter six that this is exactly what group ownership can do. In this way, group ownership contributes to basic non-domination in a *causal* way. When institutions give people authority over decisions that affect their basic capabilities, then they realise basic non-domination in a constitutive way. After all, the right to decide over one's basic capabilities does not *cause* one to have authority over them. Rather, that is just what this right means; to have authority. I shall show how group ownership institutions can realise basic non-domination in this constitutive way in chapter seven, when I show how it places people in control of their basic capability attainment.

This shows that, to reiterate a theme from chapter three, both constitutive and instrumental approaches are of value in an evaluation of ownership institutions. More precisely, *both* of these approaches need to be employed to make clear how ownership institutions – as well as other institutions – can realise basic non-domination. Both the enjoyment of basic capabilities, and the enjoyment of control over these basic capabilities, are necessary to be able to withstand arbitrary power.

It's worth emphasising that although basic non-domination should be a priority in transforming people's power relationships, states and other

[307] See chapter 3, sections 2 and 3 for my description of constitutive and instrumental arguments and for my definitions of an empirical and a normative situation.

relevant actors are not absolved from securing non-domination in other areas. Basic non-domination does not cover protection from arbitrary interference with respect to, for instance, capabilities to pursue high level athletic or artistic achievements, or to travel for leisure. These capabilities are neither so basic to a human life that their lack would immediately make a person vulnerable to domination, nor are they necessary for recognising power relations and holding powerful agents accountable. Yet it would surely be denigrating of a person's equal status if they could not pursue such activities except by leave of and according to the conditions of whoever is in power. In a society where everyone's equal standing is respected, people are in control together of the rules that structure their interaction, and they are independent in their choice of activities within that system of rules.

However, although basic non-domination falls short of that ideal, it is likely to function as a steppingstone that makes full non-domination possible. When people are in control of their basic capabilities, they will hopefully be independent enough to issue stronger political demands. In conceiving of basic non-domination in this way, I follow Cécile Laborde's homonymous concept, as well as James Bohman's discussion of the democratic minimum and Rainer Forst's conception of minimal justice.[308] Although the particulars of these conceptions are different, they have in common that they specify a steppingstone-type of minimum that empowers people to secure their own broader non-domination, and that therefore forms a precondition for this more demanding ideal. If people (are able to) enjoy good health, are literate and informed, have civil and political rights, and if they are equally in control of these basic capabilities, then they are in a good position to make social and political demands and strive to eliminate

[308] Laborde, 'Republicanism and Global Justice'; Bohman, 'The Democratic Minimum'; Forst, 'Towards'.

all remaining arbitrary power relationships.

It might be objected that there is no difference between the ideals of full and basic non-domination. Surely, a critic might ask, you cannot be subjected to arbitrary power if you are able to resist it? It would seem, then, that basic non-domination automatically implies full non-domination, and that there is no point to the distinction. This conclusion is not warranted, however. It's true that when you enjoy basic non-domination, you have the power to ward off – to some extent –arbitrary power. But that doesn't mean that *no* relationship you're currently in is dominating. Your ability to address and eventually transform dominating power relationships doesn't automatically make them cease to exist. Non-domination is something that people must achieve actively and guard; it requires, as Pettit put it, their "eternal vigilance."[309] It therefore cannot be reduced to any capacity, robust or not.

More importantly, the concept of basic non-domination is analytically helpful for people to think about when the attainment of certain capabilities and the realisation of control over those capabilities form a priority from the point of view of non-domination, and when they don't. Basic capabilities are those that help you to resist power. It is clear that not all capabilities do that, however, not even all those that one would consider valuable for a human life.[310] Whatever the value of capabilities to walk in a national park, pursue high athletic achievements, or engage in travel for one's leisure, to name but a few examples, they are not part of what it reasonably takes to be able to resist arbitrary power in general in a society. The

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[309] Pettit, *Republicanism*, 6, 250.

[310] The concepts of capabilities and functionings are not restricted to opportunities or achievements that one has reason to value. See on this Ingrid Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined* (Cambridge, UK: OpenBook Publishers, 2017), 41–44.

distinction between full and basic non-domination helps to bring out this distinction between "controlled capabilities" that must be prioritised, and controlled capabilities that must not be prioritised (even though they may be valuable).

4.6 The determinacy of the normative framework

One might at this point object that the concepts of domination and non-domination are not suitable for the evaluation of ownership institutions. This is because it might be thought that republicans can only have something to say about the conditions under which ownership institutions are adopted, not about the characteristics of these institutions themselves. After all, what matters from a republican perspective is that people are equally in control of the power to which they are subjected. In a democratic state, power is controlled in just this way by the citizens. Thus, republicans must approve of all institutions that are chosen democratically and that are effectively enforced, and object to all institutions that are not adopted in that way. They can have nothing to say, the objection states, about the *substance* of ownership institutions. We can refer to this as the "democracy determines everything" (DDE) objection. My aim in this section is to show why this objection is mistaken.

The DDE objection resonates with Christopher McMahon's critique of republicanism as an inherently indeterminate theory.[311] On his interpretation of Pettit's theory, interference is arbitrary – and therefore dominating – if it doesn't track the shared interests of those subjected to that interference. But as Pettit recognises, in any society there will be reasonable disagreement on what counts as people's shared or common interests.[312] In such cases, republicanism requires that people agree on a

[311] McMahon, 'The Indeterminacy'.

[312] Pettit, *Republicanism*, 56.

procedure for making a political decision. Granting that they can agree on this, the outcome of the democratic procedure will establish what counts as the common interest, and therefore as non-arbitrary. It follows that republicans cannot describe an institution or policy as dominating in the absence of a democratic decision. By contrast, any institution or policy that *is* chosen democratically, is automatically non-dominating.

While the particular interpretation of Pettit advanced by McMahon is incorrect, his argument does, as I will momentarily show, point to an important concern. McMahon bases his criticism on a mistaken interpretation of Pettit's non-arbitrariness condition. Pettit does not argue that interference is non-arbitrary when it tracks the interests of those who suffer it, but that it must be *forced* to track their interests. This is a procedural and not a substantive criterion, that is meant to establish that interference is under the equal control of those interfered with.[313] Thus, republicans don't need to know what people's interests are, nor do they need to know what sort of institutions or policies a democratic citizenry would elect, before they can claim that power is arbitrary. What is required instead is an analysis of power and people's control over it. If the state's power is under everyone's equal control, as is the case in a democracy, then the procedural criterion for non-arbitrariness is met. It is not the outcome of a decision-making procedure, but the characteristics of the procedure itself that determine whether the decision counts as arbitrary or not.[314]

However, it is precisely this procedural understanding of arbitrariness that is vulnerable to the DDE challenge as I articulated it. If power is made non-arbitrary by granting people equal control over it, then it seems that, in a democracy, the power of owners can never be viewed as arbitrary.

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[313] Pettit, 55.

[314] See also Philip Pettit, 'The Determinacy of Republican Policy: A Reply to McMahon', *Philosophy & Public Affairs* 34, no. 3 (2006): 275–83.

After all, such power is regulated by the citizenry as a whole, who have adopted the relevant ownership institutions. And so there is no point in analysing particular property institutions; any democratically elected institutions are fine from a republican perspective.[315]

This procedural version of the argument fails for three reasons. Firstly, as a conceptual and as an empirical matter, the way owners use their authority is not fully controlled by the citizenry, and so republicans cannot rest satisfied knowing that an ownership institution is democratically adopted. It is always possible that the power that owners gain even as a result of democratic decisions, becomes dominating. Let me first clarify the conceptual reason for this before moving to the empirical reason.

As soon as citizens inaugurate an institution of private ownership, they lose a degree of control. This is the case because *by definition*, private owners have a degree of discretionary authority over how an object may be used. This means that owners' decisions on how they use their property and how they let others use it are not determined by all citizens together. It

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[315] Lest this argument be interpreted as a defence of contemporary property institutions, it is worth noting that in reality the prospects of putting property to a fair vote are and have been terrible even in advanced democracies. As Larry Bartels notes, economic elites in the USA today use their political leverage to protect private property institutions and skew them to their advantage. Thus they increase their wealth, which in turn gives them more political leverage, creating a vicious circle. Historian Bas van Bavel demonstrates that this development is not a recent idiosyncrasy typical of the USA, but a systemic feature of market economies. These always produce elites who use their wealth to gain the political upper hand and thus secure and expand the institutions that benefit them. Economic elites do not need the formal inequality of a property qualification for suffrage to ensure that those in power have the right economic interests at heart. See Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age*, Second Edition (New York: Russell Sage Foundation, 2016); B. J. P. van Bavel, *The Invisible Hand? How Market Economies Have Emerged and Declined Since AD 500* (Oxford: Oxford University Press, 2016). But the DDE argument is not that property institutions are not dominating now; the argument is rather that they couldn't be dominating under a well-functioning democracy.

is true that owners' discretion is always limited by law, as I also clarified in chapter two.[316] However, if their discretion is taken away entirely, then we can no longer speak of private ownership. If there is no private agent (individual or group-based) who may decide how an object will be used, and this is instead determined entirely by all citizens collectively, we speak of public ownership. Citizens may set limits to what owners can do, but within those limits, private owners choose their own purposes. In this, private owners differ from public office holders, whose purposes are determined by all citizens together. Public office holders may also be given some discretion in how they act, but this applies to the choice of means they pursue in the service of a purpose determined by citizens collectively, not to the choice of purpose itself. Think of the difference between an overseer of a public park and the owner of a private garden. In both cases, the law sets limits to what they may do. But while the overseer also has to make sure that the park is fit for purposes citizens have set for it, the private owner can choose what they want to do with their garden themselves.

In addition, and as an empirical matter, citizens will find it difficult to regulate the exercise of owners' private authority. With all the ways in which owners can use their rights, and all the decisions that a democratic parliament must make, it will be very hard to adopt detailed limits to what owners can and cannot do. There is a distinct possibility that some of the ways in which owners act cannot be said to be authorised by the citizenry at all, simply because such use has never been discussed by it. It therefore remains possible that, even in a democracy, people have power that is not (entirely) under the control of the citizenry yet. If so, then this power can be dominating (this will depend on whether all the conditions for domination I set out in section three have been met).

[316] See chapter 2, section 2.

The authority of owners is not, then, fully controlled by the citizenry. This means that republicans can have reasons to object even to democratically adopted ownership institutions. This is the case when such institutions are constitutive of dominating power relationships. To illustrate, a democratic citizenry may adopt institutions that give capitalists a great deal of discretionary power over workers.[317] Capitalists can then fire their workers at will and ask them to do dangerous or demeaning tasks, and more generally determine what workers do every day. It's clear that this power is based on democratically chosen institutions, and that citizens – including the workers – therefore have had an equal say on its contours. But it's equally clear that much remains under the capitalist's arbitrary control, which is, as a result of democratically chosen institutions, structurally constituted and structurally unequal. In this case, people's equal status is not secured even though they do live in a democracy. This is why I said earlier that the institutional set-up of a democracy and the rule of law is a necessary but not a sufficient condition for enjoying equal status. What might in addition be required in this case is that workers enjoy democratic control over the workings of their firm, specifically. Then they would cease to be dominated in the workplace. Importantly, this is a *substantive republican* recommendation for what ownership of firms should look like; it is not a recommendation about the procedure through which ownership institutions are adopted.

The second reason that the DDE objection is mistaken, is that republicans can evaluate democratically adopted ownership institutions

[317] One would hope and think, of course, that no such thing happened under a well-ordered republican democracy, but this is an ideal that one strives to, not something that can be realised all at once. To make the example more plausible, one could imagine that developments have been going very fast, and that institutions have not yet caught up with the new economic reality.

substantively on the basis of how these institutions support or harm democracy itself. When ownership institutions harm the democratic system by making political equality harder to attain, these institutions harm the very possibility that citizens can enjoy non-domination in their society. Imagine that the property institutions characteristic of advanced capitalist societies were chosen democratically, following fair and equal deliberations.[318] There is nothing incoherent in arguing that this *democratic* decision resulted in domination. For it set in motion a process that eventually enabled an economic elite to use its accumulated wealth to compromise political equality in a myriad of ways, including campaign finance, lobbying activities, threats of capital flight, and other mechanisms for influencing politicians.[319] As a result, citizens can no longer exercise equal control over the power of the state. Republicans clearly have reason to object to the ownership institutions that make this possible, no matter the procedure under which they were adopted.

Thirdly, republicans can also evaluate property institutions substantively by assessing how well or poorly they help people to gain their basic capabilities (other than the basic capability of being able to exercise equal political influence). For example, it might be that privately owned hospitals perform very badly when it comes to securing people's healthcare needs, and that publicly owned hospitals do much better. In that case, republicans would have reason to prefer that hospitals are publicly owned. This is because public ownership would be better for securing people's abilities to withstand arbitrary power. More generally, republicans have reason to value ownership institutions that promote the equal, cost-

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[318] This is very clearly not the case; see note 315.

[319] On these mechanisms, see Thomas Christiano, 'Money in Politics', in *The Oxford Handbook of Political Philosophy*, ed. David Estlund (Oxford: Oxford University Press, 2012), 241–58.

effective, and sustainable attainment of basic capabilities. This is another substantive basis for the evaluation of ownership institutions, and one that fits squarely in the framework I have defended.

In sum, there is room for a substantive republican analysis of property institutions even in a well-functioning democracy. A democratic citizenry may only grant citizens the kind of private power that does not violate people's equal status. In addition, there are good republican reasons for preferring institutions that do not, because of their effects, compromise political equality or hinder people in their attainment of basic capabilities. The DDE objection is incorrect.

4.7 Conclusion

A person is dominated when they are in a relationship where, because of the social structures of their society, they are systematically disempowered vis-à-vis a systematically empowered agent, who can determine what the subjected person can and will do, in a way that the latter has no control over. To be in that position is to suffer a violation of the status that properly belongs to a person, to someone who has the capacity for practical reason. This is so no matter how that power is exercised. The objection is to the fact that someone has such standing in a society that it doesn't really matter what you do to them or what they think. This is the position occupied by people in the paradigmatic cases of domination, such as the slave, the wife in a patriarchal marriage, and the subject of an authoritarian regime. I shall show in the next chapter that it's also the position that is occupied by labourers in a capitalist society, in virtue of the distribution of property that characterises capitalism, and by middle and lower income citizens, in virtue of the political power held by wealthy citizens and businesses corporations. These examples show what I have argued at the close of this chapter, which is that the concepts of domination and non-domination can deliver

concrete standards for the evaluation of the content of property institutions.

In the next chapter, I will explain what these standards are. I shall focus on how ownership institutions can realise and harm the ideal of basic non-domination that I defended in this chapter. Basic non-domination is a form of empowerment, and involves having the abilities necessary to withstand arbitrary power, and being in charge of the decisions that affect these abilities. When people enjoy basic non-domination, they are in a good position to secure their more extensive enjoyment of non-domination in different areas of life. They are then able, that is, to make sure that they are treated in accordance with the status that is appropriate for a being capable of practical reason.

5. The Two Propensities of Ownership

5.1 Introduction

How do ownership institutions affect people's basic non-domination? The answer is not straightforward. In fact, historical and contemporary republican discussions show that ownership harbours a fundamental tension between two propensities.[320] On the one hand, ownership institutions can be designed such that they secure people's ability to meet their basic needs independently. On the other hand, ownership institutions have often taken such a shape, that they place one class in society at the mercy of another. Members of the powerful class then decide whether and how people in the subjected class can meet their basic needs. The main aim of this chapter is to clarify the conditions under which ownership realises either propensity.

I shall argue that ownership institutions realise basic non-domination when they satisfy two criteria. Firstly, such institutions must promote people's ability to use resources to attain their basic capabilities. This I will call the *basic capability criterion*. Secondly, ownership institutions must place the people who rely on a resource for their basic capabilities, in

[320] I will briefly discuss such historical and contemporary republican arguments in section 2 of this chapter.

control of how that resource is used. This is the *control criterion*. Conversely, ownership is constitutive of a particularly insidious form of domination when owners control the use of resources that other people rely for their basic capabilities, on an arbitrary basis. When this occurs, non-owners will not only depend on an arbitrary will with respect to one particular activity or other, but they will depend on such a will for their capacity to resist arbitrary power more generally. These criteria are about the substance of ownership institutions, not about the conditions under which they were adopted. I shall assume in this chapter that ownership institutions are adopted by and subject to the revisions of a democratic assembly.

The chapter is organised as follows. In section two, I briefly discuss historical and contemporary republican work on ownership and workplace governance that shows that ownership can realise as well as undermine basic non-domination, depending on who is given control over the resources that people use to satisfy their basic needs. I expand on this insight in section three, and show how it can be extended to contexts other than that of the workplace. This analysis forms the basis for section four, where I develop the conditions under which ownership institutions either harm or secure basic non-domination. In section five, I outline three ideal-typical strategies for realising basic non-domination, all of which focus on changing or supplementing current ownership institutions. This will set the stage for my comparative analysis of these strategies in chapters six and seven. Finally, section six discusses how my evaluative framework can advance the contemporary republican debate on group ownership.

5.2 Confronting a tension

How does ownership contribute to basic non-domination? Historical and contemporary republican discussions on ownership show that the institution harbours a fundamental tension in this regard. On the one hand,

ownership institutions can be constitutive of domination of the most insidious kind. This happens when these institutions make people dependent on another agent's arbitrary will for the satisfaction of their basic needs. On the other hand, ownership can also realise people's socio-economic independence. This happens when people own and therefore control the resources that they rely on to satisfy their basic needs themselves.

The negative propensity of ownership was highlighted among others by nineteenth-century republican critics of capitalist productive relationships. These critics include Karl Marx, who – as Bruno Leipold has recently argued – used republican ideas to do with servitude and independence in his critique of capitalism.[321] They also include a group of American activists, many of whom were affiliated with the association of the Knights of Labor, whom Alex Gourevitch refers to as *labour republicans*.[322] Both Marx and the labour republicans argued that because property in the means of production was concentrated in the hands of one class, the rest of society had no choice but to work for this class and submit to the arbitrary demands of its members. Gourevitch emphasises that this was because people were unable to meet their *basic needs* in another way.[323] This was what made wage-labour ultimately problematic, and set it apart from wage-labour that one might engage in to satisfy non-basic desires:

> "An independent producer, working his own tools or land, could meet his own needs without selling his labor at all. He only sold his labor occasionally, to augment his income, or purchase some luxury, but he met his basic needs by consuming or selling the products of his labor. Since he

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[321] Leipold, 'Chains and Invisible Threads'. For other accounts of the historical and conceptual links between socialism and republicanism, see Muldoon, 'A Socialist Republican'; O'Shea, 'Socialist Republicanism'.

[322] Gourevitch, *From Slavery*, 99.

[323] Gourevitch, 108.

> could support himself and his family without selling his labor-power, he was not forced to sell his labor-power. (...) The existence of this alternative meant that, when making a labor contract, he did so as one economically independent actor making an agreement with another."[324]

By contrast, with no alternative way of meeting their basic needs, proletarians had to submit to labour contracts of which the terms were determined by capitalists, and they had to submit to the capitalists' arbitrary commands after having entered a labour contract.[325] In short, the capitalist distribution of property made one class systematically vulnerable to the arbitrary will of members of the owning class, by placing the latter in control of the attainment of the former's basic needs.

Besides being problematic in itself, the socio-economic dependence of people who don't own (sufficient) means of production also translates into dependence in the political realm. Politicians who defended property qualifications for voting rights in the nineteenth century did so because they believed that the property-less could not be trusted to speak in their own voice; they would surely parrot the views of their benefactor.[326] Worries such as these continue to be relevant today, as some employers monitor their dependent workers' political activities and punish them if they don't support the right political cause.[327] This, then, is another way in which the

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[324] Gourevitch, 108.

[325] Gourevitch makes this point about the multiple levels of domination in his analysis of labour republican arguments. Labourers are firstly dominated because – as a class – they are forced to work for another class, are secondly dominated during the setting up of the labour contract, and thirdly when they work for a capitalist, having to submit to arbitrary commands that of course go beyond the labour contract. See Gourevitch, 106. Interestingly, Leipold arrives at the same conclusion in his analysis of Marx' use of republican ideas to criticise wage-labour. Leipold, 'Chains and Invisible Threads'.

[326] Gourevitch, *From Slavery*, 76.

[327] Alexander Hertel-Fernandez and Paul Secunda, 'Citizens Coerced: A Legislative Fix for Workplace Political Intimidation Post-Citizens United', *UCLA Law Review* 64

lack of control over the ability to meet basic needs, harms people's capacity to withstand arbitrary power. To prevent such problems, Rousseau famously argued that "no citizen should be rich enough to be able to buy another, and none so poor that he has to sell himself."[328]

The last part of Rousseau's quote points to the positive role that ownership can play in securing socio-economic independence, and with that, basic non-domination. If people do own their own means of production, they are able to satisfy their basic needs and do so in a way that is under their own control. Not for nothing, James Harrington claimed that "the man that cannot live upon his own must be a servant; but that can live upon his own may be a free man."[329] In the wake of the Industrial Revolution, republican land reformers came to the same conclusion. They opposed capitalist relations of production and argued for a system of individual freeholders, where everyone owns a plot of land with which they can secure their sustenance independently.[330]

While the land reformers argued for a system that placed *individuals* in control of their own means of production, labour and socialist republicans argued for *shared* ownership, and therefore shared control over means of production. Labour republicans favoured a system of interlocking cooperatives, which they saw as

> "a form of associated production in which property was held in common, all able-bodied members of the community worked, in exchange for which they received a guarantee that they would be provided all

(2016): 1–16; Alexander Hertel-Fernandez, 'American Employers as Political Machines', *The Journal of Politics* 79, no. 1 (2017): 105–17.

[328] *The Social Contract*, trans. Christopher Betts (Oxford: Oxford University Press, 2008), book 2, chapter 11, p. 87.

[329] James Harrington, *The Commonwealth of Oceana and A System of Politics*, ed. J. G. A. Pocock (Cambridge: Cambridge University Press, 1992), 269.

[330] Gourevitch, *From Slavery*, 94.

> necessities, after which owners of shares in the community would be paid dividends."[331]

In his turn, Marx favoured a system in which property was not held by separate cooperatives, but collectively by everyone in a society.[332] Consistent with the way I have described the ideal of non-domination in chapter four, these radical thinkers did not seek to make individuals self-sufficient, but instead wanted systems of control in which they had just as much of a say as others had.

These historical writings about the two opposed propensities of ownership are echoed in contemporary republican discussions. Republican theorists today address the problems caused by current ownership institutions and propose new institutions to solve them, thus securing ownership's potential for non-domination while warding off its problematic tendency. Some authors argue that property should be distributed such that everyone's socio-economic independence is secured, for example through a universal and unconditional basic income.[333] Another important

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[331] Gourevitch, 87.

[332] Cooperatives, according to Marx, were valuable as a model of how independent labour could be organised, but as they were restricted "to the dwarfish forms into which individual wages slaves can elaborate it by their private efforts, the co-operative system will never transform capitalist society. To convert social production into one large and harmonious system of free and co-operative labour, *general social changes* are wanted, *changes of the general conditions of society,* never to be realised save by the transfer of the organised forces of society, viz., the state power, from capitalists and landlords to the producers themselves." Marx, 'Instructions', sec. 5. Emphasis in the original.

[333] Antoni Domènech and Daniel Raventós, 'Property and Republican Freedom: An Institutional Approach to Basic Income', *Basic Income Studies* 2, no. 2 (2008); Philip Pettit, 'A Republican Right to Basic Income?', *Basic Income Studies* 2, no. 2 (2008); Lovett, 'Domination'; David Casassas and Jurgen De Wispelaere, 'Republicanism and the Political Economy of Democracy', *European Journal of Social Theory* 19, no. 2 (2016): 283–300. For a critique, see Gourevitch, 'The Limits of a Basic Income'. See also Richard

research program focuses on non-domination in the workplace, with many authors defending workers' rights to more control over the firms they work for, through workplace democracy, workers' councils, or a fully-fledged economic democracy.[334] What these proposals all argue for, in their own way, is placing people in control of the resources they rely on for their livelihood, and therefore their basic needs.

5.3 Authority over basic needs: Extending the argument

The key insight that can be gained from historical and contemporary republican work on ownership, is that this institution can support domination or realise non-domination depending on who is given authority over resources that people use to meet basic needs. In this section, I want to expand on this insight and explain why and how it should be extended to cover resources and basic capabilities that republicans have not yet said much about.

I'll begin with saying more about the authority of owners, and how this gives them dominating power or power against domination. It is worth dwelling on this, as the power-relational aspect of ownership is not always recognised even in the republican literature. Pettit, for instance, in his brief analysis of private property, doesn't conceive of the institution in relational terms and consequently neglects the power relationships at play. He argues

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Dagger's argument for a conditional basic income in his 'Neo-Republicanism and the Civic Economy', *Politics, Philosophy & Economics* 5, no. 2 (2006): 151–73.

[334] Hsieh, 'Rawlsian Justice'; Dagger, 'Neo-Republicanism and the Civic Economy'; Gourevitch, 'Labor Republicanism'; Iñigo González-Ricoy, 'The Republican Case for Workplace Democracy', *Social Theory and Practice* 40, no. 2 (2014): 232–54; González-Ricoy, 'Ownership and Control'; Anderson, 'Equality and Freedom in the Workplace'; Breen, 'Non-Domination'; Casassas and De Wispelaere, 'Republicanism and the Political Economy'; Nicholas Vrousalis, 'Workplace Democracy Implies Economic Democracy', *Journal of Social Philosophy* 50, no. 3 (2019): 259–79.

that in a society where property is not implemented as a result of domination, and where people are not allowed to own other people,

> "the [property] regime will naturally put restrictions in place on what different individuals can do without risking legal sanction. In addition, the restrictions imposed at any point will fall unequally on individuals, so far as some people enjoy greater property holdings than others. (...) [This] inequality of non-dominating restriction need not compromise anyone's status as an undominated member of the society, any more than natural differences of physique or intelligence or geography do so. I may regret the fact that under the existing property regime you have more opportunities than me to enjoy our common status as free persons, but the fact of that regret does not mean that you stand over me in the position of a dominating power."[335]

Pettit here seems to think that the key characteristic of property is that it gives people more choices about what they can do. Someone with more property will, for example, have more options for leisure and work activities than someone who owns less.

This way of looking at the matter neglects two things. The first is that ownership doesn't just give people the right to do what they like with their property, but that it also provides people with a right to decide how others *may* act, at least with respect to their property. The second thing Pettit neglects is that the owner's own use of their objects can affect others in a way that gives the owner power over them. Let me give an example in which both types of power are at play. Take an owner of a powerplant in a country with scant environmental and labour regulation. This owner will have the authority to decide who may work for them, and under which conditions. In a society in which workers have no or very few alternatives

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[335] Philip Pettit, 'Freedom in the Market', *Politics, Philosophy & Economics* 5, no. 2 (2006): 139–40.

to working in that powerplant (and where a basic income is not guaranteed to citizens), the owner will have a great deal of control over whether (potential) employees can obtain their livelihood and the basic capabilities that a decent wage should give access to. In addition, presupposing that the communities surrounding the plant depend on groundwater or other sources of water that the owner is allowed to pollute, the owner also has control over whether these communities will have clean drinking water. As can be seen, then, owners don't just have more options, but they have the power to shape other people's option sets. I said in the last chapter that such power is dominating when it is structurally unequally held and arbitrarily wielded. Contrary to what Pettit seems to suggest, then, ownership certainly *can* compromise people's status as an equal.

The other side of the coin is that ownership can also secure non-domination. This aspect of ownership does not become clear if one sees property primarily as a means to doing things "without risking legal sanction," as Pettit's quote might invite theorists to do.[336] Instead, one has to understand ownership as a position in which you can determine what *you and others* do with an object. This ability allows you to use your property to secure your basic needs, indeed without legal sanction, but also – and more importantly – without being subjected to an arbitrary will. Since you have authority over what is done with an object, another person may not stop you from gaining your basic needs, and may not determine the conditions under which you do so. In this way, people gain their socio-economic independence.

The historical and contemporary republican theories I discussed in the previous section focus specifically on ownership of the means of production, rather than on ownership of all kinds of resources. That is to say,

[336] Pettit, 139.

they are concerned with who controls the resources people need to gain a livelihood, and thereby meet their basic needs. From the perspective I defended in chapter four, this focus makes sense. I argued there that securing basic non-domination should be the priority in a society's attempt to secure justified power relationships. For this, people need to *have* basic capabilities and to have *control over* their basic capabilities. That is exactly what ownership of the means of production helps realise. It gives people control over what they need to make a living. It is no wonder, then, that many of the theorists I discussed focus on control over the workplace.

However, if the underlying reason justifying this focus is a commitment to basic non-domination, then it becomes clear that researchers ought to extend the insight on the link between ownership, livelihood, means of production, and (non-)domination. In particular, it needs to be extended to this principle: to enjoy basic non-domination, people need to control the use of resources with which they obtain their basic capabilities. This means that people should not just be in control of their workplace, but also of their places of shelter; the information resources they need to be able to hold their politicians to account; the natural resources they need for their daily energy supply, clean air, and drinking water; the insurance fund they rely on for when they can no longer work to secure an income; and many other resources besides. In brief, the insight on the importance of authority over basic needs should be extended to cover many different kinds of resources needed for many different kinds of basic capabilities.

It is an open question whether the attainment of basic capabilities and control over these basic capabilities always have to be realised through ownership institutions. It is in addition an open question *which type* of ownership institution (public, individual, private group-based, or otherwise) will best fulfil this task, and under which conditions that is the case. To facilitate research on these questions, it will be helpful to more precisely

define the criteria that ownership institutions must meet to realise basic non-domination, as well as the conditions under which institutions harm this value. I will do this in the next section.

5.4 Ownership and basic non-domination

A. The conditions for domination

When are ownership institutions harmful to basic non-domination? The power of owners by definition satisfies three of the five conditions for domination I listed in the last chapter.[337] Their power is agential; it is not the institution of ownership itself but agents who are given power over others. It is in addition structurally constituted; the power of owners does not arise out of contingent circumstances but is made up of the legal institutions and social conventions of that society. Finally, owners can change people's option sets. Within limits set by law, owners can decide at their own discretion what others may do with their property and how the use of their property will affect what others can do. If there is no such area of discretion, then we cannot really speak of the institution of ownership as I defined that in chapter two. Note, however, that discretionary power is not necessarily the same thing as arbitrary power. Whether the power of owners is indeed arbitrary or not depends on whether the people who are in control of how that power is used are the same people whose option sets can be shaped by that power. If so, then they are not subjected to an arbitrary will, but are in control of the power that binds them.

To become dominating, ownership-based power has to satisfy the two other conditions I listed in chapter four as well. It must, firstly, be held in a structurally unequal way. The institution of ownership must disempower one group in a society, while empowering another. Secondly, that

[337] Chapter 4, section 3.

power must be arbitrary. This means that it isn't controlled by the people who are subjected to it, or that it isn't controlled by them on an equal basis. Under these conditions, ownership institutions will be constitutive of domination.

To assess whether ownership is in addition specifically harmful to the ideal of *basic* non-domination, it's necessary to add another condition to the list. This is that the power of owners ranges specifically over people's basic capabilities. When that is the case, one social group will determine for the other whether, to what extent, or in what way people can attain their basic capabilities.

These conditions were clearly satisfied under feudalism. Under this system only a few families were allowed to own the vast majority of the land, which was then the most important means of production available. People who did not belong to this elite therefore depended on their feudal lords to earn their livelihood, and with it their basic capabilities. They had no control over how the feudal lords chose to make use of their land, or over the demands these lords made of them in working it. In short, ownership institutions here created a structurally unequal power relationship between lord and serf, in which lords could decide on an arbitrary basis whether serfs could or could not attain their basic capabilities.

Marx showed that the conditions are also satisfied under capitalism. Unlike some authors who today associate capitalism primarily with markets, Marx defined it as a mode of production characterised by a class relationship, where the property-less are forced to work for property-owners because it's the only way they can make a living.[338] As owners of means of

[338] Marx and Engels, *The Communist Manifesto*. For an example of work that attempts to analyse capitalism from a republican perspective while identifying capitalism with markets, see Gerald F. Gaus, 'Backwards into the Future: Neorepublicanism as a Postsocialist Critique of Market Society', *Social Philosophy and Policy* 20, no. 1 (2003): 59–91. For a

production, capitalists have the legal authority to decide who can work for them and who doesn't. This is not, however, sufficient to make their power unequal or arbitrary. Marx recognised, just as the American labour republicans did, that this authority of capitalists was so problematic because people had no alternative means of satisfying their basic needs. He therefore devoted much attention to clarifying how members of the working class had to be expropriated and forced to continue in their propertyless state, so that they did indeed have no alternative left but to work for capitalists under conditions dictated by them. This happened through the Enclosures in Europe in the eighteenth and nineteenth century that forced people off the shared land they had worked and relied on for generations.[339] In the English colonies, too, the imperial government made an effort to ensure that immigrants could not immediately gain land of their own upon their arrival, so that they would have to work for the capitalists there.[340] Not for nothing, Marx and Engels wanted to "do away with a form of property, the necessary condition for whose existence is, the non-existence of any property for the immense majority of society."[341] The way property in the means of production is distributed under capitalism renders one group dependent for their survival on another group's will. It is what secures the capitalists' structurally unequal, arbitrary power over workers' ability to attain their basic capabilities.

Owners of the means of production do not just have arbitrary power over workers, however. The structurally unequal distribution of property in many contemporary democracies has meant that these

critique of this type of approach, see Anderson, 'Equality and Freedom in the Workplace'.

[339] Marx, *Capital: A Critique of Political Economy. Volume I*, chap. 27.

[340] Marx, chap. 33.

[341] Marx and Engels, *The Communist Manifesto*, 19–20.

democracies take on more and more characteristics of oligarchies. Wealthy elites in such societies have far more political influence than the rest of the citizenry.[342] Thomas Christiano identifies four ways in which these elites can gain their excessive power.[343] The first mechanism is *money for votes*, meaning the buying of support for or resistance to laws and policies from citizens and politicians. Secondly, the wealthy can act as *gatekeepers* who determine – through selectively financing certain political candidate's campaigns, lobbying, and other methods – which issues make it to the political agenda.[344] Third, wealth can function as a means for *influencing public opinion*. By financing lobbyists, think tanks, scientific research, media outlets, and advertising campaigns, the wealthy can exert much influence over the beliefs and desires of the population, including those that are relevant for political decisions. Finally, Christiano distinguishes the mechanism of

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[342] For a philosophical analysis of this issue, see Christiano, 'Money in Politics'. For empirical evidence on political inequality in the US, see e.g. Kay Lehman Schlozman, Sidney Verba, and Henry E. Brady, *The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy* (Princeton University Press, 2012); Martin Gilens and Benjamin I. Page, 'Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens', *Perspectives on Politics* 12, no. 3 (2014): 564–81; Bartels, *Unequal Democracy*. For evidence of the Netherlands, see Wouter Schakel, 'Unequal Policy Responsiveness in the Netherlands', *Socio-Economic Review* 0, no. 0 (2019): 1–21. For the argument that the US can be characterised as an oligarchy, see Jeffrey A. Winters and Benjamin I. Page, 'Oligarchy in the United States?', *Perspectives on Politics* 7, no. 4 (2009): 731–51.

[343] Christiano, 'Money in Politics'.

[344] On private campaign finance as a method for selecting politicians, see Richard L. Hall and Frank W. Wayman, 'Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees', *The American Political Science Review* 84, no. 3 (1990): 797–820; Winters and Page, 'Oligarchy in the United States?', 743; Christiano, 'Money in Politics', 245–5. Though it not necessary to gain the most contributions to win a campaign, political candidates do need financing to be able to run a campaign at all. This is where the "gatekeeping" mechanism comes in.

money as independent political power.[345] The idea behind it is that capitalists have the power to impose constraints to successful policy making. If a society adopts or appears likely to adopt policies that do not suit private investors and employers, the latter can threaten to stop investment or relocate their capital. To the extent that the economy depends on these capitalists, or politicians believe the economy depends on them, politicians will likely give in to the demands of investors and employers.[346]

All these mechanisms are constitutive of structurally *unequal* political power, as the wealth that forms its basis is unequally distributed. Moreover, this political power is arbitrarily wielded; the wealthy don't have to answer to anyone in their decision of whose political campaign they shall back, which lobby organisations they support, and so on. Stronger still, the political power of the wealthy affects the very conditions under which citizens can ensure that they are governed through non-arbitrary rules. The political inequality caused by unequal property distributions not only subjects people to arbitrary power in one particular area, but it also harms their reasonable capacity to withstand arbitrary power in general.

A final example I will mention here, is of how property institutions under the UK common law doctrine of coverture supported the domination of women. The doctrine of coverture held that a married man and woman were not two separate entities for the purposes of the law, but instead formed a single entity.[347] This effectively meant that women's rights

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[345] See on this also Thomas Christiano, 'The Uneasy Relationship Between Democracy and Capital', *Social Philosophy and Policy* 27, no. 1 (2010): 195–217.

[346] Adam Przeworski and Michael Wallerstein, 'Structural Dependence of the State on Capital', *American Political Science Review* 82, no. 1 (1988): 11–29; Charles Edward Lindblom, *Politics and Markets: The World's Political-Economic Systems* (New York, NY: Basic Books, 1995); Christiano, 'The Uneasy Relationship'.

[347] See on this Tim Stretton and Krista J. Kesselring, eds., *Married Women and the Law: Coverture in England and the Common Law World* (Montreal & Kingston: McGill-Queens University Press, 2013).

were subsumed under those of their husbands. Among other things, this entailed that they could not hold property of their own. The doctrine thus contributed to women's financial dependence on men in a way that survived well into the twentieth century. It was only in 1975, for example, that the UK allowed women to open a bank account without their husbands' permission.[348]

What these cases have in common is that ownership institutions allow one group to decide how resources that another group relies on for their basic capabilities are used. An unequal distribution of property in such resources, combined with a wide area of discretion over how they may be used, ensures that control over the relevant basic capabilities is unequal and arbitrary. Under feudalism, the lords decided what to do with the land that serfs relied on for basic capabilities such as the capability to be well nourished. Under capitalism, the resource consisted of means of production, which was again something workers relied on for their livelihood and associated capabilities. The doctrine of coverture placed men in control of the property that they and their wives used and relied on every day, including their homes. The case of wealth-based political inequality shows that "reliance on resources" can also be interpreted in a negative sense. Sometimes people rely on a resource *not* being used in a certain way. As an example of such negative reliance, one can think of a fishing community that lives close to a powerplant. They need the powerplant not to be used in a polluting way that would destroy their fishery.

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[348] Suzanne McGee and Heidi Moore, 'Women's Rights and Their Money: A Timeline from Cleopatra to Lilly Ledbetter', *The Guardian*, 11 August 2014, https://www.theguardian.com/money/us-money-blog/2014/aug/11/women-rights-money-timeline-history.

B. The criteria for basic non-domination

When ownership institutions are not constitutive of domination, that doesn't necessarily mean that they *realise* basic non-domination. Recall from the previous chapter that non-domination doesn't consist in the current absence of domination, but in a robust absence thereof.[349] People have to be in control of the terms of their relationships for non-domination, which is a more demanding standard than the happenstance absence of unequal, arbitrary power relationships (which I referred to in chapter four as "no domination"). It is therefore not enough, when analysing the relationship between ownership and basic non-domination, to list only the characteristics of institutions that realise domination. I shall also have to outline the specific criteria ownership institutions have to fulfil to actually *secure* basic non-domination.[350] These criteria follow directly from the definition of basic non-domination as the enjoyment of basic capabilities combined with the enjoyment of control over decisions that affect these basic capabilities.

The first is the *basic capability criterion*, which is that ownership institutions must help people gain their basic capabilities. Institutions

[349] Chapter 4, section 4.

[350] What about ownership institutions that neither harm nor secure basic non-domination? Within my normative framework, the first step in evaluating these institutions is to see whether people's basic non-domination is secured through another set of institutions. If not, and if a change in ownership institutions could secure basic non-domination, then the ownership institutions in question are objectionable – they must be changed. The next step would be to see whether the institutions in question harm *non*-basic non-domination. If so, then the institutions are also objectionable. If instead they secure non-basic non-domination, then there is at least one strong consideration in their favour. If none of these things is the case, then that doesn't automatically mean ownership institutions are justified. As I said in chapter 3, such institutions must always be justified to the people they bind. The institutions will then have to be evaluated with the help of values outside my normative framework (using constitutive and instrumental approaches to property).

satisfy this criterion when they ensure that people use resources in such a way that the resources can be relied on for the relevant capabilities. This is an argument about the causal effects of ownership institutions, which therefore falls under the instrumental side of my normative framework. Ownership institutions regulate the way people can use things, including natural resources, buildings, funds, media outlets, and many other things besides. People rely on these things to attain their basic capabilities. Since the first criterion for basic non-domination is that people enjoy basic capabilities, the first criterion for ownership institutions to realise this ideal is that they promote the use of objects such that the attainment of basic capabilities is possible and effective. That will mean, among other things, that ownership institutions must promote sustainable use of the relevant resources, and help to get people to use them in cost-effective ways, realising basic capabilities to an extensive degree and for many people. If, for example, people depend on the wood in a forest for their daily energy supply, then the ownership institution must promote that people will use the forest sustainably and efficiently. If the institution would instead promote highly extractive and unsustainable use, then the ownership institution would fail to secure the relevant basic capabilities and therefore also fail to secure basic non-domination.

The second criterion is the *control criterion*, which states that people who rely on a resource for their basic capabilities must also be the ones who control the use of that resource. They must be in control of use-rules at least insofar as these can affect their basic capabilities. To give a few examples of what this means: the members of a family who rely on a house for their shelter must be in charge of how that house may be used, the workers in a firm in control of the rules governing that firm, the members of an insurance organisation in control of their policies, and so on. Whenever people's basic capabilities are at stake, they must be the ones taking the

decisions that can affect these capabilities.

Two things have to be noted about this second criterion. The first is that the line between who does and who doesn't rely on a resource for their basic capabilities may not be so easy to draw as I make it seem here. Moreover, sometimes the fact that people do depend on a resource and others don't, is itself the product of objectionable power relationships. In those cases, it is even more difficult to draw the line between who does and who doesn't rely on a resource, and who should and who shouldn't therefore be in control of its use. This is a difficulty I set aside for now, but I will address it in chapter seven, where I will explain how my framework can evaluate cases of in- and exclusion in the use of resources. The second thing I want to note is that my argument that people should control objects necessary for their basic capabilities, is not a knock-down argument for that control to be realised *via ownership*. It might also be that this control can be realised in another way, through strategies I will discuss in a moment. In that case, it will not be the ownership institutions themselves that realise basic non-domination, but it may nevertheless be realised. It will become clearer in what follows and in chapter seven, what sort of difficulties non-ownership institutions face in realising the right kind of control.

5.5 Strategies for basic non-domination

Republican authors have suggested different institutional innovations that would all have the effect of changing ownership-based power as it is now, and that would go some way towards realising people's basic non-domination. Most of these proposals are made in the context of arguments *against* domination in the workplace and *for* socio-economic independence. In what follows, I'll show how these proposals can be mapped onto three ideal typical strategies that help people to gain their basic capabilities and do so in a way that is under their control, by gaining control over resources

necessary for these capabilities. The general form of these strategies can be extended to cover cases outside of the realm of the workplace, and thus offers a general way of mapping the pathways to basic non-domination.

Three things must be noted in advance. The first is that I will discuss these strategies in isolation, as ideal types. This will help to better understand how they work, but of course in reality different strategies will and should be pursued simultaneously, and certain proposals to realise non-domination will in fact combine elements from multiple strategies. They will therefore not fit neatly into any of the categories I describe. Secondly, none of these solutions can combat *every* type of property-based domination; instead, they are often more suited for some situations than others. Finally, my aim here is not to show the limits or even the benefits of any of these strategies, but just to demonstrate how they work. This will give a clearer idea of the institutional, policy, and activism alternatives for group ownership, and prepare the way for my discussion in the next two chapters, where I will clarify when and why group ownership should be preferred over other strategies.

A. Limiting owners' discretion

The first strategy is to *limit the discretion of owners*, by giving non-owners more of a say on the decisions owners can take. This strategy would, at least in the first instance, leave current unequal distributions of property intact. Unequal distributions of property are constitutive of unequal power, but this is only harmful to people's basic non-domination if that power ranges over their basic capabilities. The discretion of owners can be limited in such a way that they would be accountable to whoever relies on their property for their basic capabilities. This strategy can be divided into proposals falling into two categories: limits to owners' *de facto* discretion and limits to the discretion that they enjoy *de jure.*

Proposals to limit the *de facto* discretion of owners consist of changes to the relevant economic conditions under which owners operate, so that they will have to listen to non-owners who depend on them. In the context of workplace governance, this can be done by giving non-owners the right to exit, by lowering their exit costs, and by stimulating a competitive environment among owners. Republican authors such as Robert Taylor, Frank Lovett, and Pettit all argue that exit is an important way of realising non-domination.[351] This is so, firstly, because it allows workers to exit the relationship in which their boss interferes or threatens to interfere with them. This will only work if there is something that non-owners can escape to, and if that new relationship is not also dominating. Gourevitch argues that this is a condition exit rights cannot meet.[352] As workers cannot secure their basic needs with their own property, they have no alternative but to work for *a* capitalist and can therefore at most move from one dominator to another.

The more promising way in which exit can promote non-domination is by creating the conditions under which employers have to change the way they govern their firms. By threatening to exit relationships they don't like, people can force property owners to comply with some of their demands. In this vein, Taylor claims that exit supports voice.[353] Moreover, in a sufficiently competitive environment, actual exit and entry can function as a way of aggregating preferences. If workers have a free choice between many firms, then they will choose the one with the working conditions they like best. The firms that adapt to worker's demands are the ones

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[351] Pettit, 'Republican Right'; Lovett, 'Domination'; Taylor, *Exit Left*.

[352] Gourevitch, 'Labor Republicanism'.

[353] Taylor, *Exit Left*. Taylor bases his argument on one of the theses Albert Hirschman defended in his *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, Mass: Harvard University Press, 1970).

that will survive.

This will only work under certain contingent circumstances, however. If markets are not sufficiently competitive, then owners don't have to adapt to the wishes of those who rely on them in order to survive. As is well known, this is exactly the problem with the market for low skilled labour. With so many workers available, all of whom need a job to make ends meet, employers face few limits to their discretion. Furthermore, as Albert Hirschman famously argued, exit can tempt the most vocal persons to leave rather than threaten to leave an organisation. In such cases, exit competes with voice and does not support it.[354] Consequently, exit is not constitutive of basic non-domination, though it can make it easier to attain under certain contingent circumstances.

Other ways of targeting owners' *de facto* discretion include taking concerted action via labour unions. By uniting workers, unions strengthen their bargaining power versus capitalists, and are thus able to enforce better working conditions. This, too, will work only if the circumstances are right. If unions are not strong enough to organise strikes or make forceful demands in another way, then employers will still not be answerable to their employees. The power of labour unions is therefore not constitutive of anti-power, but like exit, it can promote it.[355]

Limits to the *de jure* discretion of owners are pursued through public regulation that restrict the rights of owners to do as they wish with their property. This gives more control over the relevant property to the entire democratic constituency, and therefore reduces citizens' dependence on an

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[354] Hirschman, *Exit, Voice, and Loyalty*.

[355] Note that this applies to the power of labour unions to change working conditions, not to their achievements in the form of binding provisions that determine how employers may treat workers. These *binding* provisions are part of the robust control that workers exercise over employers and therefore are part of the institutional network that secures their basic non-domination.

arbitrary will. In the context of firm governance, this strategy is pursued through democratically adopted labour laws. When public regulation goes so far as to eliminate all discretion from owners, we can no longer speak of private ownership. In that case, there will still be property right holders, but their rights will not be control rights. Instead, they will be rights to use and gain income from resources that are ultimately under government control.

B. Equal individualisation

The second strategy is that of *equal individualisation.* This strategy works by giving every person enough individual property with which they can secure their basic capabilities, and no one so much that they would have more power than anyone else. As it is their own property, people will be in control of decisions that affect their basic capabilities. Recall that republican proponents of land reform in the nineteenth century defended just such an institution when they argued that every adult should have land of their own.[356] Rousseau, too, argued that "the social state is advantageous to men only if all have a certain amount, and none too much."[357]

Equal individualisation can take different shapes. The property at stake can be real property, shares in a corporation, or individual entitlements of a different kind. Furthermore, the division among individuals can be pursued at the local or general level. Local individualisation occurs when a particular resource is divided equally amongst users. Think of a large pasture that is divided in equal plots, one for each farmer. This would be an example of local division of real property, but of course local division of shares in a company is also possible, as is the division into other equal entitlements, such as the right to bring two sheep to a physically undivided pasture. When equal privatisation is pursued at the general level, the relevant

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[356] Gourevitch, *From Slavery*, 94. See section 2, in this chapter.

[357] Rousseau, *Social Contract*, book 1, chapter 9, p. 62, note 1.

property is distributed over everyone in a society. This form of equal individualisation has been very popular in the recent republican literature, where authors defend a universal basic income, basic capital in the form of a large cash instalment early in life, dividends from a community wealth fund, shares in companies, and so on, all to be enjoyed equally by each *individual* citizen.[358]

C. Shared ownership

The third strategy is that of *shared ownership*. Like equal individualisation, this strategy also seeks to realise non-domination by making people who depend on a resource the owners of that resource. In this case, however, the aim is not to make people individual owners of resources with which they can get their basic capabilities, but to own these resources as a group. When this group consists of all the residents of a country, we speak of *public ownership*. In the case of firm governance, this would imply a form of nationalisation. But this solution is perhaps more relevant in the context of the provision of basic services, for example by giving citizens control over the hospitals, schools, and insurance funds they rely on to be reasonably able to withstand arbitrary power.

In the case of *private* shared ownership, control rights are allocated to a group of private persons. This is the strategy of group ownership. Full private group ownership will give a group all control, income, and use

[358] Bruce A. Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven: Yale University Press, 2000); Stuart White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* (Oxford: Oxford University Press, 2003); Stuart White, 'The Republican Critique of Capitalism', *Critical Review of International Social and Political Philosophy* 14, no. 5 (2011): 561–79; Dagger, 'Neo-Republicanism and the Civic Economy'; Domènech and Raventós, 'Property'; Pettit, 'Republican Right'; Lovett, 'Domination'; Casassas and De Wispelaere, 'Republicanism and the Political Economy'; Alan Thomas, *Republic of Equals: Predistribution and Property-Owning Democracy*, Oxford Political Philosophy (New York, NY: Oxford University Press, 2017).

rights to a resource that a society allows. But any regime in which one group has all control rights to a resource will count as a group ownership regime. Republicans have also defended this solution in the context of workplace governance. The nineteenth-century labour republicans, as I mentioned earlier, argued for a system of interlocking worker and consumer cooperatives.[359] This organisational form places workers or consumers in charge of the business that they benefit from, and therefore in control of their basic capabilities. The labour republicans are joined today by republican authors who defend some form of worker control over firms as the best way of ensuring people's socio-economic independence (although this does not always amount to an argument in favour of the more specific proposal of worker ownership).[360]

5.6 Towards a general, comparative, and constructive defence

Before concluding this chapter, I want to note how the framework I have built so far facilitates a general, comparative, and constructive defence of group ownership, thus adding to the republican arguments in favour of group ownership that exist already. As I noted, different republicans have argued that workers should govern their workplace, and sometimes even argue that this should be realised by making workers the owners of the firm they work for. My framework adds to this body of work in defence of group ownership and similar institutions in three ways.

Firstly, the framework can show that group ownership is a potentially attractive solution not just for the governance of the workplace, but

[359] Gourevitch, *From Slavery*, chaps 3 and 4.

[360] Hsieh, 'Rawlsian Justice'; Anderson, 'Equality and Freedom in the Workplace'; Breen, 'Non-Domination'; Gourevitch, 'The Limits of a Basic Income'. But see González-Ricoy, 'Ownership and Control'.

for giving people control over many different types of resources they rely on for many different basic capabilities. My framework thus facilitates a more *general* defence of group ownership in different types of objects. In the next two chapters, I shall analyse group ownership regimes in natural resources that people rely on for their livelihood, but also briefly discuss such regimes in the context of income insurance, energy provision, and information resources.

Secondly, my framework can help to make the *comparative* case for group ownership. It is currently not always clear when, if ever, group ownership ought to be preferred over other ways of realising basic non-domination. What are the advantages of sharing compared to individual ownership, for instance? This question was pressing in the debate between the nineteenth-century labour republicans, whose ideal was a society of interlinked cooperatives, and republican agrarian reformers, who advocated the solution of individually owned plots of land for every citizen.[361] Today, the issue remains hotly debated between proponents of equal individualisation and group-based control, this time in the form of a comparison between the policy of a universal basic income and workplace democracy.[362]

The question on whether and when republicans should prefer group ownership to public ownership has received less attention, but not because republicans have settled on an answer. Rather, theorists don't always seem to think that there is much at stake in this choice. James Muldoon, for example, defends the two solutions simultaneously.[363] Other theorists, like Nicholas Vrousalis, go further and claim that a republican argument for workplace democracy necessarily implies an argument for

[361] Gourevitch, *From Slavery*, chap. 3.
[362] See e.g. Gourevitch, 'The Limits of a Basic Income'; Breen, 'Non-Domination'; Thomas, *Republic of Equals*, chap. 8.
[363] Muldoon, 'A Socialist Republican'.

economic democracy at a higher-order level, namely that of the state.[364] The implication of this argument may be that private group ownership is never a better idea than public ownership, and that an argument for the former always implies a defence of the latter.

I believe the basic capability criterion and the control criterion that I developed are helpful to analyse which institutional set-up ought to be preferred in which situation. The criteria are general enough to evaluate many different ownership institutions, but also precise enough to compare these institutions on just the right points, namely how they contribute to people's basic capabilities and in how far they realise the right kind of control. I shall in fact make the comparison between individual, public, and private group ownership in chapters six and seven, and show that group ownership can sometimes better satisfy the two criteria than alternative institutions.

Finally, my framework can clarify which characteristics group ownership regimes have to meet to realise non-domination. The focus in the republican literature on workplace governance is often on the critique of current employment relationships. Authors do much to clarify exactly why it is that workers are dominated and what is bad about that situation, but pay less attention to elucidating the specific positive characteristics that alternative governance structures have to meet to realise non-domination.[365] In my discussion of group ownership regimes in natural and agricultural resources in the last chapters of the dissertation, I demonstrate that my framework can clarify the particular way in which group ownership-based organisations must be organised internally and regulated externally to

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[364] Vrousalis, 'Workplace Democracy'.

[365] See e.g. Hsieh, 'Rawlsian Justice'; Gourevitch, 'Labor Republicanism'; Elizabeth Anderson, *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)* (Princeton: Princeton University Press, 2017).

realise basic non-domination for their members, without dominating non-members. In this way, my perspective can shift the focus away from a critique of existing ownership institutions towards a *constructive* theory of group ownership.

5.7 Conclusion

Ownership institutions can both subvert and help to realise people's basic non-domination. Whether they do so or not, depends on how well they can make sure that, firstly, people can attain their basic capabilities, and, secondly, who they place in control of decisions that affect these basic capabilities. When people own the resources that they rely on for their basic capabilities, and the ownership institution promotes the good use of those resources, ownership institutions help to realise basic non-domination. Ownership institutions then place people in charge of their own empowerment. In the next two chapters, I will show how and when group ownership satisfies the criteria for basic non-domination and when, moreover, it performs better at this than alternative strategies.

6. Sharing Natural Resources: Co-operation, Control, and Basic Capabilities

6.1 Introduction

In the previous chapter, I developed two criteria that ownership institutions must meet to help realise owners' basic non-domination. The basic capability criterion states that ownership institutions have to promote people's ability to use resources to attain their basic capabilities. The control criterion holds that ownership institutions must place the people who rely on a resource for their basic capabilities in charge of how that resource may be used. In this chapter and the next one, I shall show how and when group ownership – understood as the institutional realisation of sharing in common – can satisfy both criteria. What is more, I shall also argue that under certain circumstances, group ownership is successful where alternative ownership arrangements fail to satisfy the two criteria or only satisfy them at a higher cost than group ownership. When these conditions hold, group ownership is not just one viable option among many but is in fact the preferred solution from the perspective of basic non-domination.

This chapter focuses on the basic capability criterion. I show how

institutions that approximate the ideal of sharing in common enable people to use resources in a sustainable and productive way. Thus, they help people gain their basic capabilities. The particular institutions I will analyse are common property regimes (CPRs) in natural and agricultural resources. As may be recalled from chapter two, a CPR is an arrangement in which a bounded group of interdependent users of a resource manage that resource themselves, by setting rules on use and monitoring compliance with those rules.[366] The cases discussed in this chapter include CPRs in fisheries, pastures, crop fields, forests, irrigation systems, and other resources that people rely on for their livelihood or for such basic goods as firewood, clean water, and so on. CPR members devise their own rules for how these shared resources may be used, both internally and by people outside the regime. As such, CPRs approximate the ideal of sharing in common, which holds that individual use and income rights to a resource are determined collectively by all the members of the relevant group. I therefore take CPRs as a good case study for showing how group ownership performs in practice.

I shall argue that CPRs allow resource users to realise their basic capabilities and that they can – under certain circumstances – do so in a more effective way than individual and public ownership institutions. This may be a surprising argument, since *individual* ownership has often been presumed to be the most efficient and sustainable property arrangement available under all circumstances. Where individual ownership fails, moreover, many authors assume that the alternative must be to manage a natural resource through the state. However, empirical evidence shows that these views are mistaken and that there are distinct benefits to sharing amongst multiple *private* persons. What is more, these benefits can only be realised

[366] See chapter 2, section 4.C.

in cases where the people sharing the resource manage their use collectively and democratically, which is the central characteristic of my conception of group ownership. It follows that group ownership can satisfy the first criterion for basic non-domination.

The chapter is organised as follows. In section two, I discuss the main objections to the idea that shared resources can be used in a productive, cost-effective, and sustainable enough way to realise basic capabilities. It will appear that these arguments are based on models of human behaviour and motivation more than they are based on actual empirical evidence. The arguments fall into two different categories. Firstly, sharing is thought to promote adverse incentives that will lead to inefficient use at best and destructive use of resources in the worst-case scenario. Secondly, certain theoretical perspectives predict that interdependent users who interact with one another on equal terms, will not cooperate to counteract adverse incentives. This is either because such cooperation is too costly or because users face second-order adverse incentives that keep them from organising themselves. Section three shows that this second argument is mistaken. I discuss Elinor Ostrom's celebrated theory on CPRs, in which she draws on empirical data to show how multiple people who use a resource can organise themselves and cooperate in a durable way to obtain shared benefits from that resource. They do this by agreeing on use-rules together, thus collectively determining what each individual may take from or has to contribute to the resource, just as happens under sharing in common.

In section four, I argue that this way of governing resource use is not only feasible, but sometimes also preferable in terms of its realisation of basic non-domination when compared to individual and public ownership. This argument stands in direct opposition to historical views – propagated during the time of Enclosure – that claim that group ownership is always worse than individual ownership of land, and that only the latter

can benefit society. In section five, I suggest that such views may have been politically motivated rather than scientifically grounded.

While the chapter takes natural resources as the focal point of the discussion, I believe that the central argument about group ownership's ability to realise basic non-domination can be extended to other cases as well. I briefly discuss some of these cases in section six.

6.2 Arguments against sharing

In this section I will discuss some of the classic arguments against sharing in general, and the sharing of natural resources in particular. These arguments all hold that when multiple people share natural resources on equal terms (so not in a hierarchical setting, such as in a non-democratic business corporation or under strong public management), this is inefficient at best and leads to the neglect, overuse, and even the eventual destruction of resources in the worst-case scenario. Either scenario spells problems for my argument that group ownership can help realise basic non-domination. It is clear why that is so in the case of total resource destruction; sharing in common is not a viable option if it leads to the destruction of resources that could have been used to gain basic capabilities under another property arrangement. But a tendency to promote "merely" inefficient use is also problematic in my framework. To understand why and to what extent that is so, it pays to take a closer look at the concept of efficiency.

Resource use is maximally efficient when it's impossible to improve the extent to which the resource contributes to a certain goal or set of

goals.[367] This definition of efficiency leaves open what that goal is.[368] Indeed, it isn't necessary to specify a goal to understand the arguments against sharing that I shall discuss in this section. This is because these arguments seem to hold that *whatever* one wants to achieve by using a natural resource, shared use is not a good way of achieving it.[369] For the purpose of evaluating group ownership's contribution to basic non-domination, however, it's important to move beyond the generic definition of efficiency and specify the value that must be promoted. On my framework, resource use is maximally efficient when it's impossible to improve the number of people who can use the resource to attain their basic capabilities, and impossible to improve the degree to which the resource contributes to their basic capabilities.

To satisfy the basic capability criterion, however, an ownership institution need not promote maximal efficiency so understood. It is of course worrying if group ownership is so inefficient that it promotes the

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[367] Julian Le Grand, 'Equity versus Efficiency: The Elusive Trade-Off', *Ethics* 100 (1990): 554–68. Le Grand's definition is that "an allocation of resources is efficient if it is impossible to move toward the attainment of one social objective without moving away from the attainment of another objective" (p. 559). Le Grand's definition may appear different from mine because it seemingly describes a trade-off between different values, whereas my framework describes no such trade-off. Le Grand makes clear, however, that the different "objectives" referred to in his definition may also refer to the achievement of a *single* value for different *persons*, such as when one is concerned with the utility functions of all citizens (p. 558-559). In that case, maximal efficiency refers to the cost-effective achievement of a single overarching value (utility) for different persons, such that no one's utility level could be improved without lowering another person's utility level. Therefore, there is no conflict between his definition and mine. In my normative framework efficiency will refer to the cost-effective use of resources for the achievement of basic non-domination for multiple persons.

[368] It need not, then, refer to preference satisfaction, though efficiency is often interpreted with that value in mind.

[369] An exception might be if the activity of sharing (and possibly the experience that attends it) is itself the goal, and not a means to another end.

attainment of basic capabilities only for very few people or to a low extent. However, basic capability attainment doesn't have to be optimal to get people to the stage where they can resist arbitrary power. Group ownership – and other ownership institutions evaluated in my framework – must ensure that people can reach that critical stage, rather than be as efficient as they can possibly be. The arguments in this section are worrying, then, to the extent that they suggest that the shared use of resources is not even sufficiently efficient for this goal.

Broadly speaking, the opposition to sharing rests on two pillars. Firstly, theorists argue that unregulated sharing of a resource incentivises overuse and underinvestment. Secondly, theorists discount the possibility that multiple resource users can regulate the use of the resource themselves and thus counteract adverse incentives. I shall refer to these two pillars as the *problem of unregulated use* and the *problem of cooperation* respectively, and I will discuss them in turn.

A. The problem of unregulated use

One of the best-known arguments against sharing is offered by Gareth Hardin in his essay 'The Tragedy of the Commons.' In this article, Hardin argues that shared resources are doomed to destruction.[370] Sharing, on his analysis, means simply that multiple people can use a resource, and that they cannot exclude one another from it. Hardin's view is not grounded in empirical evidence, but he does illustrate his claim with what is by now a famous parable. Imagine a pasture where multiple herders can come to let their sheep graze. Each of these herders is tempted to act in their self-interest and bring many sheep to the pasture, since that will raise more revenue. The shepherds know that if there are too many animals on the pasture, the

[370] Gareth Hardin, 'The Tragedy of the Commons', *Science* 162, no. 3859 (1968): 1243–48.

resource will deteriorate and may eventually be destroyed altogether. They therefore know that the best results for *all of them* would be achieved if they restricted their use of the pasture, allowing it to restore itself. Two things move them to act differently, however. Firstly, each shepherd knows that the best outcome for them, individually, would be achieved if they could bring many sheep to the field while all the other shepherds restricted their use of it. Then the resource would not deteriorate, and the individual shepherd's gain would be maximised. There is an incentive, then, for overgrazing. Secondly, the problem is compounded because the herders suspect that, even if they restrain themselves and limit their number of grazers, the other users may not do the same. Therefore, there is no sure benefit in restraining one's use; the pasture may be depleted anyway. Under these conditions, the "rational" thing to do is to maximise one's use of the resource as long as it still exists. This is why sharing inevitably leads to resource destruction.

The parable has the shape of a one-shot prisoner's dilemma (PD) in game theory. The shepherds face a social dilemma, meaning they are tempted to act in their immediate self-interest even though this action is detrimental to the interest of everyone in their group in the long term.[371] When a social dilemma is structured along the lines of a one-shot PD, participants choose to act in their immediate self-interest because they cannot

[371] Paul A.M. Van Lange et al., 'The Psychology of Social Dilemmas: A Review', *Organizational Behavior and Human Decision Processes* 120, no. 2 (2013): 125–41. This conflict between one's immediate self-interest and long-term interest of all the members of the group is sometimes also referred to as a collective action problem. I prefer the term social dilemma for two reasons. Firstly because it coheres with the language used in empirical studies of natural and agricultural resource governance, most notably in Ostrom's work. Secondly, the term "collective action problem" seems to suggest that the adverse incentives cannot be overcome; there is a *problem* for collective action. But that is precisely what I will deny. Collective action is possible, even in the face of these adverse incentives.

be assured that others act in a way that is beneficial for the group.[372] Having no assurance that other shepherds will refrain from bringing more sheep to the pasture, the strategy with the highest expected value for any individual shepherd is to bring more sheep. That way they can at least reap the short-term benefits even if they cannot be assured of the long-term viability of the pasture. And as is the case in a PD game, the simultaneous pursuit of the seemingly rational strategy produces the worst of all possible results.

The only ways this can be prevented, argues Hardin, is by either having a state institution govern the use of the resource or by dividing the resource so that every separate parcel comes under the governance of one owner. Equal individualisation leads to a situation where the owner of a parcel is sure that the improvements they make to the field or the restraint they show will be to their own benefit. They will therefore have an incentive to restrict their use of the resource and to take care of any maintenance tasks. Individual owners are assured that they can reap the benefits of these actions without having to suffer the bad actions of others. Indeed, such

[372] In the classic formulation of a one-shot prisoner's dilemma, two suspects of a crime are interviewed separately by the district attorney. Neither suspect knows what the other one is saying to the DA. They know, furthermore, that if neither suspect betrays the other, the DA will only be able to get them two years of prison time each. This is the scenario under which both suspects cooperate, i.e. not betray their partner. However, if one of them chooses to betray her partner, while the other one doesn't, then the former will get no prison time, while the latter gets a ten-year sentence. From the individual suspect's perspective, then, this would be the best outcome. However, if they both defect, then they will both get ten years. In the absence of any knowledge about what their partner will do, the expected value of defection is better than for cooperation from the perspective of an individual. Cooperation leads to at best two years, and ten years in the worst-case scenario, while defection leads to zero years in the best, ten years in the worst case. Consequently, both parties will choose to defect, leading to the worst possible outcome for the group. See William Poundstone, *Prisoner's Dilemma* (New York: Anchor Books, 1993). Robert Axelrod showed that when PD games are repeated (so not a one-shot game), participants do tend to cooperate to avoid conflict. See Robert M. Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 2006).

owners can only suffer from their own overuse.

Both of Hardin's solutions work by installing a single decision maker as owner or regulator. Hardin neglects the possibility that the shepherds can come to an agreement together on the kinds of use they will and will not allow. This becomes clear from the way he models their predicament. In a classic PD game, the players cannot communicate with one another. This makes it difficult to signal any willingness to cooperate. Moreover, if the game is not repeated, there is also no way to retaliate for lack of cooperation, or reward cooperative behaviour in the game's iterations. Under these conditions, there is no way for players to work together. Yet these features of a PD game are not those of real life. People *can* communicate, come to agreements, and take action in case of a lack of cooperation. So even if the conception of rational action that Hardin employs is a plausible way of modelling human motivation, then there is an important question he neglects to ask. Why wouldn't it be possible for the shepherds to talk to each other and agree on use-rules together? I turn now to the theoretical perspectives that predict such cooperation will be too costly or difficult to realise.

B. The problem of cooperation

One such argument is offered by Harold Demsetz in his highly influential article 'Toward a Theory of Property Rights.'[373] He argues that people will not agree on use-rules when the costs of coming to an agreement outweigh the benefits that can be obtained through it. He moreover claims that these costs are invariably high when there are many people involved in the decision-making process. This is why he argues that the evolution of property rights always moves in the direction of private – by which he means *individual* – rather than communal property. To understand this claim, it

[373] Demsetz, 'Toward I'.

helps to put it in the context of Demsetz' theory on the function and emergence of property rights.

Demsetz claims that property rights emerge when they are a cost-effective way of internalising externalities. He defines an externality as an effect of an action of which the cost or benefit is not brought to bear on the decision to take that action.[374] A standard example is of factory owners polluting the environment without having to pay for the damage they cause. In that case, the cost of their action is not brought to bear on the decision to pollute. Externalities are internalised when the cost *is* brought to bear on these decisions. Ronald Coase famously argues that this happens when people have clear entitlements to things.[375] If the people surrounding the factory have an entitlement to clean air, the factory can pay them to pollute it. If, by contrast, the factory is entitled to pollute, then the community can pay it to stop polluting. Either way, the costs of a certain action are paid.[376] Demsetz clarifies the role that property rights play in this process: they form the basis for the entitlements that people can trade to take the costs of actions into account. Simply put, an owner can be paid not to use their property in a certain way, while a non-owner can pay to use it or have it used in a certain way.

Now, the question is when these property rights arise. Demsetz argues that this happens when the costs of developing property rights outweigh the costs of continuing without them.[377] Externalities are not always worth internalising. When the effects of actions on others are not costly or

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[374] Demsetz, 348.

[375] Ronald H. Coase, 'The Problem of Social Cost', *Journal of Law and Economics* 3 (1960): 1–44.

[376] As can be seen, there are important moral questions here about who should hold the initial entitlement and who should therefore be asked to pay. These questions are beyond the very concept of an externality, however, which is not moralised.

[377] Demsetz, 'Toward I', 349-350.

beneficial enough to warrant the effort of creating clear entitlements, externalities remain just that. Conversely, when externalities become more significant – for example because the value of objects that are affected by these externalities increases – the pressure to create entitlements will mount. As land and other resources become more productive and tradable, externalities will be internalised. The most cost-effective way of doing that, Demsetz claims, is through individual property.[378]

Like Hardin, Demsetz also doesn't provide empirical evidence for his hypothesis, but he does illustrate it loosely with a description of the fur trade in seventeenth-century Canada. He claims that while aboriginal peoples still hunted for their subsistence, it did not make sense for them to take the externalities of their actions into account. This changed, however, with European colonisation and the ensuing fur trade. At that moment the value of fur rose, and so did the incidence of hunting. The effects of hunters on each other and on the stock of animals now mattered a great deal. And these effects would likely be negative, claims Demsetz, as long as the hunters continued to share their hunting grounds. Like Hardin, he believes communal ownership "fails to concentrate the cost associated with any person's exercise of his communal [use] right on that person. If a person seeks to maximize the value of his communal rights, he will tend to overhunt and overwork the land because some of the costs of his doing so are borne by others."[379] Demsetz believes that this explains why husbandry and family-owned territorial hunting grounds developed where formerly all the land was shared and people were allowed to hunt everywhere.

Why should this be so? Why did the hunters not continue to share their grounds, while agreeing to rules on use? They could have avoided the

[378] In addition to individuals, Demsetz also thinks families can make for efficient owners. Most of the text refers to individuals, however. Demsetz, 356.
[379] Demsetz, 354.

adverse effects of potential overhunting that way. Demsetz suggests three reasons.[380] Firstly, the transaction costs of coming to an agreement between all users would be too high. With many people who have to negotiate and come to an agreement together, the amount of time, energy and other resources that have to be spent is considerable. By contrast, individual owners have to deliberate with no one about how they use their property. In addition, where individual owners of different objects can affect one another, for example because their lands are adjacent, they will only have to strike agreements between a few persons. Secondly, there are the costs of monitoring collective agreements, which again Demsetz assumes to be very high because of the high number of people who have to be monitored. Finally, he makes the peculiar argument that private owners can take better account of the future, including the interests of future generations. Just why communal owners would have more trouble with this remains unclear, however.[381] Concluding, he claims that in a communal ownership regime

> "[t]he effects of a person's activities on his neighbors and on subsequent generations will not be taken into account fully. Communal property results in great externalities. The full costs of the activities of an owner of a communal property are not borne directly by him, nor can they be called to his attention easily by the willingness of others to pay him an appropriate sum. Communal property rules out a "pay-to-use-the-property" system and high negotiation and policing costs make ineffective a "pay-him-not-to-use-the-property" system."[382]

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[380] Demsetz, 354-355.

[381] James Grunebaum also argues this in his *Private Ownership*, 158-167.

[382] Demsetz, 'Toward I', 355.

In a later article, Demsetz suggests these problems can be mitigated by what he calls compactness.[383] If a group is "compact," meaning sufficiently homogeneous and with strong social ties, then the costs of coming to and enforcing agreements are relatively low. However, the relevance of such groups decreases as economies develop.

Though Demsetz' conception of communal ownership differs from my conception of group ownership in an important respect, it is nevertheless relevant for my present enquiry. His conception is different because communal ownership is not defined by collective, non-optional control over individual entitlements. Recall that on my view, a group defines and authorises individual rights to use and gain income from an object. Conceptually speaking, the group's decisions on this need not be unanimous, though my view does not exclude that either. Group ownership thus consists of what I referred to in chapter two as a *group right* to determine what may be done with a resource. Demsetz' conception, however, refers to what I called *group-differentiated rights* of individuals to use a resource, rather than a group right to control it.[384] Demsetz writes:

> "By communal ownership, I shall mean a right which can be exercised by all members of the community. Frequently the rights to till and to hunt the land have been communally owned. The right to walk a city sidewalk is communally owned. Communal ownership means that the community denies to the state or to individual citizens the right to interfere with any person's exercise of communally-owned right."[385]

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[383] Harold Demsetz, 'Toward a Theory of Property Rights II: The Competition between Private and Collective Ownership', *The Journal of Legal Studies* 31, no. S2 (2002): 653–72.

[384] See chapter 2, section 4.B.

[385] Demsetz, 'Toward I', 354. Demsetz used the same conception of communal property in a later paper he co-authored with Armen Alchian, 'to describe a bundle of rights which includes the right to use a scarce resource, but fails to include the right of an "absentee

On this conception of sharing, not even the group as a whole has a right to "interfere with" an individual member's use rights. This becomes clear also from the worry Demsetz expresses about individual holdouts in the process of coming to collective agreements. On his view, "each hold-out has the right to work the land as fast as he pleases," continuing with a type of use that the rest of the group might want to forbid.[386] Such hold-outs are possible when individual use rights are not defined by the collective decisions of the group.[387]

Demsetz' argument against sharing is nevertheless relevant, because the difficulty of coming to agreements is not reducible to hold-outs, or to the fact that collective control is something optional that individuals can engage in, rather than something they are obliged to submit to. Instead, he locates the problem of communal ownership with the sheer number of people who have to regulate their actions. This is what drives up the cost of communal as opposed to individual ownership, and it would be a cost that – on his theory – my conception of group ownership also has to deal with. His argument implies that the collective management of resources is so cumbersome that the benefits obtained from these resources will be limited at best, and impossible to obtain in the worst-case scenario. Group ownership, then, is highly inefficient on his view.

Demsetz works in the context of transaction costs economics, and his argument against the likelihood of cooperation among multiple

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owner" to exclude others from using the resource.' Alchian and Demsetz, 'The Property Paradigm', 19.

[386] Demsetz, 'Toward I', 355.

[387] Holdouts such as these are also possible when the group does have the right to collectively determine the rights of each individual (i.e. these are not defined by a government or by some other party external to the group) but must do so on a unanimous basis. But there is no evidence in Demsetz' text that collective control is a key feature of what he calls communal ownership at all, let alone textual evidence that such control must be unanimously exercised.

resource users draws on that framework. The difficulty of regulating use through collective control is approached from a different angle in a game-theoretical framework of collective action. Here, too, the question is whether and how individual users of a natural resource can take collective action – that is, action that they coordinate and take together – themselves. The problems that users face in setting up a scheme of cooperation are in this framework modelled as a series of social dilemmas.[388] These are second-order social dilemmas; they don't refer to the adverse incentives that people face in using the resource, but to the adverse incentives to developing and sustaining a system through which use can be regulated.

Firstly, the *problem of supply* relates to the question of why individuals would take the trouble to create institutions for collective action.[389] Clearly, use-rules are desirable, but that does not mean they will appear of themselves; individual users must be willing to supply them.[390] And here, rational choice theory predicts that users face a social dilemma; they know that it would be best for the group if they did create rules, but they are not inclined to bear a bigger share of the cost of creating those rules, when they cannot isolate the benefit of their efforts for themselves. The temptation is therefore to free-ride. Secondly, there is the *problem of credible commitment*: even *if* rules are created, the users of a resource may not be convinced that everyone will follow them. And since they cannot be assured of that, there remains a temptation to break the rules.[391] To assure everyone of

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[388] These three social dilemmas are discussed in Ostrom, *Governing the Commons*, 42-45. Ostrom clarified the nature of these social dilemmas, but did not do so to argue cooperation was impossible. To the contrary, her theory showed how people could overcome these predicted difficulties.

[389] Ostrom, 42.

[390] Robert H. Bates, 'Contra Contractarianism: Some Reflections on the New Institutionalism', *Politics & Society* 16, no. 2–3 (1988): 387–401; Ostrom, *Governing the Commons*, 42–43.

[391] Ostrom, *Governing the Commons*, 43–45.

everyone's commitment, a system of mutual monitoring needs to be in place. This is where the third social dilemma crops up, which is the *problem of mutual monitoring*.[392] John Elster describes the dilemma as follows:

> "True, it may be better for all members if all punish non-members than if none do, but for each member it may be even better to remain passive. Punishment almost invariably is costly to the punisher, while the benefits from punishment are diffusely distributed over the members."[393]

This, then, is another hurdle that people who share a resource have to overcome, before they can collectively agree on rules for using and managing their resource.[394] In sum, people are tempted by their self-interest to not supply rules, to not follow them, and to refrain from monitoring compliance with those rules.

These theoretical views on the problem of unregulated use and the problem of cooperation can support real and damaging policy decisions made by governments. In one well-documented case, the Nepalese government did not recognise a regime of communal control as a valid system for regulating forest use.[395] While the local foresting community had developed its own use-rules, the national government assumed that sharing in this case must lead to destructive results. It therefore nationalised the forest, with the intention to protect and preserve it. The result, however, was the

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[392] Ostrom, 45.

[393] John Elster, *The Cement of Society: Studies in Rationality and Irrationality* (Cambridge: Cambridge University Press, 1989), 41.

[394] The problem of commitment and the problem of mutual monitoring are analytically distinct, though they require a single solution to solve both. Once the problem of mutual monitoring is solved, people can credibly commit to the rules. However, the incentive *not* to follow the rules and the incentive to *not* invest in monitoring are two different adverse incentives.

[395] Feeny et al., 'The Tragedy'.

disruption of the system of communal control. Due to a lack of monitoring, moreover, nationalisation effectively meant that no new system of control replaced the former one. People faced no external restraint to their incentives, nor did they have assurance that others refrained from overuse, and this led to gross deforestation. The Nepalese government was not alone in this type of policy response. The unwillingness of governments to recognise that private groups can control natural resources themselves is a recurring theme in countries as diverse as Canada, Brazil, Ghana, and many others.[396]

There is a positive twist to the story of Nepal, however; in the late seventies, the Nepalese government reversed its policy and worked together with local communities to re-establish their system of control, with encouraging initial results. Which brings me to the argument of my next section, which is that groups *can* collectively regulate the way they use resources, and thus can make sure they use them in a productive and sustainable way, even when their members interact on equal terms rather than in a hierarchy, and even when they are faced with incentives for overuse and underinvestment.

6.3 Conditions for durable and productive cooperation

Many researchers demonstrate that people who share a resource in practice can come to agreements about how that resource may be used, and that this cooperation is cost-effective enough for the users to reap joint benefits from the resource in a sustainable way.[397] Their research includes examples

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[396] Ostrom, 177 ff.

[397] Key publications include Ciriacy-Wantrup and Bishop, 'Common Property'; Netting, *Balancing on an Alp*; Feeny et al., 'The Tragedy'; Ostrom, *Governing the Commons*; Ellickson, *Order without Law*; Thomas Dietz, Elinor Ostrom, and Paul Stern, 'The Struggle to Govern the Commons', *Science* 302, no. 5652 (2003): 1907–12. For a more extensive list of highly influential publications on this topic, see https://iasc-commons.org/key-

of fishers regulating their shared fisheries, farmers governing the use of their shared irrigation systems and crop fields, shepherds doing the same with their shared pastures, communities regulating the use of forests, and many other cases. The findings challenge the traditional opposition to sharing, an opposition that is largely based on theoretical speculation rather than empirically informed work. Empirical studies find that users can and do rely on natural resources that they share on equal terms for their basic capabilities. These studies providing the input for evidence-based theories on sharing and cooperation.

The most influential theory in this field comes from Elinor Ostrom, whose work I discussed briefly in chapter two.[398] In *Governing the Commons*, Ostrom seeks to explain how groups of individuals can organise themselves and govern shared resources of which the use and provision is subject to social dilemmas.[399] She challenges the idea that people can only benefit from shared resources if they are subjected to top-down rule, whether in a hierarchical business corporation, or under complete government regulation (as Hardin argued). Instead, she develops a theory "whereby a *group of principals* can organise themselves voluntarily to retain the residuals of their own efforts."[400] Her theory does not prove that such

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publications/. See also the Digital Library of the Commons for the most complete collection of literature on self-governing users of natural resources (https://dlc.dlib.indiana.edu/dlc/).

[398] For a quantitative analysis of this influence across disciplines, see Frank van Laerhoven, Michael Schoon, and Sergio Villamayor-Tomas, 'Celebrating the 30th Anniversary of Ostrom's Governing the Commons: Traditions and Trends in the Study of the Commons, Revisited', *International Journal of the Commons* 14, no. 1 (2020): 212. For a qualitative analysis of Ostrom's influence on the field of law, specifically, see Carol M. Rose, 'Ostrom and the Lawyers: The Impact of Governing the Commons on the American Legal Academy', *International Journal of the Commons* 5, no. 1 (2011): 28.

[399] Ostrom, *Governing the Commons*, chap. 1.

[400] Ostrom, 25 (emphasis added).

cooperation is possible; this was already proven by many actual examples of self-organised enterprises.[401] Rather, the theory explains the conditions under which this cooperation is possible and under which it can endure. This is important because "until a theoretical explanation – based on human choice – for self-organised and self-governed enterprises is fully developed and accepted, major policy decisions will continue to be undertaken with a presumption that individuals cannot organise themselves and always need to be organised by external authorities."[402]

The cases she builds her theory on are of common property regimes (CPRs) in natural and humanmade resources, including inshore fisheries, irrigation systems, forests, natural water basins, pastures, and crop fields. These are all common pool resources, which are resources from which it is costly to exclude people, and that are highly subtractable, meaning that consumption of the good reduces the availability of the good to others.[403] Users of such resources face exactly the kind of adverse incentives I discussed in the previous section. The cost of excluding people makes it difficult to isolate benefits and costs of investment and use, and therefore makes it difficult to prevent free-riding. Meanwhile, high subtractability implies that there must be restraints on use if the resource is to survive. What people own in common in these cases is the resource system (e.g. the irrigation system, fishery, forest), not the resource units (respectively water, fish, wood).[404] The units, once taken from the resource system, are owned by

[401] Ostrom, 25.
[402] Ostrom, 25.
[403] Ostrom, 30. On the contrast with private, public, and public goods, see Ostrom, 'How Types'.
[404] Ostrom, *Governing the Commons*, 30. A resource system is often also referred to as the resource stock, with resource units referred to as the resource flow.

the separate members, as is the equipment used to obtain these units.[405] Another parameter of Ostrom's selected cases is that appropriators (people who take resource units from the resource system) number between 50 to 15000.[406] Finally, in the selected cases, appropriators rely heavily on the shared resource for securing their livelihood. Indirectly, then, they rely heavily on the resource to attain such basic capabilities as the capability to be well-nourished, sheltered, and so on.[407]

Ostrom identified eight design principles that accounted for the robustness of successful CPRs. I have copied and divided them in four categories in the table below.[408]

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[405] To become an owner of a unit, it's not necessary that people have actually extracted the unit from the resource themselves. It's also possible that the resource units are all collected first and then divided on the basis of some distributive principle or other. See e.g. the case described in Margaret A. McKean, 'Management of Traditional Common Lands (Iriaichi) in Japan', in *Proceedings of the Conference on Common Property Resource Management*, by National Resource Council (Washington D.C.: National Academy Press, 1986).

[406] Ostrom, *Governing the Commons*, 26.

[407] Ostrom, 26.

[408] The design principles are listed in Ostrom, 90. To facilitate my division into four categories I have changed the numbering of the design principles compared to Ostrom's seminal original list. Ostrom initially called the criteria for long-enduring CPRs 'design principles,' but wrote later that this had led to confusion. She had not meant that people have certain principles in mind as they create institutions. Rather, the design principles reflected underlying lessons or best practices she deduced from studying CPRs. See Elinor Ostrom, 'Beyond Markets and States: Polycentric Governance of Complex Economic Systems', *The American Economic Review* 100, no. 3 (2010): 653. I continue using the term design principles to ensure congruence with the literature on CPRs.

Table 6.1 Ostrom's design principles for long-enduring CPRs. (Adapted from Ostrom, *Governing the Commons,* p. 90.)

Category	Design principles
Organisational ability	1. Clearly defined boundaries Individuals or households who have rights to withdraw resource units from the CPR must be clearly defined, as must the boundaries of the CPR itself. 2. Minimal recognition of rights to organize The rights of appropriators to devise their own institutions are not challenged by external governmental authorities.
Rule creation	3. Congruence between appropriation and provision rules and local conditions Appropriation rules restricting time, place, technology, and/or quantity of resource units are related to local conditions and to provisions requiring labor, material, and/or money. 4. Collective-choice arrangements Most individuals affected by the operational rules can participate in modifying the operational rules.
Compliance	5. Monitoring Monitors, who actively audit CPR conditions and appropriator behavior, are accountable to the appropriators or are the appropriators. 6. Graduated sanctions Appropriators who violate operational rules are likely to be assessed graduated sanctions (depending on the seriousness and context of the offense) by other appropriators, by officials accountable to these appropriators, or by both. 7. Conflict-resolution mechanisms Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials.
Nesting	8. Nested enterprises Appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layers of nested enterprises."

The first category concerns principles that are important for the minimal ability of appropriators to self-organise. This includes the principle that CPRs have clearly defined boundaries.[409] That is to say, the resource's physical boundaries must be clearly defined, and it must be clear who has a right to appropriate from that resource. If appropriators cannot close their resource to outsiders, they face the risk that the benefits of their cooperation are not reaped by themselves. In that case, their returns will be lower or the resource may be depleted entirely. Boundaries and exclusion are important "for any appropriators to have a minimal interest in coordinating patterns of appropriation and provision."[410] If appropriators can reap the benefits of the rules they set up, then this will be the first step to overcome the problem of institutional supply mentioned in the last section. It will then be worth investing time and other expenses to devise institutions together. But of course, appropriators will have to be allowed to

[409] Ostrom, *Governing the Commons*, 90, 91-92.

[410] Ostrom, 91. Some legal scholars criticise Ostrom for arguing that exclusion is important. They claim that Carol Rose's work is more radical than Ostrom's for showing that even in the absence of mechanisms of exclusion, people who share goods can come to develop norms on use together. See Rose, 'Ostrom and the Lawyers'; Rose, 'The Comedy of the Commons'. This is not a fair criticism of Ostrom, however. Her arguments on exclusion should be seen in light of the type of resources and resource users she discusses. Ostrom focuses on resources that are subtractable in use, whereas Rose writes about goods whose benefits *increase* when more people use them. Naturally, then, limits on the number of users are not so important for the survival of a resource in Rose's discussion as it is in Ostrom's. Moreover, Ostrom argues that an open access regime would leave individuals unable to communicate, agree on rules, and hold each other to it. This is a highly plausible thesis when it comes to natural resources. Of course, digital open access arrangements in knowledge resources, such as Wikipedia, show that it *is* possible for users to cooperate and set rules on use and production even when the resource is open to everyone. Observations such as these don't discredit what Ostrom says about exclusion in natural resources, however, because she talks about very different circumstances. All that can be said on this matter, then, is that the conditions for good resource use will vary depending on the type of resource that is at stake.

do this. The second design principle in this category states that appropriators must have minimal recognition of rights to organise, meaning that "the right of appropriators to devise their own institutions are not challenged by external governmental authorities."[411]

This recognition was absent in one of the unsuccessful CPRs Ostrom discusses, studied originally by Paul Alexander.[412] In the Sri Lankan village of Mawelle, briefly discussed in the third chapter of this dissertation, fishing was done largely for subsistence until the late 1930s. After the construction of a road to Mawelle, however, the sale of fish became much more lucrative. Combined with population growth, this development resulted in many more people fishing there and eventually in overuse of the resource. The fishers were initially able to put a stop to new entrants and to create use-rules, thus preventing total rent dissipation. They registered the number of nets that could be cast there and devised a rota system for the casting of these nets. This changed, however, when faction leaders demanded that their new nets be registered as well. One of these faction leaders even promised support for a political candidate after that candidate agreed that additional nets could be registered. After considerable conflict, the nets were added to the rota system, causing the rent dissipation that fishers had been trying to prevent. Ostrom comments that

> "[t]his was not a problem of ignorance. The fishers involved were aware of the consequences of adding nets, it was not a case of individuals being incapable of devising and enforcing rules well tailored to their local circumstances. The sequence rules had been practiced successfully for many

[411] Ostrom, *Governing the Commons*, 90.
[412] Alexander, 'South Sri Lanka'.

years. It does illustrate what happens in a dynamic local setting when appropriators do not have autonomy to make and enforce new rules."[413]

The second category of design principles concerns the way in which rules are created. These principles state, firstly, that there must be congruence between appropriation and provision rules and local conditions. If there is no fit between use-rules and local conditions, people will not be successful in overcoming social dilemmas. Secondly, and crucially for my argument, successful CPRs have collective-choice arrangements, such that "[m]ost individuals affected by the operational rules can participate in modifying the operational rules."[414] Such collective choice arrangements enable CPR members to "tailor their rules to local circumstances, because the individuals who directly interact with one another and with the physical world can modify the rules over time so as to better fit them to the specific characteristics of their setting."[415] In a historical case study on a commons in Flanders, Tine de Moor argues that adaptability achieved through collective rule was so important that participation in collective rule was made compulsory.[416] In addition, researchers have suggested that participation in the setting of rules is important for the perceived legitimacy of these rules.[417] A study of an inshore ground fishery in Maine in the eighties, for example, relates how users did not find the top-down imposed fishing rules credible, and were consequently unwilling to comply with them. By contrast, in a lobster fishery in the same region where users could set the rules themselves with the support of their government, compliance was very

[413] Ostrom, *Governing the Commons*, 155 (emphasis omitted).
[414] Ostrom, 90, 93.
[415] Ostrom, 93.
[416] Tine De Moor, *The Dilemma of the Commoners: Understanding the Use of Common-Pool Resources in Long-Term Perspective*, 2015.
[417] Dietz, Ostrom, and Stern, 'The Struggle to Govern the Commons'.

high.[418]

In other words, the success of appropriators in overcoming incentives to defect *depends on collectively determined rules*. Ostrom's design principle does not go so far as to claim that the collective choice arrangements must be entirely democratic to achieve the benefits of cooperation. However, it does suggest that it is better if everyone affected by use-rules is included in the decision-making process, and that this is better for the instrumental reason that it enables people to gain joint benefits from a resource. This finding is supported by other studies as well. In a study about women's exclusion from decision-making in communal forest tenure organisations in India and Nepal, Bina Agarwal suggests that including women could have efficiency benefits.[419] It would allow the CPR to make good use of women's specialised knowledge, which is extensive since they have to go into the forest every day to collect firewood. Inclusive collective choice arrangements therefore do not hinder the productive use of resources because of their costs, as Demsetz thought they must, but are precisely what makes this productive use possible when people share a resource. De Moor argues that, far from producing inertia, intensive collective management enabled the commoners in her historical case study to adapt in a dynamic environment characterised by political, economic, and social changes.[420] Jesse Ribot comes to a similar conclusion in a report on natural resource interventions conducted by governments, NGOs, and

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[418] James M. Acheson, *The Lobster Gangs of Maine* (Hanover, NH: University Press of New England, 1988); James A. Wilson et al., 'Chaos, Complexity and Community Management of Fisheries', *Marine Policy* 18, no. 4 (1994): 291–305; Dietz, Ostrom, and Stern, 'The Struggle to Govern the Commons'.
[419] Agarwal, 'Participatory Exclusions'.
[420] De Moor, *The Dilemma of the Commoners*, 158.

international development agencies.[421] Such interventions aim at promoting sustainable resource management, and will sometimes circumvent democratic institutions in an effort to speed processes up, for example by empowering non-democratic conventional authorities. Ribot finds, however, that on the long term democratic communal management is *more* efficient and sustainable. He therefore advocates interventions that aim to strengthen existing local democratic institutions.

The third category of design principles concerns the way in which compliance with collectively determined rules must be ensured. Though use-rules may be created by the appropriators themselves, this does not yet ensure that they will comply with them. The temptation to shirk remains present – this is the problem of credible commitment. Design principle five is therefore that compliance must be monitored, and the people doing the monitoring must either be the appropriators themselves or be accountable to appropriators.[422] This design principle further underlines, then, the need for the appropriators to collectively control the resource. According to design principle six, in addition, there has to be a system of graduated sanctions for violation of the operational rules. The final principle in this category is principle seven, which states that there have to be low-cost conflict-resolution mechanisms to resolve conflicts between appropriators or between appropriators and external parties.

Ostrom notes that all long-enduring CPRs invest in monitoring and sanctioning activities, which according to her demonstrates that even when people consider rules to be binding, and even in cases where reputation matters a great deal, sanctioning and monitoring remain necessary to

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[421] Jesse C. Ribot, 'Building Local Democracy through Natural Resource Interventions: An Environmentalist's Responsibility', Policy Brief (World Resources Institute, 2008).
[422] Ostrom, *Governing the Commons*, 90.

overcome harmful incentives.[423] One possible explanation for this is that people need to be assured that others are also complying. They do not want to be "a sucker," someone who will keep to the rules even as free-riders profit from their restraint and work.[424] If a resource is well-monitored and sanctions are dealt out, then users will have this assurance. In addition, there will be circumstances when the temptation to break rules is stronger than usual, for example when in times of extreme draught a farmer is tempted to take more water than allowed from a shared irrigation system. In that case, even people who would otherwise comply with rules of their own accord, need the self-binding mechanism of setting up a system for monitoring and sanctioning. It will ensure that their long-term interest in a well-governed resource is secured.

As I noted in the previous section, transaction cost and game-theoretical approaches consider monitoring costly and the benefits of monitoring difficult to isolate for oneself. This is why the problem of monitoring is a second-order social dilemma. As it turns out, however, in practice appropriators are able to keep the costs of monitoring low, for instance by devising ingenious rules that allow them to simultaneously use and monitor the resource. One example is of irrigation rotation systems. In such systems, individuals have an incentive to take more water for themselves, leaving less water for users down the line. How can one ensure in a low-cost way, then, that farmers don't take more water than they have agreed to? On a rotation system where farmers get to take water one by one, every farmer will be ready to open the floodgates to their land before their turn on the rota comes. As a result, they are in a good position to check if the farmer directly adjacent to them in the upstream direction is not leaving the gates open too long. By combining use and monitoring in this way, farmers in

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[423] Ostrom, 93-94.

[424] Ostrom, 94-95.

the arid Spanish region of Valencia were able to monitor water withdrawal effectively and efficiently.[425] Similar solutions are adopted in fisheries with a rota system for casting nets.[426] In other regimes, members take turns to monitor the resource, so that no one has to bear the brunt of monitoring costs alone. Thus, individuals are able to overcome the problem of monitoring and with it the problem of commitment, in a way that is cost-effective enough for them to be worth undertaking.

The final design principle – which I have placed in a category of its own – applies to CPRs that are parts of larger systems. It states that all activities must be organised in multiple layers of nested enterprises.[427] This principle comes down to a type of subsidiarity at the level of CPRs, and it enables members to specify local rules as well as more general rules that apply to the resource system as a whole.

Note the absence of a design principle about what Demsetz called compactness. While Demsetz assumed that collective action would be impeded in a heterogeneous and/or large group, the empirical relation between these factors has been very difficult to establish. Researchers have provided evidence for positive, negative, and indeed non-linear correlations between durable cooperation in the governance of shared resources, and economic, social, and cultural differences between actors. The role of heterogeneity therefore remains heavily contested.[428] The effects of size are

[425] Ostrom, 73–74, 95.
[426] Ostrom, 95.
[427] Ostrom, 90, 101-102.
[428] See on this e.g. George Varughese and Elinor Ostrom, 'The Contested Role of Heterogeneity in Collective Action: Some Evidence from Community Forestry in Nepal', *World Development* 29, no. 5 (1 May 2001): 747–65; Amy R. Poteete and Elinor Ostrom, 'Heterogeneity, Group Size and Collective Action: The Role of Institutions in Forest Management', *Development and Change* 35, no. 3 (June 2004): 435–61; Lore M. Ruttan, 'Sociocultural Heterogeneity and the Commons', *Current Anthropology* 47, no. 5 (2006): 843–53; Jean-Marie Baland, Pranab K. Bardhan, and Samuel Bowles, eds.,

also contested, but they don't seem to be in line with Demsetz' prediction that only small, socially tightly knit communities can come to enforceable agreements.[429] Cases of 15000 successfully cooperating appropriators, as Ostrom studied in *Governing the Commons,* show that groups neither have to be very small nor tightly knit, though there may be limits to the size of a successful group ownership regime.

To sum up: boundaries, congruence between rules and local conditions, collective-choice arrangements, accountable monitoring, graduated sanctions, conflict resolution mechanisms, recognition of rights to organise, and nested enterprises enable groups of principals to overcome adverse incentives and create and enforce rules together, and this enables them to gain benefits from natural and agricultural resources in a durable way. When Ostrom first suggested these design principles they were hypotheses deduced from the cases she studied. Many other researchers have since examined and tested the applicability of these design principles in further empirical studies. In a systematic review of this literature, Michael Cox et al. find that Ostrom's original theory is confirmed.[430] When the design principles are in place, group ownership does not lead to the destruction of resources that people rely on. Rather, the central feature of sharing in common – collectively determined individual entitlements – enables resource users to cooperate and thus ensure that their sharing is beneficial and durable. And that means that group ownership as I have defined it can satisfy

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Inequality, Cooperation, and Environmental Sustainability (New York : Princeton: Russell Sage Foundation ; Princeton University Press, 2007); Fijnanda van Klingeren and Nan Dirk de Graaf, 'Heterogeneity, Trust and Common-Pool Resource Management', *Journal of Environmental Studies and Sciences* 11, no. 1 (2021): 37–64.

[429] Poteete and Ostrom, 'Heterogeneity, Group Size and Collective Action'.

[430] Michael Cox, Gwen Arnold, and Sergio Villamayor Tomás, 'A Review of Design Principles for Community-Based Natural Resource Management', *Ecology and Society* 15, no. 4 (2010).

the basic capability criterion. Stronger still, in the next section it will appear that under certain circumstances CPRs – and therefore group ownership – can better satisfy this criterion than alternative ownership institutions.

6.4 The comparative benefits of private sharing

A. CPRs and individual ownership

Different researchers have shown that CPRs can be more efficient than individual property regimes. By this I mean that CPRs can ensure that more people can meet their basic capabilities, or that they can meet them to a higher extent, than would be possible under individual property regimes in the same resources. In particular, CPRs can be more efficient than the strategy for promoting basic non-domination that I called *local equal individualisation* in the last chapter. This involves the distribution of a particular material resource into equal parts for individual owners.[431]

The claim that this strategy can be less efficient than sharing may seem surprising in light of Demsetz' discussion of the higher transaction costs in group ownership regimes. According to his view, group ownership is inefficient partly because there are so many people who have to come to an agreement before an externality can be internalised. This will have particularly harmful effects on trade. It is easier for one landowner to negotiate with the director of a factory about the price of pollution than it is for multiple members-owners to do the same, for example. Demsetz' view is focused, then, on describing the institutions that facilitate transactions and thus lead to optimal gains from trade. These are realised when people face no or very few hindrances to trading whatever they wish, as this will create a distribution of goods that is more to everyone's liking than the situation prior to trade.

[431] Chapter 5, section 5.B.

As Joseph Heath argues, however, gains from trade form only one mechanism for promoting efficiency. The four other mechanisms Heath identifies are economies of scale, risk pooling, collective self-binding, and information sharing, all of which I will discuss below.[432] What Demsetz fails to recognise is that these mechanisms can be realised in group ownership regimes and not (or not as easily) under regimes of individual property. As Heath makes clear, individual property is quickly considered the most efficient property institution *if* one privileges the mechanism of gains from trade over other efficiency promoting methods.[433] Once the other mechanisms come into view, however, the efficiency benefits of alternative institutions will be better recognised.

One study that brings out these benefits very well is R.M. Netting's

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[432] Joseph Heath, 'The Benefits of Cooperation', *Philosophy & Public Affairs* 34, no. 4 (2006): 313–51. It's worth noting that Heath's framework is not merely of use in a welfarist normative framework. The mechanisms for achieving cooperative benefits he identifies can be viewed more generally, as "ways in which individuals can help each other to objectives, whatever those objectives may be" (p. 315). This makes his view amenable to other normative perspectives than welfarism. I shall use it to clarify how people can cooperate to attain their basic capabilities in a cost-effective way.

[433] Heath, 339–40. Heath here briefly discusses tragedy-of-the-commons type arguments. He claims that commentators have neglected to see that there is a conflict between two different efficiency promoting mechanisms going on in the choice for institutions for collective action. He argues commentators (particularly political philosophers) are too quick to view the division of resources into individual parcels as an efficiency gain, because while that division may promote better management, continued sharing comes with the distinct benefit of spreading risks. I would go further still and question whether there really always is a conflict going on in this choice between different mechanisms of efficiency. It may be that group ownership sometimes simply is the more efficient option. As I have shown, good resource management is possible even if people share a resource. In fact, sharing may have certain benefits for resource management over individual management (as I will argue shortly) when the different resource users can benefit from one another's dispersed knowledge in a way that is difficult to achieve when the resource is split into individual parcels.

research on Swiss Alpine pastures.[434] In it Netting argues that group ownership is more efficient than individual ownership when the value of per-unit production of an individually owned resource, the frequency and dependability of the yield, and/or the possibility of improvement is low. Group ownership is also an efficient strategy when a large area is required for effective use and/or the size of the group needed to make capital investments is large. This explains why shepherds in the Swiss Alps opted for large, shared pastures, rather than smaller individually owned parcels of land as Hardin suggests in his article. Being located on mountains, Alpine pastures are not homogeneous. Different parts of the pasture are exposed to different weather conditions at different times of the year. Consequently, if a pasture would be divided into small parcels, that would make some shepherds unable to use their land for part of the year. The yield and dependability of every individual share of the pasture would be lower than if shepherds shared a large space for grazing animals. Sharing a large pasture and collectively deciding on and implementing grazing rights is the more efficient way for shepherds to use their land.[435]

Netting's study shows that through sharing, individuals can realise benefits from cooperation in two of the ways identified by Heath. Firstly, as authors such as De Moor, Robert Ellickson, Henry Smith, and Elinor Ostrom also note, sharing functions as an insurance mechanism.[436] When the dependability of a resource is low, it makes little sense to divide it into smaller individually owned parts; it will only lower the expected benefit that can be obtained. Users can spread and thus minimise risks by sharing a resource. Secondly, among other authors, Netting, Ellickson, and Carol

[434] Netting, 'What Alpine Peasants'.

[435] Netting.

[436] Netting; Ostrom, *Governing the Commons*; Ellickson, 'Property in Land'; Smith, 'Exclusion versus Governance'; De Moor, *The Dilemma of the Commoners*.

Rose show that sharing natural resources enables people to benefit from economies of scale.[437] Even when a resource is reliable and homogeneous enough to be split into individually owned parts of equal value, that value may be very low. To go back to the example of the pastures again: even if every individual parcel is equally valuable and dependable throughout the year, it might still – depending on the size and quality of the parcel – be inefficient for shepherds to have their animals graze on small plots of land. A small pasture is easily exhausted; there is only so much grass that the animals can graze on, and it requires time to recover regularly. To prevent depletion only a few animals may be left to graze there. A large pasture, by contrast, allows shepherds to move their animals around, giving the pasture plenty of time to recover. Nor is capital the only thing that can be shared. In some commonly owned crop fields, for example, land as well as labour outputs are shared to produce higher expected benefits.[438]

Ostrom's theory suggests two more mechanisms through which efficiency benefits can be obtained in CPRs. Firstly, appropriators benefit from sharing their knowledge of the resource with one another. It would be extremely difficult for any one person to understand how an entire resource system works, and create good rules on the basis of that knowledge. In a group ownership regime, however, people don't have to do this – they benefit from their combined experience with the resource. Secondly, shared control functions as a self-binding mechanism. Even someone who is motivated to cooperate may face circumstances in which this motivation is put under pressure, and they are tempted to violate their agreements. It is then in their long-term interest that agreements are enforced. In fact, in this way individuals have been able to preserve their common property for

[437] Netting, 'What Alpine Peasants'; Rose, 'The Comedy of the Commons'; Ellickson, 'Property in Land'.
[438] McKean, 'Management'.

future generations. Contrary to what Demsetz claimed, individuals in a CPR can take great pains to ensure the survival of their resource, so that their children can benefit from it as they did.[439]

Note that I do not claim that these benefits are uniquely achieved in group ownership regimes. Indeed, it may be possible for individuals to realise economies of scale by owning large resources individually and having a great number of employees work for them. If sufficiently motivated, these employees might also be willing to share their specialised knowledge, leading to more benefits. The reason I have not focused on this possibility is that it doesn't satisfy the control criterion for basic non-domination. On this arrangement, employees don't have the authority to decide how the relevant resource may be used and therefore are not in control of the attainment of their basic capabilities. (The same point applies to hierarchical shareholder business corporations, of course.) By contrast, the strategy of equal individualisation that I have focussed on seems to hold the promise of satisfying both criteria for basic non-domination (and may also have been favoured for that reason by the republican agrarian reformers discussed in the previous chapter).[440] It is therefore critical to show, as I have just done, why the equal individualisation solution is sometimes less efficient than group ownership. In those cases, group ownership performs better on the basic capability criterion than the strategy of equal individualisation does.

It is perhaps due to the comparative efficiency of group ownership that Demsetz' thesis on the development of property rights doesn't withstand historical scrutiny. Contrary to what he supposes, the evolution of property rights doesn't always move in the direction of individual ownership. In his research on the English scattering and open field system of

[439] De Moor, *The Dilemma of the Commoners*.

[440] See chapter 5, section 2.

agriculture, Henry Smith finds that the development of property rights in fact moves in multiple directions.[441] Common property is sometimes converted to individual holdings, but it also happens that individual holdings are converted into common property. Smith argues that the central object of either regime is to control the use of a resource. However, there are two different ways in which this control can be realised.[442] One way he calls the *exclusion* strategy, which allows individuals to control their property simply by excluding others. The other method he refers to as *governance*, and it involves groups sharing a resource while setting fine-grained rules on how it is to be used. As can be seen, the governance strategy strongly resembles my conception of group ownership. Smith therefore revises Demsetz' core theory. He agrees with Demsetz that property rights develop as the value of objects increases, and that they develop in the direction of more efficient use of resources. However, Smith argues that this doesn't always mean that people create individual property holdings. The governance strategy, with its collectively determined specification of individual entitlements, is another path this development can and does take.

B. CPRs and public ownership

CPRs can also be more efficient than public ownership under certain circumstances. Public ownership can take at least two forms: one in which the government is itself also the exploiter of the resource, and another, in which it is in charge of how the resource may be used but the appropriators are still private parties. I shall only discuss the latter type of cases. A government then specifies the use-rules for a resource, by determining when people may obtain resource units from the resource system, how much they

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[441] Henry E. Smith, 'Semicommon Property Rights and Scattering in the Open Fields', *The Journal of Legal Studies* 29, no. 1 (2000): 131–69.
[442] Smith, 'Exclusion versus Governance'.

may obtain, with what sort of gear, and so on. I should note at the start that CPR management often includes a significant role for local governments.[443] If there is much overlap between the residents of a village and the appropriators of a resource, for example, then it makes sense to use local government institutions to regulate use of the natural resource. The relevant comparison is therefore more between CPRs and national or regional governments, or local governments in municipalities where only a small proportion of the residents depend on a resource. CPRs sometimes perform better at promoting sustainable and efficient use than a regime that places a government entirely in charge of how a resource may be used. In those cases, CPRs can help more people to attain their basic capabilities or do so at a lower cost. These circumstances do not always obtain, and their articulation is partly based on the speculation of empirical researchers, but they give a reasonable idea of what questions to ask when comparing the efficiency of private group ownership to that of public ownership.

One of these circumstances is when governance of a resource requires extensive local knowledge, which can be gained or disseminated easier by appropriators in a group ownership regime than through a government. Discussing a CPR in a fishery in Turkish Alanya, Ostrom claims that it would have been very difficult for a local government to gain the requisite knowledge for setting up effective rules.[444] Civil servants would have had to learn about the quality and recovery rates of the fishery, the circumstances that impacted yields, fishers' equipment, the way fishers interacted with one another, their relation to the local economy, and other information relevant for determining what was necessary for the fishers to use the resource sustainably and yet productively. The only way of gaining that information, Ostrom argued, would be for the civil servants to work in the

[443] See e.g. the case described by Netting, 'What Alpine Peasants'.

[444] Ostrom, *Governing the Commons*, 20.

fishery themselves.[445] The more cost-effective solution, which was in fact adopted, was that the local government supported fishers who already had relevant knowledge of the resource to set up and maintain their own rules. Such a regime is particularly effective, argues De Moor, in a dynamic environment. She argues that users will be quicker to note relevant changes that require a response in the governance of the resource and claims that this is what can make self-governance more efficient than public management.[446]

Another circumstance concerns the costs of monitoring. In some cases, these costs will be lower when adopted by a community of users than by an external party, such as a local government. The farmers of Valencia, for example, were able to monitor their resource while using it. The fishers in Alanya developed a similar way of keeping the costs of monitoring down. If such tasks would be taken over by a government, however, that would mean that someone has to be employed to uphold the rules there. Costs of monitoring may further increase if – as was the case in Maine – rules are perceived as illegitimate or not credible. Appropriators are then much more likely to shirk responsibilities and break rules, which will again make it more difficult and costly to monitor compliance. The case of the nationalised forest in Nepal clarifies what happens when a national government has insufficient funds to monitor a resource. When underfunded public monitoring replaced the communal group ownership regime, this turned the forest from a regulated one to one that was *de facto* without rules.[447] Use of the forest was then no longer sustainable.

The problem of perceived illegitimacy should also be discussed separately and not just as a factor driving up monitoring costs. When appropriators feel that their government is adopting rules on the basis of little or

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[445] Ostrom, 20.

[446] De Moor, *The Dilemma of the Commoners*, 158.

[447] Feeny et al., 'The Tragedy'.

no expertise, or feel like they are not or no longer in control of the rules that govern their lives, this has an effect on how they perceive the legitimacy of the government's authority. As could be seen in the case of Maine, this means that rules are less likely to be followed, leading to damage to the resource.

None of this should be taken to imply that group ownership regimes are always the (only) right way for managing natural and agricultural resources. To the contrary, there are many viable ways of doing this and no panaceas.[448] Group ownership is one of these methods, and it has characteristics that make it especially suitable for particular situations. To sum up, group ownership better satisfies the basic capability criterion than individual ownership in natural and agricultural resources when it can realise efficiency gains through economies of scale, risk pooling, self-binding, and information sharing that outweigh the efficiency gains that can be gained through individual ownership (most likely through gains from trade). This is likely to occur when, as Netting said, the value of per-unit production of a resource, the frequency and dependability of the yield, and/or the

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[448] The point that there is no one-size-fits-all solution to the management of resources is often emphasised by Ostrom, for example in Ostrom, Janssen, and Anderies, 'Going beyond Panaceas'. Her constant effort has been to make researchers go beyond simple metaphors and models that are supposedly able to capture each and every situation, and to move them towards an extensive study of the characteristics of a resource, its environment, and its users to make informed decisions. In this light it is highly surprising and quite problematic that authors try to use her theory to make sweeping statements about what they think should be the default approach to property arrangements, such as happens in Mark Budolfson, 'Market Failure, the Tragedy of the Commons, and Default Libertarianism in Contemporary Economics and Policy', in *The Oxford Handbook of Freedom*, ed. David Schmidtz and Carmen E. Pavel (Oxford University Press, 2017), 257–83. If anything, Ostrom aimed to sensitise researchers to the fact that the search for a "default approach" in economic policy is futile at best and harmful when it is actually taken up by actual governments. See also *Governing the Commons,* chapter 1, on metaphorical models and their harmful use in political decision-making.

possibility of improvement is low, and when the area required for effective use and/or the size of the group needed to make capital investments is large. In those cases, it makes sense for people to pool resources, risks, and labour. Furthermore, group ownership can be more efficient than public ownership when governments are likely to face high costs in gaining information on and monitoring a resource, and/or where their rules are likely to be perceived as illegitimate. More could be said on this topic; this is not meant as an exhaustive list of the situations that are conducive to CPRs. But it already shows that one should firmly reject the view that individual and public ownership institutions are always more efficient than private group ownership.

6.5 A political analysis of the opposition to sharing

Arguments about the comparative benefits of shared property provide a critical perspective not just on the (relatively) recent theories I discussed in section two, but also on much earlier arguments that defended the Enclosure movement in the UK and continental Europe. In particular, they suggest that the opposition to sharing may not only have been rooted in well-meant speculative theory, but in the self-interest of parties who had the power to shape property institutions.

Prior to the Enclosure, English villages were built around commons, i.e. pastures and crop fields that everyone in the village could use and that were managed by the villagers themselves, together.[449] In some cases the lord of the manor would retain formal ownership rights over this land, in which case the villagers set up the rules of the commons in agreement

[449] For an introduction to this system and to the Enclosure movement that caused its demise, see W.E. Tate, *The English Village Community and the Enclosure Movements* (London: Victor Collancs Ltd, 1967). A very brief overview can also be found in Susan Jane Buck Cox, 'No Tragedy of the Commons':, *Environmental Ethics* 7, no. 1 (1985): 53–55.

with him. From the seventeenth century onward, however, a political process began whereby these scattered fields and pastures were consolidated and brought under the sole control of the landowner, ending the communal right of villagers.[450] This change coincided with the development of new production technologies and with the increase in value of some commodities, particularly wool.[451] Landlords enclosed the commons in an effort to profit maximally from these developments. Villagers were then no longer allowed to manage the land on their own terms, nor were they allowed to use it as they had before; the land was then under the control of the landlords, who could exclude all the villagers whose employment they didn't require.

Proponents of the Enclosure argued that everyone benefited from enclosing the commons, even the villagers whose communal entitlements to use and control land were taken away. W.E. Tate makes this vividly clear in his description of what he calls "the ceaseless propaganda" that Enclosure advocates used to persuade landowners:[452]

> "There was much insistence upon the benefits that could be expected to accrue from the introduction of new crops and new methods, and the abolition of outworn customs which it would make possible. Farmers would benefit by the enormous increase of productivity which was confidently predicted. The lord of the manor would receive a sufficient compensation for his not-very-valuable interest in the soil of the common. (...) The deserving poor would find small plots in severalty, or small pasture closes, more useful than scattered scraps in the open fields, and vague grazing rights. Certainly they would be no worse off without the largely illusory advantages of the common, and the very real temptations to

[450] J.R. Wordie, 'The Chronology of English Enclosure, 1500-1914', *The Economic History Review* 36, no. 4 (1983): 483–505.
[451] Tate, *The English Village*; Cox, 'No Tragedy'.
[452] Tate, *The English Village*, 22.

idleness which its presence entailed. The undeserving poor, especially the insubordinate squatters, living in riotous squalor in their tumbledown hovels on the common, would prosper morally and economically if they were compelled to do regular work for an employer."[453]

The credence of such arguments increased with the publication of Hardin's article on the tragedy of the commons, as his parable seemed to be exactly about the sort of shared land that was privatised during the Enclosure. Susan Jane Buck Cox argues that the article created a myth about the way the actual commons had worked and about the reasons that motivated Enclosure.[454] While Hardin's argument had not referred to the historical commons but rather to the concept of an ungoverned resource, Cox shows how it nevertheless led to "a general impression among most people today that the tragedy was a regular occurrence on the common lands of the villages in medieval and post-medieval England."[455] Now it seemed as if the Enclosure had not only been more beneficial for everyone involved, but that it had been necessary; a crucial development to prevent the overuse and destruction caused by communal users.

This belief, however, "despite its wide acceptance as fact, is historically false."[456] Cox shows that actual commons did not succumb to tragic overuse as a result of a lack of regulation, but that overuse of the commons was viewed as a legal transgression and treated as such.[457] An important exception to this rule was when wealthier farmers overused the commons to the detriment of poorer commoners, and this transgression was not properly addressed by the lord of the manor. Cox sees in this the "perennial

[453] Tate, 23.
[454] Cox, 'No Tragedy', 52–53.
[455] Cox, 53.
[456] Cox, 53.
[457] Cox, 56–57.

exploitation of the poor" and argues that enclosures were the "ultimate conclusion" of a process in which the poor were taken advantage of, rather than a solution to unregulated use.[458]

Her argument is in line with the one put forward by S.V. Ciriacy-Wantrup and Richard Bishop. In what is by now a classic article in natural resource management, the authors reject both parts of the myth favouring the Enclosure movement. They argue that enclosing commons was *not* necessary to maintain resources, not even in a developing market economy, and that the enclosures did *not* benefit all villagers.[459] Systems of communal natural resource management were able to survive even when land became more valuable as a result of growing markets. The problems that are often ascribed to sharing regimes that are exposed to markets usually have more to do with the inherent vulnerability of subsistence economies than the fact that resources were shared. Enclosure may have increased productivity, but it was certainly not necessary to avoid the tragedy of overuse.[460]

Furthermore, and contrary to the propaganda extolling the virtues of enclosure for all, Ciriacy-Wantrup and Bishop deny that enclosures did or were intended to benefit commoners. Instead, feudal lords saw an opportunity to gain more private benefits for themselves as the value of land increased. The real effect of the Enclosure was that landlords capitalised on land and that villagers suffered a loss, as it was more profitable for landlords to let sheep graze for commercial wool production than to allow villagers to use the land to sustain themselves. When in England "the open fields were enclosed, largely at the insistence of the feudal lord, (...) the peasants

[458] Cox, 58.

[459] Ciriacy-Wantrup and Bishop, 'Common Property'.

[460] Cox, 'No Tragedy', 58–60.

were displaced (often without compensation)."[461] A similar development occurred in continental Europe, when

> "forest lands became increasingly profitable as sources of timber for sale vis-à-vis their traditional role as sources of livestock forage, firewood for home consumption, and building material for the peasant village, the feudal lords changed from administrators and protectors to profit-seeking entrepreneurs. (…) The feudal lord was motivated to reduce and eliminate the grazing and other rights on the commons. (…) Here also the result was a weakening of the village system and dispossession of the peasantry. The peasant was transformed from a co-equal owner on the commons with secure tenure to a landless worker on the feudal estate. This is the true "tragedy of the commons.""[462]

In the French context, this leads one researcher to conclude that "[t]he increased economic value of forest holdings led the *seigneurs* and the king to become covetous of the community rights and to devise various ways and means for usurping them."[463]

This second argument of Ciriacy-Wantrup and Bishop points to a political analysis of the Enclosure movement, meaning an analysis that explicitly thematises the role that political power had in the development of property institutions, and that addresses how the use of this political power was motivated by self-interest. Like the work done by Ostrom and many other researchers in the context of natural resource management, Cox, Ciriacy-Wantrup, and Bishop show that opposition to sharing regimes is often not grounded in the empirical reality of how such regimes function. But Ciriacy-Wantrup and Bishop go a step further and show what the opposition to sharing might instead be grounded in (apart from a desire for

[461] Ciriacy-Wantrup and Bishop, 'Common Property', 719.
[462] Ciriacy-Wantrup and Bishop, 720.
[463] F. Sargent, cited in Ciriacy-Wantrup and Bishop, 720 (italics added).

elegant and simple models and predictions). In the case of the Enclosure, this opposition was likely grounded in the self-interest of people who stood to benefit from a transition from shared to individual property.

6.6 Extending the argument

So far in this chapter, I used natural and agricultural resources as the main case study to demonstrate group ownership's ability to satisfy the basic capability criterion. The question arises, however, whether the lessons that can be learned from studying CPRs in these resources could be extended to other resources as well.

It might be thought that the answer is a clear *no*, and that the parameters of Ostrom's case studies limit the applicability of her findings to common pool natural and agricultural resources used by anything between 50 and 15000 persons. It is worth noting, then, that this is not how Ostrom understands her own theory. Rather, her aim was to study more generally how individuals can cooperate when they face incentives not to do so, by developing their own solutions to overcome these incentives.[464] She takes CPRs as relatively simple cases in which this *general* question on cooperation can be addressed, in a way that is akin to how biologists study complex processes in relatively simple organisms. As she puts it: "[t]he organism is not chosen because it is representative of all organisms. Rather, the organism is chosen because particular processes can be studied more effectively using this organism than using another."[465] If it is possible to find out whether and under which conditions people can cooperate to overcome the adverse incentives inherent in the case of sharing common pool natural resources, then these findings may have wider applicability. The finding that I am interested in for my purpose is that people can depend on a

[464] Ostrom, *Governing the Commons*, 27-28.

[465] Ostrom, 26.

resource for their basic capabilities by controlling its use collectively. In what follows, I want to suggest that there is good reason to believe that this finding may indeed have further applicability.

In different economic sectors, people are able to share resources while obtaining joint benefits from them in a way that contributes to their basic capabilities. This is the case in *insurance mutuals*: risk-sharing organisations in which people pool their premiums in a shared fund, and in which the insured own the organisation and decide on the rules surrounding insurance claims themselves.[466] One thing these mutuals can provide is income insurance in case of unemployment caused by illness or accidents.[467] It is clear that income insurance – however provided – is crucial for the attainment of one's basic capabilities in the case of a debilitating accident or disease. It ensures that people continue to have access to nourishment and shelter, for example. However, the provision of such insurance is subject to social dilemmas that attend any insurance scheme, namely moral hazard and adverse selection.[468] Moral hazard in this context refers to the incentive of insured persons to increase the risks of their behaviour because the costs of these risks are not born by them alone, but shared by everyone in the insured group. Adverse selection, in turn, refers to the asymmetry in knowledge between the providers and recipients of insurance – who are the same group in the case of mutuals – because recipients have an incentive to keep information about the risks of their situation to themselves.

[466] Vriens and De Moor, 'Mutuals on the Move'. For an overview of the history of mutual insurance organisations see Marco H. D. van Leeuwen, *Mutual Insurance 1550-2015: From Guild Welfare and Friendly Societies to Contemporary Micro-Insurers* (London: Palgrave Macmillan, 2016).
[467] Vriens and De Moor, 'Mutuals on the Move', 230.
[468] Leeuwen, *Mutual Insurance 1550-2015*, 6; Vriens and De Moor, 'Mutuals on the Move', 226.

What is interesting is that some of the income insurance mutuals seem to be able to overcome these social dilemmas *because* they allow members to collectively control the use of the resource they share. The Dutch Broodfonds, for example, consists of a number of risk-pooling groups, where twenty to fifty people share an insurance fund on which they can rely in case of debilitating disease or accidents.[469] Part of the organisation's success so far in providing income security may be due to the collective control granted to the group members. They set their own rules (within a framework that is determined on a national level) on how to use their shared fund, for example by determining what counts as a valid insurance claim. As Eva Vriens and De Moor argue, when members of sharing organisations participate in the decision-making process, this can foster trust in the organisation and in the other members, increase people's commitment to the organisation's success,[470] and enable members to respond well to changes "because involved members better understand why, and which, changes are needed."[471] What goes for this particular organisation of course also applies to other insurance mutuals that are democratically governed; collective control over a resource they all use helps them to secure their basic capabilities.[472]

Another example comes from renewable energy cooperatives, which are organisations in which members own and manage local renew-

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[469] Broodfonds, 'Broodfonds: Hoe Het Werkt', accessed 1 September 2021, https://www.broodfonds.nl/hoe_het_werkt.

[470] Vriens and De Moor, 'Mutuals on the Move', 228.

[471] Vriens and De Moor, 234.

[472] Vriens and De Moor find that bigger mutuals are often characterised by a top-down approach to governance, while relatively small scale risk-pooling groups accord more room to member participation in governance. Vriens and De Moor, 'Mutuals on the Move'.

able energy generators.[473] The provision of energy is crucial for people's basic capabilities. Without it, they would face severe deprivation and therefore become (more) vulnerable to arbitrary power. People can obtain energy in the market or in some cases through state parties, but also through energy cooperatives. In that case, they own the energy source – such as a wind turbine – on which they rely themselves, and they make decisions on its use through a democratic governance structure.[474] This is a good example, then, of a group ownership institution in action, and one that satisfies the basic capability criterion for basic non-domination.

A further instance of people collectively controlling the resource that they rely on for their basic capabilities, and with success, is that of worker cooperatives. In a worker cooperative, workers own and control the firm they work for themselves. They are in charge of their working conditions and of the investment and production decisions of their firm, all of which are decisions that concern their livelihoods and therefore their basic capabilities. In a review of international empirical evidence, Virginie Pérotin argues that workers do this successfully; labour managed firms survive at least as long as those governed by investors and are able to provide stable jobs.[475] Group ownership of firms thus satisfies the basic capability criterion; workers can be reasonably sure that they can continue to rely on the firm for their livelihood and connected basic capabilities.

This evidence contradicts prominent strands in economic theory

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[473] Thomas Bauwens, Boris Gotchev, and Lars Holstenkamp, 'What Drives the Development of Community Energy in Europe? The Case of Wind Power Cooperatives', *Energy Research & Social Science* 13 (2016): 136.
[474] Bauwens, Gotchev, and Holstenkamp, 136–37.
[475] Virginie Pérotin, 'What Do We Really Know about Worker Cooperatives?' (Co-operatives UK, 2018); Virginie Pérotin, 'Worker Co-Operatives: Good, Sustainable Jobs in the Community', in *The Oxford Handbook of Mutual, Co-Operative, and Co-Owned Business*, ed. Jonathan Michie, Joseph R. Blasi, and Carlo Borzaga (Oxford: Oxford University Press, 2017).

that predict that worker cooperatives are too inefficient to form an alternative to investor-managed firms, or only do well under unusual circumstances.[476] As Gregory Dow and Pérotin both note, however, these theories are often insufficiently informed by empirical evidence, and cannot explain actual findings on worker cooperatives' survival rates and their distribution over different sectors in the economy.[477] This disparity between purely theoretical predictions and evidence-based analyses of worker cooperatives is similar to that between the speculative theories developed by Hardin and Demsetz and the empirically driven work of Ostrom and her colleagues. It is yet another area, then, where opposition to sharing is not always grounded in observations on how sharing regimes actually function.

The final example I will mention here is that of *knowledge commons*. Knowledge commons are organisations for the institutionalised sharing and co-production of information resources, including news outlets, encyclopaedias, websites, scientific discoveries, technological innovations, theories, datasets, and so on.[478] Access to such resources is highly important for people's minimal ability to withstand arbitrary power. Without reliable encyclopaedic information and information about current events, for example, people cannot orientate themselves in the world or form sound judgments about the relationships that they are in. Although information resources are very different resources from those originally studied by Ostrom and her colleagues, researchers have nevertheless found it useful to

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[476] Pérotin, 'What Do We Really Know', 104.

[477] Gregory K. Dow, *Governing the Firm: Workers' Control in Theory and Practice* (Cambridge: Cambridge University Press, 2003), 8–9; Pérotin, 'What Do We Really Know', 104.

[478] Brett M. Frischmann, Michael J. Madison, and Katherine Jo Strandburg, 'Governing Knowledge Commons', in *Governing Knowledge Commons*, ed. Brett M. Frischmann, Michael J. Madison, and Katherine Jo Strandburg (Oxford: Oxford University Press, 2014), 1–43.

apply some of her insights on sharing and cooperation to this different field.[479]

In a striking similarity with the study of CPRs, research on the knowledge commons shows that people can cooperate to produce and maintain shared resources in spite of the social dilemmas that are often thought to plague the production of shared knowledge.[480] The standard narrative in favour of institutions that seek to make information exclusive – such as copyright and patent law – is that without an exclusionary mechanism people have no incentive to produce or disseminate information.[481] Knowledge is a product that costs very little to disseminate, and that doesn't decrease in quality when it is shared. This means that, without intellectual property (IP) rights, it will be difficult for people to isolate the benefits of their inventions or discovery for themselves; these will be open to all. And thus there is no incentive to invest in any information production. In short, the theory predicts that when knowledge is shared, it won't be produced.

As in the case of natural resources and worker cooperatives, however, this prediction diverges from actual empirical evidence.[482] Mark Lemley argues that while a lack of exclusionary mechanisms may hamper production in some sectors, the evidence shows that in other sectors they may

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[479] See e.g. Charlotte Hess and Elinor Ostrom, 'Introduction: An Overview of the Knowledge Commons', in *Understanding Knowledge as a Commons: From Theory to Practice* (MIT Press, 2007), 3–26; Frischmann, Madison, and Strandburg, 'Governing Knowledge Commons', 2014; Charlotte Hess, 'The Unfolding of the Knowledge Commons', *St. Anthony's International Review* 8, no. 1 (2012): 13–24.

[480] See in particular Michael J. Madison, Brett M. Frischmann, and Katherine Jo Strandburg, 'Constructing Commons in the Cultural Environment', *Cornell Law Review* 95, no. 4 (2010): 657–709.

[481] Madison, Frischmann, and Strandburg, 664–66.

[482] Madison, Frischmann, and Strandburg, 669; Mark A. Lemley, 'Faith-Based Intellectual Property', *UCLA Law Review* 62 (2015): 1331–35.

be counterproductive or unnecessary.[483] Lemley further suggests that in *some* cases, blanket faith in IP rights as a necessary incentive for production and innovation is defended because it serves the interest of the corporations who benefit from IP protection.[484] This is again reminiscent of the arguments against the sharing of natural resources, in particular of the politically motivated propaganda favouring Enclosure. In fact, knowledge commons like Wikipedia and Linux show that individuals can be motivated to produce shared information resources of good quality, and that they can be motivated to contribute to the resources' upkeep, without exclusionary mechanisms playing a role.[485] As in CPRs, this cooperation is based on formal and in some cases informal norms about how the resource may be used.[486]

The research on knowledge commons is still in its early stages and as yet has little to say about the conditions under which the norms governing a resource are created.[487] The concept of knowledge commons seems to be used primarily to refer to organisations characterised by shared use and joint production, not by democratic control of the users/producers. This means that the resemblance to my concept of group ownership may not be as strong as is the case in the other examples. Yet it is worth researching further just how control is exercised in the knowledge commons and how this affects people's ability to cooperate and realise basic capabilities.

It is encouraging to see, on this score, that Wikipedia relies on a

[483] Lemley, 'Faith-Based', 1334.

[484] Lemley, 1336.

[485] Yochai Benkler and Helen Nissenbaum, 'Commons-Based Peer Production and Virtue', *Journal of Political Philosophy* 14, no. 4 (2006): 394–419.

[486] Frischmann, Madison, and Strandburg, 'Governing Knowledge Commons', 2014.

[487] This is not the subject, for example, of any of the contributions in Brett M. Frischmann, Michael J. Madison, and Katherine Jo Strandburg, eds., *Governing Knowledge Commons* (Oxford: Oxford University Press, 2014).

form of collective decision-making. Entries in the online encyclopaedia may be edited by everyone, giving users of the resource a degree of first-order control over its content. In addition, everyone may propose, discuss, and – together with their peers – decide to adopt or amend norms that guide content production on Wikipedia, thus giving users second-order control over a resource they rely on for their information. These proposals are not subjected to a vote but are adopted if a general consensus arises from a discussion in which everyone may state their arguments for and against a proposal.[488] This indicates that the ability of Wikipedia users to rely on the encyclopaedia for some of their basic capabilities is at least consistent with a form of equal control over it.

More research needs to be done, of course, on these and other sharing arrangements to see to what extent they resemble the ideal of sharing in common and to assess how they fare on the basic capability criterion, also in comparison to alternative property institutions. There is enough here, I argue, to warrant such research.

6.7 Conclusion

Research on CPRs shows that group ownership institutions can satisfy the basic capability criterion. Contrary to what is often supposed, people who share natural and agricultural resources can do so in an efficient and sustainable way, enabling them to rely on that resource for their livelihood and other basic needs. CPR members do this by setting and monitoring rules on how a resource may be used together. It is this collective control that

[488] Wikipedia, 'Wikipedia: How to Contribute to Wikipedia Guidance', accessed 1 September 2021, https://en.wikipedia.org/wiki/Wikipedia:How_to_contribute_to_Wikipedia_guidance; Wikipedia, 'Wikipedia: Centralized Discussion', accessed 1 September 2021, https://en.wikipedia.org/wiki/Wikipedia:Centralized_discussion; Wikipedia, 'Wikipedia: Consensus', accessed 1 September 2021, https://en.wikipedia.org/wiki/Wikipedia:Consensus.

enables them to avoid overuse and underinvestment – actions that might be in the short-term interest of each individual resource user, but not in their long-term interest in the stable provision of their basic capabilities. Collective control, then, is not only consistent with the basic capability criterion, but is critical for its satisfaction in non-hierarchical regimes with multiple resource users. Collective control is what facilitates cooperation, and cooperation is critical for avoiding adverse incentives. Under certain circumstances, this cooperation can in fact lead to more efficient use of resources – that is, a more cost-effective promotion of basic capabilities – than can be promoted through individual and public ownership.

In the last section of this chapter, I have suggested that some of the findings on CPRs can be extended to other types of resources that are collectively controlled by their users. Collective control over a resource seems consistent with, and in some cases even an enabling factor for, the provision of insurance, electricity, jobs, and information. This claim is more cautious than the claims about CPRs; it is offered as a hypothesis about the value that group ownership institutions can have in promoting basic capabilities, and with that people's reasonable ability to resist arbitrary power.

But the chapter has not only shown that group ownership can contribute to basic non-domination. I have also dwelled a little on the classic arguments against sharing and their basis. The arguments forwarded against sharing, while sometimes treated as established facts, are often insufficiently based on empirical evidence. In addition, in the case of the propaganda in favour of Enclosure, such arguments seem to have been (partly) motivated by the self-interest of the wealthy. It is striking that these two features of the arguments against sharing natural resources seem to be repeated in cases of other types of resources, most notably firms and information resources. It may be worthwhile, then, to research more extensively whether the arguments against sharing show structural similarities across

different types of resources. In any case, these similarities should give property theorists pause and make them more alert in assessing the case for and against group ownership.

7. Sharing Natural Resources: Placing the Right Persons in Control

7.1 Introduction

This chapter shows how CPRs in natural resources can satisfy the control criterion for basic non-domination. This criterion, it will be remembered, states that ownership institutions must place the people who rely on a resource for their basic capabilities, equally in control of how that resource may be used. I shall outline the way in which CPRs need to be internally organised and externally regulated to meet this criterion, and I shall also show how CPRs compare to other strategies for placing people in control of their basic capabilities, namely the strategy of public ownership of resources and the strategy of securing extensive exit opportunities for resource users.

This analysis of CPRs serves as an illustration of how my normative framework can be mobilised to analyse ownership institutions in general, and group ownership institutions in particular. Although it might be thought that my conception of group ownership satisfies the control criterion by definition, this is not exactly true. My conception specifies that *a*

group must exercise collective, democratic control over individual entitlements to a resource, but it doesn't say *which* group that should be. The control criterion for basic non-domination is supposed to give content to this open provision, as well as specify the sort of control that non-members of a group ownership regime should have with respect to an object.

I shall argue that CPRs must be internally democratically organised to fit the control criterion. All appropriators who rely on a resource for their basic capabilities should have an equal say over how that resource may be used. CPRs must furthermore be nested in layers of democratic communities, all of which give a measure of control to people who do not appropriate from the resource themselves, but whose basic capabilities can nevertheless be affected by how that resource is used by appropriators. These democratic communities of non-CPR members set the boundaries within which CPR members may exercise their discretionary authority. I shall argue that this arrangement of internal democracy and external democratic nesting is possible to achieve in a CPR, as it fits with several of Ostrom's design principles for enduring CPR organisations. This will be the argument of section two.

In setting out these criteria for CPRs, I assume that a group of resource users can be identified. These users are the ones who should govern the resource. This may raise the question, however, of whether my framework is not too biased towards the status quo. It seems to grant power to people who happen to be using a resource now, when of course it's possible that this status quo is itself the result of dominating power relationships and unjustified exclusion. In section three, I demonstrate that, to the contrary, my normative framework is rich enough to help think through the issue of who should be included and who may be excluded from using a resource, and is therefore not acquiescent to the status quo.

Sections two and three thus set out the requirements that CPRs

must meet to secure the right kind of control to the right persons. Section four addresses a very different sort of requirement for CPRs. Here I ask whether, in order to be justified, CPRs must allow their members to sell rights to the resource to outsiders. Hanoch Dagan and Michael Heller defend this view, arguing that such alienable rights are necessary to guarantee member-owners a meaningful opportunity to exit the relationships they no longer want to be a part of. I shall argue that their view is unconvincing because the authors cannot explain why group ownership organisations should bear the burden of securing meaningful exit themselves, when it could be secured through alternative and universal state measures.

As in the last chapter, I do not just aim to show that CPRs – and with that group ownership – form a merely *viable* way of realising non-domination. I also aim to demonstrate that under certain circumstances, CPRs do better than alternative strategies for pursuing this ideal. In sections five and six, I shall show when and why the alternative strategies of public ownership and securing extensive exit opportunities fail to satisfy the control criterion. I argue that public ownership comes with the risk of *overinclusion*, allowing more people to govern a resource than is justified from the point of view of basic non-domination. The exit strategy, in its turn, fails because it cannot give individuals sufficient control over the resources that would secure their socio-economic independence, and therefore leaves them vulnerable to arbitrary power.

These are not the only considerations that might – in certain circumstances – favour group ownership over alternative strategies. In section seven I zoom out from the particular case of CPRs and discuss an advantage that is shared by different organisations that approach the ideal of sharing in common, and that is particularly relevant in the comparison between group ownership and strategies such as the implementation of a universal basic income. This is the advantage that citizens can set up sharing-

organisations themselves and thus secure their basic capabilities in their own way, without having to wait for governments to implement substantial changes to national institutions and policies. This means that group ownership expands the courses of action that citizens can take to overcome domination. They can still petition parliaments to implement the key changes necessary to provide basic capabilities to all citizens, but they can also take direct action themselves when parliaments are unwilling or unable to do what is required. This is another way, then, in which group ownership can help people to gain control over their own empowerment.

7.2 Internal democracy and democratic nesting

A CPR satisfies the control criterion for basic non-domination if everyone who relies on the resource for their basic capabilities is in control of how that resource may be used. I draw a distinction here between persons who have to appropriate resource units from the resource system (such as fish from a fishery, water from an irrigation system, grass from a pasture, and so on) to attain their basic capabilities, and people who rely on the resource in an indirect or negative way. By this I mean that they do not use the resource, but that they do need it to be used in a certain way in order to obtain their basic capabilities. Think here of, for example, villagers who do not use a nearby pasture to graze sheep and thus gain their livelihood and associated basic capabilities, but who do need farmers to limit the number of animals they bring to the pasture, in order to get clean groundwater. These two groups should exercise control over the resource in different ways. Appropriators should be members of the CPR and exercise control equally over how the resource may be used. This is the requirement of *internal democracy*. Other persons who need the resource to be used in a certain way, without appropriating from it themselves, should together with the CPR-members be part of a democratic community, which sets the boundaries to what

the CPR-members may do. This is the requirement of *democratic nesting.* I shall discuss these requirements in turn.

A. Internal democracy

Appropriators who rely on a resource for their basic capabilities must have an equal and effective say over how that resource may be used. This is at once a criterion about the democratic governance of the CPR, and about the constituents of that democracy. Recall that, conceptually speaking, a CPR is not necessarily democratic.[489] In this it differs from my conception of sharing in common. All that is required to fit the description of a CPR is that resource appropriators are the ones managing the resource, not that *all* resource appropriators are involved in this management task, nor that they have an *equal* say in decisions. To secure basic non-domination, however, CPRs must be democratic and thus come closer to my description of sharing in common.

If this requirement of internal democracy is not satisfied in a fishery, for example, then fishers rely on a resource for their basic capabilities without being equally in control of decisions that affect their basic capabilities. And so they depend in a problematic way on whoever it is that does have such control, or that has more control than they do. The disenfranchised fishers are then not assured of their minimal independence, and must hope that whoever is in power lets them fish, lets them earn a living, and lets them live as they have. When CPRs are internally democratic, however, the resource appropriators enjoy a degree of basic non-domination; they are in charge of the decisions that affect their capacity to withstand power.

More concretely, democracy in a CPR should be organised to meet

[489] Chapter 2, section 4.C.

the requirements for non-domination that I discussed in chapter four.[490] The members must have an equal and effective say, meaning that they should have an equal opportunity to influence the outcomes of decisions over resource use. This opportunity must be real and not just formally present. In addition, decisions must follow deliberations in which everyone has an equal opportunity to present their reasons for or against a proposal. Commoners must also have the higher-order opportunity to criticise and put forward proposals about what counts as a good reason or not. This helps to ensure that considerations in favour of one proposal or other are not accepted only because of unequal power relationships that influence people's beliefs and views. Instead, discussion must be open, so that everyone can question beliefs all the time.

The requirement of internal democracy also applies to resource systems from which appropriators take different types of resource units. What matters is whether these resource units are necessary for the attainment of basic capabilities or not. If they are, then people should have an equal say on resource use, even if the units they happen to derive from it are different. To illustrate, a forest may be used to cut wood for commercial purposes, but it may also be a place to collect branches for firewood, as was the case in the communal forest tenure regimes studied by Bina Agarwal in Nepal and India.[491] As I mentioned in earlier chapters, Agarwal found that men in these regimes decided on the rules for using the forest, to the detriment of women.[492] But there was another dividing line as well. Women more often were responsible for the collection of firewood for the daily energy supply of their families, while many of the men were involved in cutting timber for commercial purposes. This latter difference, just as the difference in

[490] See chapter 4, section 4.

[491] Agarwal, 'Participatory Exclusions'.

[492] Chapter 2, section 5.C and chapter 6, section 3.

gender, is not a legitimate basis for denying people decision-making rights. When in both cases basic capabilities are at stake, people should have an *equal* say. Firewood for cooking and keeping warm contributes to people's most basic capabilities, as does the wage earned from selling wood. So although there is much room for specialised decision-making bodies, it may not be the case that some people are denied a say, when their basic capabilities are at stake. By contrast, one might imagine a group of forest users who only like to cut wood for their leisure. Their inclusion in the governance of the CPR is not necessary for their basic non-domination, and may even – as I shall discuss in section five – be harmful to the basic non-domination of others.

Note also that equality in decision-making power is still a requirement when members do not appropriate from the resource equally. For example, it might be that some of the shepherds sharing a pasture own more sheep than others, and therefore let their animals graze more. That should not mean that they have more of a say over pasture use, however, since they and the other shepherds all rely on the resource for the same thing: basic capabilities. I note this because it might be thought that more use somehow implies 'a bigger stake' in the decision-making, and that this would justify differentiated levels of power. That is not how my framework ought to be interpreted, however. The relevant dividing lines are instead between basic and non-basic capabilities, and between direct and indirect reliance on a resource. The fact that one person stands to make more money off a resource in no way justifies them having a bigger say. What matters instead is whether that person and other appropriators all rely on a resource for capabilities they need to be able to withstand power. This is what determines whether they have a 'stake' in the decision-making or not. If they have such a stake, then an arrangement other than equal control would leave them vulnerable, rather than independent.

The requirement of internal democracy fits with Ostrom's design principles for enduring CPRs that I discussed in the last chapter. Her design principle on collective choice arrangements states that cooperation is facilitated and likely to endure if "[m]ost individuals affected by the operational rules can participate in modifying the operational rules."[493] This principle is not a straightforward endorsement of *democracy*, as that would mean that all and not most individuals should be included, and that they should all have an equal voice, something the criterion says little about. But the principle does suggest that collective democratic governance and efficient cooperation go hand in hand.[494] I noted in the previous chapter why that is. To wit, resource appropriators are less likely to follow use-rules if they cannot decide on them themselves, and inclusion of all resource appropriators promotes the efficient use of knowledge that they all gather. While Ostrom and other authors have highlighted these instrumental benefits of the 'roughly democratic' character of CPRs, I want to add that a democratic CPR also has value because it empowers the right persons. It does so, moreover, without hindering the goal of using natural resources productively and sustainably for the attainment of people's basic capabilities. Republicans don't have to choose between productivity and sustainability on the one, and democracy on the other hand; both can be pursued at once and both are required to realise basic non-domination through the use of natural resources.

B. Democratic nesting

For a CPR to satisfy the control criterion, it is not enough that it is internally organised in a democratic way. This is because the people who rely on

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[493] Ostrom, *Governing the Commons*, 90.

[494] See chapter 6, sections 3 and 4.A on the relationship between collective control and efficiency.

a resource in an indirect way – and who are therefore not included in the CPR membership – should also have control over decisions that affect their basic capabilities. Such non-members live in communities surrounding natural resources, including the global community of humans. These communities can be affected in their ability to attain their basic capabilities through decisions made by CPR members. In her seminal book, Ostrom did not study cases in which these spill overs were likely to occur, focusing instead on cases where the people affected by use of the resource were mostly the resource appropriators themselves.[495] But of course CPRs *can* affect non-members. As Jesse Ribot notes, there is a serious risk involved in empowering *user-groups* in natural resource management, since they may pursue their interests at the cost of other people surrounding that resource.[496] It is therefore necessary to think about how surrounding communities can exercise control over commoners' decisions.

Non-CPR members whose basic capabilities can be affected by decisions on the use of a resource should have democratic control over the limits of the discretionary authority of CPR members. This must be achieved by nesting the CPR in a series of concentric and expanding democratic communities. An example may help to clarify what I mean. Take an internally democratic CPR, consisting of shepherds managing a shared pasture together. The commoners agree on rules such as how many sheep they can bring, what penalties are involved for breaking rules, and so on. But their use of the pasture doesn't just affect the shepherds themselves. Decisions on how many sheep to bring could also affect the basic capabilities of the surrounding communities, for example by causing pollution to the groundwater of a nearby village. CPR members cannot unilaterally take such decisions. To ensure that individuals in the surrounding villages enjoy

[495] Ostrom, *Governing the Commons*, 26.
[496] Ribot, 'Building Local Democracy', 12.

basic non-domination, they must be involved in the democratic regulation of what the commoners can do, either on the regional or national level. They can then decide – on equal terms with other citizens, including the members of the CPR – what the boundaries to the authority of group-owners of natural resources should look like. These can include limits to groundwater pollution. Within those limits, however, commoners must be able to decide for themselves what uses of the pasture they allow (for reasons that will become clear in section five). Ideally, democratic nesting extends all the way to a global democracy, in which people decide – for example – on how many degrees they would maximally want the earth to warm up to. Such decisions would determine what laws countries may adopt and might in that way ultimately have consequences for the limits to what shepherds may do with their pasture.

The figure below is a schematic illustration of what such nested governance looks like. Importantly, the communities all overlap; CPR members are included in the community of the village they live in, and the villagers are included in other communities, all the way up to the global community.

Figure 7. 1 Schematic illustration of the principle of democratic nesting.

This requirement of democratic nesting also fits with Ostrom's design principles. Specifically, Ostrom argues that CPRs in larger resource systems can endure if "[a]ppropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layers of nested enterprises."[497] This shows that multiple levels of governance and subsidiarity are not counterproductive to the realisation of basic capabilities. Again, proponents of non-domination do not have to choose between republican principles and sustainable, productive natural resource management. As Ostrom shows, nesting can contribute to the longevity of CPR organisations. In addition, it also ensures that people have control over decisions when and to the extent that they can affect their basic capabilities. Democratic nesting thus helps to satisfy both the basic capability criterion (in particular in the case of larger resource systems) and the control criterion for basic non-domination.

[497] Ostrom, *Governing the Commons*, 90.

7.3 Inclusion and exclusion

In devising the requirements of internal democracy and democratic nesting, I assumed that there is a clear distinction between people who rely on a resource for their basic capabilities and those who don't. The former should be included as member-owners of a resource to ensure their basic non-domination, while the latter shouldn't. It might be argued, however, that far from securing the right power relationships, my framework actually acquiesces to domination that has occurred in the past. This is because the fact that some people rely on a resource and others don't, may itself be the product of unequal power relationships. It may be, for example, that a fishery is only open to people of a certain ethnicity, and that other persons have been kept from using that fishery by force. If my framework nevertheless entails that the user-group should have authority over what may be done with the resource, then that would mean that the dominant ethnic group is strengthened in its ability to exercise arbitrary power over others. Put differently, my framework might in such cases seem to be biased towards the status quo and therefore cement domination rather than counter it.

This worry is unjustified, however. The key aim of securing basic non-domination is rich enough to be used to evaluate questions about who must be included and who may be excluded from the use of a resource. My framework is therefore not uncritical towards the status quo, but can deliver a set of principles for evaluating particular situations. Importantly, these principles are not for *terra nullius* situations – situations that arise frequently enough in our imagination, but that I believe are extremely rare at best. They are instead about how to engage with a place in which there is already a history of use.

The first principle is that in- and exclusion rules may not be determined by an existing user-group, but must be the subject of a democratic

deliberation and decision in a wider community. That way, it is possible for people who are currently excluded to contest their position, and to do so on equal terms with those who are included. This wider democratic community sets the boundaries to the more specific in- and exclusion rules that can then be adopted in a CPR. Secondly, the rules that are adopted in the wider democratic community must be general; they may not single out a particular organisation, (potential) user, or (potential) user-group, but must be focused on the general rules that a society is willing to accept about in- and exclusion from natural resource use. That way, no one is subjected to arbitrary power; everyone must follow the rules set by all.[498]

A similar requirement applies, thirdly, to the more specific rules that CPRs adopt. The recognition of appropriation rights may not track discriminatory social norms, such as when women, people from oppressed ethnic groups, and members from other vulnerable classes are excluded. Ownership institutions may neither create a dominating social class, nor support an existing dominating group in its ability to dominate others. They may not, that is, support existing structures of unequal power.

The fourth principle is that exclusion is justified – at least from the perspective of basic non-domination – if inclusion would affect a resource so severely that it cannot be used to satisfy people's basic capabilities anymore. To illustrate, a CPR in a fishery need not include new entrants if as a result the fishery would be depleted, or if catch rates would go down so much that no one can use the resource to sustain themselves anymore. That would defeat the very purpose of new entry in the first place. There is an

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[498] There may be exceptions to this principle, such as when the relevant natural resource is a very rare ecosystem that governments want to take special measures to protect. Even then, however, the reasons that motivate this special treatment ought to be general on a higher-order level. For example, it must then be the case that the government more generally wants to protect special ecosystems. The point of this principle is to secure the rule of law, and make sure that commoners are not subject to caprice.

interesting question of whether CPR members are obligated, conversely, to include a new user when this wouldn't affect their own basic capabilities and it would help to realise the basic capabilities of the new entrant. The question is difficult to answer, because of course inclusion in a CPR is not the only possible way in which a person's basic capabilities can be obtained. One would have to know more about the situation at hand and the alternative options available before locating the burden of basic capability provision with any particular organisation.

What if commoners want to exclude new entrants because working without them would facilitate their cooperation? Commoners need to work together well to preserve their resource and use it productively. Users of a resource might therefore want to argue that the inclusion of a person or group of persons will hamper their ability to cooperate. If this claim is based on discriminatory norms – such as that women are harder to work with – then it should certainly be rejected. The claim that cooperation with members of a certain group is more difficult is then a strategic way of discriminating people without being outrightly perceived to do so. From the standpoint of non-domination, one should certainly be weary of these kinds of claims. What is more: it's not up to the dominant group to decide what good cooperation looks like, nor do they have a right to have it very easy. If the argument is instead based on a weariness of large numbers of commoners, then the issue is more difficult. Such claims will be unjustified if there is already evidence that large groups of people using a similar resource *can* work together successfully. Empirical evidence on the relation between group size and cooperation can be very helpful in evaluating these principles, while armchair reasoning is not.

This is by no means a complete account of how to evaluate the issue of in- and exclusion from CPRs, but it does show that the ideal of basic non-domination is determinate and critical enough to be of use in such an

evaluation. And what goes for CPRs and group ownership goes for other types of ownership regimes as well. Though I have kept the discussion focused on CPRs here, it's important to remember that CPRs are not the only ownership regime whose inclusion and exclusion rules should be subject to review. The same questions ought to be asked about individual, public, and other types of ownership.

7.4 Exit rules for CPRs?

I turn now to a very different criterion that has been proposed for the evaluation of group ownership-based organisations in general, and CPRs in particular. Hanoch Dagan and Michael Heller argue that these organisations must have specific exit provisions in order to be justified.[499] In what follows, I shall assess their argument firstly as one that is specifically aimed at CPRs, before zooming out to discuss the wider implications for my conception of group ownership.

Starting from a broadly liberal framework, Dagan and Heller argue that commoners should have a meaningful right to exit a sharing arrangement. Individuals who join such a regime may change their mind, or may find the sharing arrangement oppressive, or want to leave it for another reason. In that, they should not be hindered by the rest of the commoners. Dagan and Heller argue that a meaningful ability to exit requires that each commoner has an individual right to sell their own rights with respect to the resource. Such a right can involve the sale of use rights to a resource that remains whole, or it can require that the resource is divided and the title to its parts is sold. Dagan and Heller believe this is important because without this right to alienation, the cost of leaving the CPR would be so high that commoners would effectively be stuck where they are. By selling their

[499] Hanoch Dagan and Michael A. Heller, 'The Liberal Commons', *Yale Law Journal* 110, no. 4 (2001): 549–623.

rights to a resource, however, CPR members can gain some money and set up a new life for themselves.

The authors worry that CPRs place limits on such alienation rights, however. They claim that limits to alienation are present in such CPRs as Ostrom studied, but they provide insufficient empirical evidence for this claim.[500] Instead, they base their view on a theoretical model of the CPR situation, which they believe resembles a repeated prisoners' dilemma.[501] In a repeated PD game, players can signal to each other that they want to cooperate, which helps them to build trust and obtain good outcomes. However, the last iteration of this game takes on the structure of a one-shot prisoner's dilemma. Since it is the last iteration, players can no longer be punished for defection. Game theoretical analyses therefore predict that this iteration leads to defection on all sides.

Dagan and Heller use this model of a repeated PD game coming to an end to explain what happens when a commoner wants to leave the organisation. At that moment, the person exiting has a strong incentive to free-ride, by breaking the rules on how the resource may be used or the rules about maintenance obligations that every member has. After all, they will not suffer the consequences of this behaviour anymore. This causes other members – who don't want to be suckers[502] – to free-ride as well. They don't want to follow the rules if they are not sure others are following them as well, particularly if they have to suffer the bad consequences of other people's behaviour anyway. This eventually leads to the collapse of the CPR. To prevent this outcome, Dagan and Heller argue, commoners will tend to place limits on individual alienation rights, and thereby on

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[500] Dagan and Heller, 566. The authors only refer to one case in which exit through alienation was limited (but not made impossible).

[501] Dagan and Heller, 575–77.

[502] See on this chapter 6, section 3.

meaningful exit. This they consider unjust.

It is questionable whether Dagan and Heller's model is a good description of what actually occurs or is likely to occur in a CPR. Members of these regimes are often much more locally rooted than seems to be assumed by their argument, and may therefore be less inclined to exit. In addition, members often share a strong sense of trust and social norms and have a paramount interest in keeping the CPR functioning. I also find no empirical evidence for commoners imposing restrictions on exit to promote cooperation. I will set these issues aside, however, and focus on the normative claim.

Dagan and Heller not only argue that commoners should be able to leave, but, more importantly, that their exit should be enabled by allowing commoners to sell rights to or a part of the resource.[503] This raises two questions. Firstly, why should this principle apply only to CPRs, or only to group ownership organisations? It seems that the consistent application of their principle requires that employees in conventional (non-democratic, shareholder) business corporations also have a right to sell part of their company. That would be a way of securing meaningful exit for them. And what to think of state citizens and their right to exit? Does the ability to exit states have to come with the right to sell one's citizenship, or a part of the country, for example? Since Dagan and Heller don't argue for any of this, they must rely on a distinction between CPRs and other organisations from which one should be able to exit.

One relevant consideration here could be their belief that common property arrangements cover a great deal of the resources commoners have access to, much more – so they claim – than ordinary contracts do, for example.[504] If CPRs really do encompass so much of what individual

[503] Dagan and Heller, 'The Liberal Commons', 567–70.
[504] Dagan and Heller, 548.

commoners have and can do, then that may be why unsupported exit is more problematic here than it is in other cases. An argument like this might be made for the traditional *kibbutzim*, for example. In these communities, people do indeed share almost everything they have with others. And there, exit without alienation rights might leave someone completely expropriated. But the situation in most CPRs in natural resources is not like in these *kibbutzim*. As I explained in the previous chapter, what people share in a CPR is the resource system.[505] But they will often own their tools individually, and the same goes for the resource units they withdraw, and the profit they reap from that.

Another argument might be that commoners – unlike employees and citizens – have a property right to the CPR. Hence, it's only right that they can sell it. This argument faces two problems. Firstly, on the conception of group ownership that I have defended, the individual members of a group ownership regime do not have individual property rights with respect to an object.[506] Instead, a group owns an object, and this group determines how it may be used by individuals. In a CPR that is organised in accordance with my conception of group ownership, then, individuals do not have rights to the resource that they can sell. Secondly, this type of argument is in any case unacceptable for the present purpose, which is to find out what justified property rights *should* look like. The answer to that question cannot be: property rights are justified when they respect property rights.[507] If this is the argument for Dagan and Heller's position, then it

[505] Chapter 6, section 3.

[506] Chapter 2, section 4.B.

[507] This type of reasoning is not uncommon in the literature on workplace democracy. There authors will sometimes use what they believe are existing property rights – namely the rights shareholders have with respect to business corporations – as considerations against proposals for new property arrangements, like a worker cooperative. For a critical discussion of such views and references, see Hélène Landemore and Isabelle Ferreras, 'In

takes place *within* a property system. It does not get behind it, so to speak, to ask about its justification.

Dagan and Heller might want to accept my claim that their argument has wider applicability than their discussion of common property makes it seem, at least as a *pro tanto* consideration. All organisations, or at least all property-based organisations, should in that case support the right to exit by allowing members to sell a share of the relevant property.

But then we come to the second and more important question that their argument raises. Why must CPRs – and with them many other types of organisations – bear the burden of their members' meaningful exit themselves? Meaningful exit could also be secured, after all, through a national social security net, or through the presence of alternative ways of earning a living. Exit would then also be effectively and not just formally possible. The question that Dagan and Heller fail to answer, then, is who should bear the burden of providing exit opportunities.

I do not think this question can be answered without a contextual analysis of the society in which CPRs function. Such an analysis can uncover good reasons to prefer either more universal mechanisms for securing exit, such as income insurance, or the more local solution of alienation provisions in CPRs (and other organisations). One type of solution might be easier to achieve than the other or have more attractive spill over effects. Whatever the answer will be, it will be context dependent. There are no good reasons to claim that CPRs should *always* include alienation rights upon exit. Although commoners may decide to include these rights in their charters, it is not necessary for a just CPR.

What does this mean more generally for organisations based on group ownership? The fact that there are organisations that don't have to

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Defense of Workplace Democracy: Towards a Justification of the Firm–State Analogy', *Political Theory* 44, no. 1 (2016): 60–65.

include alienation rights upon exit (e.g. a CPR in which individuals own their own tools and the resource units they appropriated, and where their government provides income insurance) shows that on a *conceptual level* group ownership doesn't have to satisfy this criterion to be justified. Yet given a particular context, this may be a demand that they must satisfy.

7.5 Public ownership and overinclusion

In this section and the next I will discuss two alternative strategies for realising basic non-domination and explain when and why they fail to satisfy the control criterion. This section analyses the strategy of public ownership, and section six shall be concerned with the strategy of promoting people's exit opportunities.

I focus on the same type of public ownership as I did in the last chapter, namely the kind where governments do not exploit a natural resource themselves but do determine what appropriators may do with that resource. This strategy works by giving all citizens, including resource appropriators, equal and effective control over how a resource may be used. Like the strategy of group ownership, this means that the people who directly rely on a resource for their basic capabilities do control it. Unlike group ownership, however, they do not have *more* of a say than other citizens; they are not accorded, that is, a degree of discretionary authority over the use of the resource.

This strategy of public ownership overshoots; it includes more people in the governance of the precise use of a resource than are necessary to attain basic non-domination. After all, for citizens who do not directly depend on the resource, it is enough that they can set the limits to what CPR members can do with it. They have no interest from the perspective of basic non-domination, however, in governing the particulars of use when these cannot impact on their own basic capabilities.

Such overshooting can be problematic for two reasons.[508] Firstly, it makes resource users dependent on people who do not rely on the resource themselves, and who therefore have less of an interest in ensuring that the right use-rules are adopted. These citizens may take decisions in a careless or otherwise harmful way because they do not have to live with these decisions themselves. Thus, the control of the users is not only lessened, but is lessened in a way that makes the attainment of their basic capabilities less secure. Secondly, overinclusion is even more problematic when it is not reciprocal. This happens when, for example, all citizens are included in the governance of a natural resource that only some citizens use to obtain their livelihood, but the entire citizenry is not similarly included in the governance of all other resources that people rely on for the same reason. In cases such as these, overinclusion can amount to a type of domination. This is because one social group is asymmetrically empowered to have significant and arbitrary influence over what people in another group can do.

An analogy can clarify this second point. Imagine a marriage institution in which husbands and wives have to share authority equally over what sort of career the wife will pursue. However, wives do not have the same authority when it comes to their husbands' careers. Such a marriage institution is highly objectionable. It would be bad enough to demand that both partners have to achieve a consensus on both of their careers. Such a reciprocal rule would introduce a limitation of choice and a type of dependency on one's partner that is not required to achieve non-domination. But a non-reciprocal power structure is worse. It is constitutive of domination *even though* the husband has not been granted more of a say than his wife. This is because, despite having an equal vote, wives are unable to

[508] For an argument that there is no problem with overinclusion, see Robert E. Goodin, 'Enfranchising All Affected Interests, and Its Alternatives', *Philosophy & Public Affairs* 35, no. 1 (2007): 58–59.

check their husbands' power; they can merely mitigate it. Consequently, husbands have a measure of arbitrary power over women, and this power is structurally enabled and structurally unequal. That is to say, it is a form of domination. This marriage institution is an extreme case of non-reciprocal overinclusion, and one that is likely much more problematic than other cases that are structurally similar to it. Yet it does help clarify why even institutions that grant people equal control over a certain situation, can be constitutive of domination. And that is just what can happen when all aspects of resource use are governed by all citizens.

In sum, public ownership can lead to overinclusion, with negative effects on the control that people need to enjoy basic non-domination. Bringing it back to the type of case at hand, I conclude that there must be some discretionary authority left to people who rely on a resource for their basic capabilities. Nested in ever-expanding democratic communities that regulate their authority, CPR members must enjoy some leeway to decide on issues that do not affect what others may, can, or will do.

There is an important limit to this principle, however, and it comes into play when the choices of CPRs conflict with regulatory principles that are set at a higher level of nesting. It is always open to natural resource users to contest the regulation that governments (local, national, or otherwise) impose on them, and of course they must – as citizens – be included in the decision-making process on this regulation. But if a rule is adopted democratically, and does withstand contestation, then commoners have no choice but to follow it. The same would of course go for individual owners of natural and agricultural resources. The reason I mention this, is because a failure to comply can result in a loss of the private discretion I have so far defended.

To illustrate, in the Netherlands today different political parties argue for a 50% reduction of nitrogen emissions in agriculture. One measure

through which this could be achieved, certain parties argue, is the severe reduction of the number of cattle.[509] Some farmers have objected to the very goal of high nitrogen reduction, but even those who do agree with the goal, believe that it can be achieved in other ways that would allow them to keep or only slightly reduce their number of animals.[510] Say that the ambitious goal of 50% nitrogen reduction was nationally agreed upon. In principle, my view would leave room to the farmers to take discretionary measures to achieve that goal. However, then farmers do have to demonstrate that they are actually making that effort. There is a risk that they, or private entrepreneurs more generally, propose new solutions only to drag their feet and postpone change in wait of 'better times' of deregulation. When that is so, the claim for private discretion and against overinclusion becomes weaker, while the claim for the strengthening of national democracy becomes stronger. That, too, is in line with a commitment to non-domination.

7.6 The insufficiency of exit

Another strategy for securing basic non-domination works by promoting people's opportunities to exit relationships. The argument for exit that I will analyse in this section is different from the argument I discussed in section four. There, exit was about a criterion that group ownership institutions must meet in order to be justified. Here, exit is *an alternative method* to group ownership for realising non-domination. Robert Taylor is a

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[509] Lennart Bloemhof, 'Partijen Blijken Vooral Verdeeld over Toekomst van Nederlandse Boer', *NOS*, 9 March 2021, https://nos.nl/collectie/13860/artikel/2371982-partijen-blijken-vooral-verdeeld-over-toekomst-van-nederlandse-boer.

[510] Martin Kuiper, 'Boeren En Milieuclubs Komen Met Eigen Stikstofplan, Maar over de Voorstellen Bestaat Scepsis', *NRC Handelsblad*, 25 May 2021, https://www.nrc.nl/nieuws/2021/05/25/boeren-en-milieuclubs-komen-met-eigen-stikstofplan-scepsis-over-voorstellen-a4044765.

fervent defender of this method, which he has developed most extensively in the context of employment relationships.[511] He contends exit helps counter the arbitrary power that managers and owners have over employees in hierarchically governed corporations. Rather than democratise such organisations – the strategy of sharing in common – Taylor argues that governments should empower workers indirectly by promoting alternative opportunities to sustain a livelihood. This argument can be extended to fit the context of natural resource policy. Here Taylor might argue that governments shouldn't democratise existing hierarchical governance structures and shouldn't do much to promote democratic power relationships where no governance structures exist yet. Instead, the main aim should be to help people to leave governance regimes.

Taylor's argument goes as follows. Firm managers and owners gain arbitrary power over their employees as a result of their market power.[512] Market power arises in insufficiently competitive markets where, in the absence of sufficient regulation, parties enjoy great discretion in determining what they offer and for what price. In the labour market, this means that corporations can set the working conditions and wages of workers at their own discretion, and that workers have little or no choice but to accept these conditions. Market power is therefore a form of domination; it allows one party to govern another arbitrarily. To counter such domination, employees must be able to leave their jobs. Taylor offers two different arguments for this last claim. Firstly, exit allows workers to *escape* the rule of the party that dominates them.[513] Secondly, the mere fact that people *can* exit their

[511] See Taylor, 'Market Freedom as Antipower'; and Taylor, *Exit Left*. The latter work discusses the strategy of promoting exit opportunities as a way of countering domination in marital, employment, and political relationships.
[512] Taylor, 'Market Freedom as Antipower', 595–96.
[513] See Taylor, 596–97, where he approvingly quotes Pettit who argues that "in a well-functioning labor market (...) no one would depend on any particular master and so no

employment relationship will give them some control over it.[514] This is because employers will want to meet workers' demands in an effort to keep them happy and thus keep them from leaving.[515] Exit then functions as an auxiliary to voice.

Non-domination in the market can be realised through perfect competition; employers then compete extensively for workers and vice versa.[516] From this Taylor concludes that governments should do everything in their power to prevent collusion in the market and make exit as frictionless as possible. He argues this strategy is better than empowering workers directly by demanding that they participate in firm governance. This is because the indirect empowerment of workers through exit, while it requires a great deal of government action, does not require direct government regulation of workplaces.[517] By contrast, something like that would be required if governments implemented the strategy of increasing worker participation in firm governance:

> "The democratic state can demand that monopsonistic or oligopsonistic employers include employees in their decision-making processes (such as via German-style "works councils"), but because such inclusion is contrary to their business interests, the state will (...) have to give regulators the necessary discretionary powers to monitor, assess, and redress employer non-compliance. Else, employers will just create procedural "work-arounds" to bypass the influence of laborers (...)."[518]

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one would be at the mercy of a master: he or she could move on to employment elsewhere in the event of suffering arbitrary interference."; See Pettit, 'Freedom in the Market', 142.

[514] Taylor, *Exit Left*, chap. 1.

[515] Taylor, 'Market Freedom as Antipower', 600.

[516] Taylor, 597.

[517] Taylor, 599.

[518] Taylor, *Exit Left*, 23.

To be effective, Taylor furthermore argues, this regulation must take highly intrusive forms, even to the point where video surveillance would be required.[519] Following public choice theory, he claims that such regulation produces dominating relationships by giving civil servants unchecked power over employers.[520] This is because, due to the complexity of government regulation, the behaviour of civil servants cannot itself be regulated.[521] The resulting problems Taylor predicts are severe, as workplace regulators might use their power

> "to demand bribes from employers in return for leniency, to pursue the interests of their bureaucratic class in future employment in the industry as consultants, or even to harass employers as part of personal or ideological vendettas."[522]

No such problem would arise, however, through measures aimed at securing a competitive market.

Taylor's argument is unconvincing for three reasons. Firstly, exit as escape is not a good way of realising non-domination. Someone may be able to leave a dominating relationship, but that doesn't imply that the dominator has no power over them. To the contrary: the fact that a person needs to exit a relationship and the rights and opportunities that come with it, is a sign of the dominator's power. This is because the dominator has still decided – on an arbitrary basis – what the leaving agent can and will do.

To see this, imagine that a single non-democratic corporation owns all the pastures in a mountainous area. Some of the residents of this area will work for the corporation as shepherds. The corporate managers have the power to set the shepherds' working conditions for them, and subject

[519] Taylor, 22.
[520] Taylor, 21.
[521] Taylor, 22.
[522] Taylor, 22–23.

them to interference on an arbitrary basis (I'm assuming Taylor's wish for little regulation is granted). To escape such interference, shepherds might exit this corporation and work for another type of business, or for a similar business in a different place. But what would that mean? Natural resources are rooted, and so exit means giving up the place in which one lives, and one's connection to the local environment and the community there. Working with natural resources, moreover, is a particular way of life, that is very different from working in, say, a shop. This not only makes exit costly, as some theorists have argued,[523] but it also means that *exit* is just another symptom of the corporation's power. If you want to escape it, you have to change your life entirely, meaning that the terms of your life continue to be dictated – indirectly – by the agent you try to escape. Escape thus implies the *continued* subjection of a person to another agent's will. It means that you cannot live your life according to terms you set equally with others, but that some people decide the conditions under which you live for you, arbitrarily.

It might be argued that being able to choose any profession you like, or living in any place you want, are not basic capabilities. They are not capabilities you need to be able to withstand arbitrary power, and so the fact that they cannot be realised is not a problem from the point of view of basic non-domination. This argument would misunderstand the problem I have located, however. The shepherds from my example are not able to make these choices about their profession, way of life, and place of residence *because* they are not in control of the resources they need for their basic capabilities. It is precisely because they cannot determine how the pastures that they rely on may be used and by whom, that they are subjected to the arbitrary power of the corporation. So the problems the shepherds face have

[523] E.g. Hsieh, 'Rawlsian Justice'.

everything to do with basic non-domination.

The second problem has to do with the argument that exit is a way of strengthening workers' voices. The problem is that Taylor's strategy introduces a contingency where there shouldn't be one, namely between workers' demands about how they want to attain their basic capabilities, and the effect that is given to these demands. Taylor argues at length that employers are more likely to comply with their workers' demands if these workers can credibly threaten to exit.[524] That is probably true, but it is also true that the ability of workers to effect change depends on the level of competition that happens to exist in a society. For example, where competition between workers is fierce, as is the case in the market for lower skilled labour, workers will be less likely to have their voices heard. Some of these contingencies can be mitigated through government intervention. Taylor suggests that governments should offer workers a basic income or capital grant, so that they can still threaten to leave their employment.[525] There are serious questions about the feasibility of such policies, and about the limited relevance of Taylor's views as long as these policies aren't pursued. What is more important, however, is that even these policies would leave it an open question whether and to what extent employers will give in to what workers want. The strategy of promoting exit opportunities is in fact a mediated version of what should be a much more straightforward solution, namely the granting of authority to workers. Their level of control should not depend on contingencies but should be secure. It is only then that we can speak of non-domination, since that is the *robust* status of being in control of the relationships you're in, not the happenstance status of enjoying such control.

Finally, Taylor's arguments against worker participation in firm

[524] Taylor, *Exit Left*, chap. 1.
[525] Taylor, 'Market Freedom as Antipower', 597.

governance are implausible. It is worth noting that his argument would be of limited relevance even if it were correct. Taylor is worried about governments who have to implement the democratisation of organisations, but government implementation is in any case not a necessary path to worker empowerment. People can also set up democratic organisations – such as CPRs and worker cooperatives – themselves. Another problem is that Taylor doesn't take worker cooperatives as his key example of democratised organisations, but focuses on organisations in which workers are empowered alongside shareholders and managers.[526] This is a convenient choice for this argument; in the latter type of organisation there might indeed be a need for an external party to check whether workers truly have as much control as is claimed. In a worker cooperative, however, workers are entirely in charge themselves, and thus there is no difficulty in making sure that they are empowered.

More importantly, however, Taylor's fear of government regulation of workplaces relies on an unsubstantiated view of what such regulation looks like. Why should government regulation have to be so intrusive as to require "video surveillance," for one thing? That has certainly not been necessary for the implementation of labour regulation in any country that I know of. Instead, the application of labour law relies on workers making complaints internally or in court, on in-person inspections of workplaces, on questionnaires handed out to workers, on the advocacy of labour unions, and so on. And what about the claim that civil servants are so difficult to keep in check that they might use their power for rent-seeking activities or even to fight out their "vendettas" with employers? Taylor provides no empirical evidence for this claim at all. Instead, he relies on the classic theory of public choice as James Buchanan and Gordon Tullock

[526] Taylor, *Exit Left*, 23.

first proposed it, a theory about the selfish behaviour of unelected officials that has itself been criticised for its lack of corroborating empirical evidence.[527] There is no good reason, then, to be so extremely sceptical about governments' abilities to keep their civil servants in check.

In conclusion, the promotion of exit opportunities is insufficient for realising basic non-domination. Provided with many alternative opportunities for securing their basic capabilities, people are still not *robustly in control* of how these basic capabilities can be attained. This lack of control leaves them vulnerable to arbitrary power.

7.7 Citizens taking action

The fact that group ownership institutions are sometimes better able to satisfy the criteria for basic non-domination than alternative strategies is not their only comparative advantage. I will argue in this section that another advantage of group ownership is that it helps citizens to secure their own non-domination even when their government is unwilling or unable to implement the policy changes necessary to realise this ideal. In this it is different from strategies that do rely on governments making significant changes to their institutions and policies. In making this argument, I will zoom out from the particular case of CPRs in natural resources, and use examples from group ownership-based organisations in different economic sectors.

Many of the strategies that republicans propose to realise non-domination require governments to make great changes to their institutions and policies. Consider, for example, proposals in the category of equal individualisation. It will be remembered that this strategy involves providing individuals with equal amounts of property with which they can attain their

[527] See e.g. Jon Pierre and B Guy Peters, 'The Shirking Bureaucrat: A Theory in Search of Evidence?', *Policy & Politics* 45, no. 2 (2017): 157–72.

basic capabilities.[528] The proposal to implement a property-owning democracy falls in this category. In a property-owning democracy, all citizens should have some property and no citizen should have too much. Also in this category are the more specific proposals of a universal basic income, to be received by every citizen every month, and a universal capital grant, a large cash instalment citizens receive as they become adults.[529] Though these proposals can certainly be realised, they require a government to take extensive action; they could not be realised by a group of private citizens acting on their own. The same applies to proposals to realise basic non-domination through the public provision of goods and services that people need for their basic capabilities. Here one can think of goods and services like income insurance, reliable information about current affairs, and so on. These proposals are all potentially successful ways of realising basic capabilities, and they place control over these capabilities with all citizens. But again, the national government has to be willing to make important changes to its current institutions and policies to implement these proposals. Citizens who want to see such changes implemented can petition politicians, start campaigns, vote for the right political parties, and so on. Citizens can take action, that is, by pressuring their government to act.

Institutions of group ownership, however, allow citizens to do something besides trying to move national parliaments to secure their basic non-domination. The legal structure for group ownership is present in many societies, even if it is not always organised in an ideal way.[530] This structure allows people to set up group ownership-based organisations

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[528] See chapter 5, section 5.B.

[529] For extended defences of these proposals, see respectively Thomas, *Republic of Equals*; Philippe Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Oxford University Press, 1997); and Ackerman and Alstott, *The Stakeholder Society*.

[530] See on this Dagan and Heller, 'The Liberal Commons'.

themselves. Even where no such structure is present, moreover, citizens can use creative ways to organise themselves in groups that function according to the ideal of sharing in common. They can, that is, set up organisations in which they share a resource and collectively control its use, so that they can use the resource to attain their basic capabilities in a way that is under their own control. This is another way, then, in which citizens can take action to secure their own basic non-domination. In the event that governments are unwilling or unable to undertake the required actions, citizens can step in and try to do it themselves.

And that is exactly what people do all the time. Think only of the examples of sharing organisations I discussed in the last chapter, such as insurance mutuals, energy cooperatives, worker cooperatives, and knowledge commons. In response to inadequate public provision of income insurance for self-employed persons, for example, citizens have set up insurance mutuals such as the Dutch Broodfonds.[531] The mutual allows them to achieve what they could not do alone and what the Dutch national government would not do for them, namely make sure that they can still meet their basic needs in case of unemployment caused by sickness or an accident. Energy cooperatives, meanwhile, allow citizens to use sustainable sources of energy when they find the market for energy inadequate, or where governments are unwilling or unable to transition to renewable energy fast enough. By pooling their funds and getting, say, a windmill for themselves, citizens can take control over how their energy is supplied and make choices about sustainability themselves. Worker cooperatives have similarly been important for citizens to take matters into their own hands when it comes to control over their livelihood. Citizens can pool their funds to start up a worker-owned firm themselves, or they can convert an

[531] Vriens and De Moor, 'Mutuals on the Move', 225, 227.

existing conventional firm into a worker cooperative.[532] Either way, they will ensure that they gain control over the resource they depend on for their income, without having to wait for the implementation of a universal basic income, for example. Finally, knowledge commons like Wikipedia show what individuals can do to secure the adequate provision of information. They don't have to rest content with pressuring governments to provide reliable information free of charge, nor are they completely dependent on market provision. Instead, they can band together and create a shared resource that is under the control of all who use it. In that way, they directly contribute to their own basic non-domination.

In listing these examples, I don't mean to argue that citizens shouldn't make demands of their governments anymore. To the contrary, I think citizens benefit from having an *expansion* of paths they can take to pursue non-domination. They can do more than one thing to get to the solutions they need, and this means they can increase their chances of success. Having this alternative do-it-yourself route to non-domination is particularly valuable where the welfare state is on its retreat.[533] Where governments are privatising what were formerly public services or are cutting back on the public services they provide, it's good to know that citizens have multiple courses of actions open to them to rectify the situation, and that they can pursue these courses of action simultaneously. An expansion of pathways to basic non-domination makes the attainment of this status more likely.[534]

Relatedly, it's important to caution that governments should not

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[532] For an analysis of such conversions, see Alison Lingane and Shannon Rieger, 'Case Studies: Business Conversions to Worker Cooperatives' (San Francisco: Project Equity, 2015).

[533] De Moor, *The Dilemma of the Commoners*, 161–62.

[534] See De Moor's related argument that institutional diversity can make the provision of goods more resilient in 166–67.

view the positive potential of group ownership institutions as an excuse to stop providing goods and services necessary for basic capabilities. This would be particularly problematic in cases where states could provide these capabilities in a more efficient way than group ownership-based organisations, and do so without risking the kind of overinclusion I discussed earlier. It may then be that states use claims about the value of group ownership as a fig leaf for what are actually simple cutbacks that leave vulnerable citizens in the cold. To prevent this, it would be good if citizens, politicians, and researchers could rely on a more extensive account of how different strategies for basic non-domination compare to one another, and what the circumstances are under which one can substitute one strategy for another or prioritise one strategy over another. This chapter and the one before will hopefully serve as input for such an account.

It is also important to note that I do not think that citizens currently face no difficulties in setting up and maintaining group ownership-based organisations. Governments can certainly do more to strengthen citizens' ability to share objects in common. Yet a demand for this kind of policy or institutional change is slightly different from the demands I listed earlier in this section, that ask governments to implement a universal basic income, capital grant, and so on. In particular, a demand to strengthen group ownership institutions is more in keeping with a direction for republican research that Alex Gourevitch has recently defended, writing that

> "the emphasis should be less on formulating the ideal social policy or the perfect legislative demand and instead on thinking about how those subject to domination could act on their own behalf. There is a good practical reason for this, which comes straight from the historical sociology of domination: who else will do it?"[535]

[535] Gourevitch, 'The Limits of a Basic Income', 25.

Gourevitch argues, in other words, that theorists concerned with domination should focus less on the ideal policies that will eliminate problematic power relationships and more on developing an account of collective action that clarifies how citizens can secure their non-domination themselves. He therefore argues in the context of workplace governance that "we ought to defend those practices and policies that permit the greatest opportunities for workers to exercise their own collective agency to free themselves from their subjection."[536]

I believe group ownership institutions should be defended and expanded for just this reason, and not just in the context of employment relationships. These institutions can help people take action together and gain control over their basic capabilities in different contexts of their life, thus realising their own non-domination. Therefore, a demand to strengthen group ownership institutions is not a demand to secure the policies that directly realise basic non-domination, which is how a demand for a universal basic income can be interpreted. It is instead a demand to promote those institutions that can help people secure their own empowerment.

7.8 Conclusion

This chapter discussed how CPRs must be organised and regulated to realise the control criterion for basic non-domination. The right persons are placed in power over the right decisions when CPRs are internally democratically organised, externally democratically regulated, and when their in- and exclusion rules don't produce or support relationships of structurally unequal arbitrary power. In evaluating other group ownership institutions and their performance on the control criterion, these three key areas of internal governance, regulation, and in- and exclusion must also be analysed.

[536] Gourevitch, 26.

I have also said a little about the problems faced by alternative strategies for realising non-domination. Public ownership can come with a risk of overinclusion, which occurs when the people who rely on a resource directly have no discretionary authority at all over how that resource may be used. The promotion of exit opportunities fails for more fundamental reasons. It simply doesn't grant people control over the resources they rely on for their basic capabilities, and therefore leaves them vulnerable to the domination of others. Group ownership avoids these problems, and is in addition a strategy that citizens can pursue without having to wait for governments to implement radical changes to their policies.

Together with the previous chapter, this chapter has explained how group ownership institutions can realise basic non-domination. This has been far from a complete account, since there are many other group ownership-based organisations that one could analyse in addition to CPRs. It is also far from a complete *comparative* account, since I have discussed only a few of the circumstances under which group ownership can perform better than other strategies for achieving non-domination, and no circumstances under which these other strategies perform better than group ownership. I hope to have provided enough reasons to see why a comparative analysis of these strategies is valuable, however, and that I have provided enough reasons to demonstrate that group ownership institutions ought to be taken seriously in such an analysis.

8. Conclusion

8.1 The value of group ownership, once more

Why should people share objects in common? When and why should they own things as a private group rather than individually, or with all their fellow citizens in a public ownership regime? The answer I have defended in this dissertation is that group ownership can empower people.

More precisely, I have argued that group ownership as the institutional realisation of sharing in common can help people to realise their basic non-domination. This is important because when people don't enjoy basic non-domination, they are (vulnerable to becoming) subjected to the arbitrary power of others. To be subjected to another person's will in that way, is a violation of the status that persons ought to enjoy as beings capable of practical reason. It is wrong, I have argued, that people can decide *for* others what they can, may, and will do. Instead, people should be equally in control of the terms of the relationships they are in. Basic non-domination is not the full realisation of this demanding ideal, but it does form a crucial stepping-stone to its attainment. When people enjoy basic non-domination, they are in a good position to secure more extensive control over the forces that govern their lives.

My thesis has set out an evaluative framework with which the contribution of ownership institutions – including group ownership – to basic non-domination can be assessed. Basic non-domination involves having

the basic capabilities necessary to be able to withstand arbitrary power, and being in control of the decisions that affect these capabilities. Ownership institutions can realise this value by meeting the basic capability criterion and the control criterion. They must, that is, promote the good use of resources, so that people can rely on these resources to obtain their basic capabilities, and they must place people who rely on a resource for that reason, in control of how it may be used.

My discussion of CPRs in natural and agricultural resources demonstrates that group ownership can satisfy both criteria. In fact, under certain circumstances it can even outperform alternative strategies for realising basic non-domination, such as individual ownership, public ownership, and market competition combined with extensive exit opportunities. By facilitating cooperation between resource users, CPRs promote efficient and sustainable resource use, thus satisfying the basic capability criterion. This is the instrumental argument in favour of this group ownership institution. In addition, when CPRs are internally democratically organised and externally regulated by nested layers of democratic communities, they also satisfy the control criterion. This is the constitutive argument for CPRs and similar group ownership institutions.

When the criteria are realised, people are not only empowered, but they are in control of their own empowerment.

8.2 A basis for further research

The main way in which my thesis contributes to political philosophy is by providing an extended normative justification of group ownership. In addition, I believe the concept of group ownership and the normative framework that I have developed in the service of this justification, form a fruitful basis for further research. In what follows, I want to note three ways in which political theorists might make use of my analysis.

Firstly, my conception of group ownership can facilitate (comparative) normative research on this institution in different theoretical traditions. My conceptualisation distinguishes between two things that are sometimes confused, namely the *group right* of group ownership and *group-differentiated individual* property rights. Under the former institution, a group defines and authorises the rights of its individual members with respect to an object. When people have group-differentiated individual property rights, however, their rights are neither defined nor subject to change by the user-group they are in. The normative situations of individuals in these scenarios are therefore very different. Making this clear helps theorists understand what, exactly, needs to be evaluated in an analysis of group ownership. This will allow them to research how my conception of group ownership can contribute to values as diverse as flourishing, welfare, social cohesion, absence of interference, virtuous character development, and so on.

In addition, my analysis of the different shapes of property defences may help clarify the internal workings of certain justifications of property, and thus clarify the issues that need to be debated. At the moment, many theorists don't label their arguments as explicitly instrumental, constitutive, or as a combination of these arguments. This can make it difficult to debate their theories; it is not always clear whether the arguments rely on a purely causal account of how property realises a certain value, or whether property is rather a (necessary) part of the good that must be secured. My account of the point and structure of constitutive and instrumental approaches can assist property theorists in providing a more explicit statement of how their arguments work, which will be fruitful for further discussions. In addition, theorists who wish to work with neither instrumental nor constitutive arguments may also be able to benefit from my research, as I have outlined what libertarians and historical entitlement

theorists need to prove to make their arguments work (and also why that is quite difficult to prove).

The more specific contribution of my argument to republican thought is that it can facilitate comparative research on the institutions required for basic non-domination. The basic capability criterion and the control criterion can be used to evaluate ownership institutions, as I have done in this thesis, but when suitably reformulated, they have wider applicability. The criteria may be used to assess whether any type of institutional arrangement secures people's basic capabilities and also secures control over decisions that affect their basic capabilities.

This will be useful in research on the provision of goods and services, and the role that markets, states, consumer cooperatives, charities, and other organisations should play in this provision. My remarks in chapters six and seven on mutual insurance organisations, energy cooperatives, and knowledge commons show something of the possibilities in this direction. Knowledge commons, for example, could be evaluated by asking what sort of information they provide and whether that is the type of information that people need to be able to resist arbitrary power (the basic capability criterion) and by asking how they organise control over the provision of information (the control criterion). The same approach can be applied to the provision of (health)care, education, and security services, to give but a few examples. My framework has hopefully shown that republicanism has a distinctive perspective on these questions, where what matters is not just the quality of the goods and services provided, but the way in which this quality is secured; it has to be under the control of those who depend on it. Moreover, in certain cases it is not enough that people exercise such control only through the state, by deciding democratically on the framework in which private organisations operate. In my analysis of CPRs I showed that there can be reasons – internal to republicanism – to grant

people an additional degree of control on the level of private organisations as well. Whether those reasons apply in other cases where basic capabilities are at stake, is something that would be very important to assess.

8.3 Open questions

In closing, I want to note a few questions that my research has left open, and that would be useful to address in further research on basic non-domination and group ownership.

Firstly, more can be done to develop the idea of basic capabilities. This thesis has worked with a deliberately general conception of what those capabilities are for two reasons. To begin with, the commitment to non-domination requires that citizens themselves formulate which capabilities and functionings they believe are required to be reasonably able to withstand arbitrary power in their society; this is not something that can be determined in a theoretical exercise. In addition, and relatedly, what citizens need for this capacity to resist arbitrary power will differ from one social context to another. My conception of basic capabilities was specific enough for my analysis of CPRs, and also for my remarks on mutual income insurance organisations, energy cooperatives, and worker cooperatives, as the capabilities that are gained in these cases are uncontroversially important for people's empowerment. But if my framework will be used to study other cases as well, as I hope it will, then more should be said about the different categories of basic capabilities, how they relate to one another, and how people should determine what counts as a basic capability and what doesn't. This will help republicans to study more difficult cases as well, for example in research on the provision of goods and services, where it may not be so clear whether a specific good or service answers to people's need not to be vulnerable to arbitrary power. For the two reasons I already mentioned, republicans need not formulate universal or very precise

answers to these questions, but they can certainly assist citizens in thinking about them, for example by developing the criteria on what it means to be reasonably able to withstand arbitrary power in greater detail.

The second question I want to mention, is about group ownership's contribution to non-domination. In my analysis, I focused on the direct advantages of sharing in common for the members of a group ownership regime. That is to say, I focused specifically on how the collective and democratic authority that member-owners share helps them to cooperate to gain their basic capabilities, and also gives them control over this process of cooperation. It would be worthwhile to research in addition how group ownership regimes contribute to non-domination *indirectly*, both for the member-owners and for people outside the regime.

For example, do commoners benefit from group ownership indirectly, by gaining certain skills in collective reasoning that are transferable other arenas of collective decision-making? Does participation in democratic decision-making in a group ownership regime stimulate citizens to become active in national democratic politics? Carole Pateman famously argues this is one of the benefits of workplace democracy.[537] It would be interesting to investigate her thesis in the context of group ownership regimes that do not concern the workplace.

Another example of an indirect effect that could be investigated is how group ownership affects the distribution of wealth in a society, and

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[537] Carole Pateman, *Participation and Democratic Theory* (Cambridge University Press, 1970), chaps 3 and 4. Pateman's claim has been put to the test by various political scientists since the publication of her book. See e.g. Neil Carter, 'Political Participation and the Workplace: The Spillover Thesis Revisited', *The British Journal of Politics and International Relations* 8, no. 3 (2006): 410–26; Per Adman, 'Does Workplace Experience Enhance Political Participation? A Critical Test of a Venerable Hypothesis', *Political Behavior* 30, no. 1 (2008): 115–38; David Lewin and Paul J Gollan, 'Democratic Spillover from Workplace into Politics: What Are We Measuring and How?', in *Advances in Industrial and Labor Relations* (Bingley: Emerald Publishing Limited, 2021), 145–76.

how this, in turn, affects political equality. It might be that in a society where many objects are owned in common, differences in wealth are less disparate than they are now. It could be, for example, that commoners decide to distribute their profits more evenly among themselves than happens in hierarchical organisations. It might also be that large corporations will not be able to attract as many customers as they do now if people can also obtain goods and services from – for example – energy cooperatives, knowledge commons, and so on. In that case, group ownership regimes would limit the amount of wealth that large corporations accumulate. If group ownership can indirectly contribute to equality in wealth distributions in this way, then it can also indirectly contribute to maintaining equal political influence for all citizens in a democracy. As I noted in chapter five, wealth inequality often translates into political inequality, which is detrimental to the ideal of non-domination. It is therefore worthwhile to find out whether group ownership indeed has the effects I just suggested it might have.

The third open question is: what do citizens currently need to be able to create and maintain organisations in which they can share objects in common? In chapter seven, I argued that one of the advantages of group ownership as a strategy for realising basic non-domination is that people can set up group ownership-based organisations themselves. They can do more than urge a government to change its redistributive system or take on tasks it currently leaves to market parties; they can also create the organisations that will help them to secure their basic capabilities in a way that is under their control, in the economy as it is organised now. However, in making this point I did not mean to suggest that people face no challenges in creating and maintaining group ownership-based organisations. To the contrary, they may face important practical hindrances, such as a lack of knowledge, tools, funding, and so on. There may in addition be political

resistance to such organisations. If the practice of sharing in common threatens vested interests, then the institutions that facilitate this practice may be opposed by powerful parties. It is important that these challenges are analysed so that they can be addressed.

The main aim of this thesis has not been to map all the practical and political challenges that citizens who want to set up sharing organisations currently face. I aimed rather to clarify the value of sharing in common, to show *why it's important* that citizens can set up such organisations, and thus to show *what is at stake* in current political decisions about the institution of group ownership. In that way, my theory will hopefully play a role in strengthening citizens' demands to be allowed to share objects in common and to be assisted in that endeavour. I have shown that what is at stake is people's basic non-domination. A society that promotes group ownership is a society that enables its citizens to secure their own empowerment.

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Samenvatting in het Nederlands

Overal ter wereld gebruiken mensen gedeelde eigendommen om in hun belangrijkste behoeften te kunnen voorzien. In verschillende dorpen in India, bijvoorbeeld, zijn inwoners afhankelijk van kaphout uit gedeelde bossen voor hun inkomen en voor de benodigde brandstof in hun huishoudens. In Nederland vertrouwen veel zelfstandige ondernemers op gedeelde "broodfondsen" om hun inkomen aan te vullen of te vervangen in het geval van tijdelijke arbeidsongeschiktheid. Herders in Zwitserland laten hun schapen grazen op gedeelde Alpijnse weiden, en gebruiken de opbrengst om te voorzien in hun levensonderhoud. Overal in de Verendigde Staten zijn burgers aangesloten bij energiecoöperaties, waar elektriciteit wordt opgewekt met behulp van gedeelde bronnen. En het is goed mogelijk dat er bij u om de hoek een coöperatieve winkel zit, waar de medewerkers zelf samen hun bedrijf bezitten.

Hoewel deze voorbeelden veel van elkaar verschillen, hebben ze ook een paar eigenschappen gemeen. Het gaat in alle gevallen om groepen mensen die een object delen om zo hun basisbehoeften te bevredigen, op een manier die zij zelf samen bepalen. Deze groepen zijn privaat; over het gebruik van de objecten wordt niet door alle leden van de maatschappij besloten, maar slechts door de gebruikers zelf.

Het is duidelijk dat in alle voorbeelden mensen ook gebruik hadden kunnen maken van alternatieve eigendoms- en beheer constructies. Zo zouden de bossen in India ook beheerd kunnen worden door grote bedrijven of door de staat, en hetzelfde geldt voor de verzekeringsfondsen en energiebedrijven. De winkel en Alpijnse weiden zouden daarnaast ook van één

persoon kunnen zijn, in plaats van van een groep.

Daarom rijst de vraag: hoe moet de keuze voor groepseigendom worden beoordeeld? Wat maakt de vorm van delen die ik heb omschreven, en de instituties die deze vorm van delen mogelijk maken, waardevol? En onder welke voorwaarden is dit delen van waarde?

Deze vraag is lang onderbelicht gebleven in de politieke filosofie. De aandacht is binnen dit vakgebied vooral gericht op *individueel* eigendom en op de uitleg over waarom deze institutie al dan niet gerechtvaardigd is. Dit gebrek aan theorieën over groepseigendom kan schadelijke praktische gevolgen hebben. Zolang burgers niet weten waar groepseigendom goed voor is en onder welke voorwaarden dat zo is, weten ze niet goed wat er op het spel staat bij hun politieke keuzes over eigendomsinstituties.

In deze dissertatie beargumenteer ik dat groepseigendom van waarde is en gerechtvaardigd omdat en wanneer het helpt de *basale non-dominatie* van mensen te realiseren. Ik zal hieronder kort uitleggen wat ik hiermee bedoel en een zeer algemene samenvatting – bedoeld voor niet-specialisten – geven van de kern van mijn betoog.

Non-dominatie (*non-domination*) is een technische term uit de politieke filosofie, die stamt uit het republikeinse gedachtegoed van de Romeinen. Je geniet non-dominatie wanneer niemand in staat is om op willekeurige wijze macht over je uit te oefenen. Macht is willekeurig, volgens de republikeinse traditie, als een machthebber deze naar eigen believen kan uitoefenen, zonder dat de mensen die daaraan onderworpen zijn er iets over te zeggen hebben. Iemand die zulk soort macht heeft, *domineert* mensen. Denk bijvoorbeeld aan een slavenhouder, dictator, of – onder seksistische wetgeving – een echtgenoot. In alle gevallen is de machthebber geen verantwoording schuldig aan de mensen om wie het gaat, namelijk de slaven, de inwoners van de dictatuur en de echtgenote.

Voor non-dominatie is het nodig dat niemand macht op deze

willekeurige manier over je *kan* uitoefenen. Een dictator moet bijvoorbeeld niet alleen *toevallig* niet ingrijpen in jouw leven, maar dat moet helemaal onmogelijk worden gemaakt. Hiervoor is het nodig dat je zelf controle hebt over de macht die over je uitgeoefend wordt, samen en op gelijke voet met andere mensen die in dezelfde positie zitten als jij. Dit gebeurt in een democratische republiek, waar burgers zelf samen de wetten bepalen die ze moeten naleven.

In deze dissertatie betoog ik dat non-dominatie van waarde is omdat het een status is die hoort bij wezens die zelf kunnen nadenken over wat ze willen en zouden moeten doen. Mensen kunnen zelf bedenken welke doelen ze willen nastreven en ze kunnen zelf nadenken over wat een regel inhoudt en hoe die betrekking heeft op hun acties. Het is verkeerd om ze te behandelen alsof ze dit niet kunnen en om *voor ze* te bepalen wat zij wel en niet mogen en kunnen. Dat is een status die hoort bij *dingen*; die hebben zelf geen wil, en daar mag je dus voor bepalen hoe ze worden ingezet. Wanneer het om mensen gaat, moet je echter alle beslissingen over wat ze mogen en kunnen doen, aan ze rechtvaardigen. En zij moeten bovendien zelf bepalen of een rechtvaardiging goed genoeg is of niet. Met andere woorden: omdat mensen kunnen zelf kunnen bepalen wat ze willen doen, moeten ze allemaal een gelijke stem krijgen over beslissingen die vastleggen wat ze mogen en kunnen doen.

Non-dominatie kan in meer of mindere mate worden gerealiseerd. Ik ontwikkel in deze dissertatie het idee van *basale* non-dominatie (*basic non-domination*) als het minimale niveau van non-dominatie dat mensen moeten hebben. Je geniet basale non-dominatie wanneer aan twee voorwaarden is voldaan. Ten eerste beschik je over *basale capaciteiten* (*basic capabilities*). Dat zijn de capaciteiten die redelijkerwijs nodig zijn voor het weerstaan van ongelijke machtsrelaties. Denk hier bijvoorbeeld aan de capaciteit om te voorzien in je behoeftes aan eten en drinken, maar ook de

behoefte aan betrouwbare informatie. Die behoeftes moet je allemaal kunnen bevredigen om goed in staat te zijn ongelijke machtsrelaties te weerstaan. Want als je bijvoorbeeld honger hebt, zul je makkelijk ten prooi kunnen vallen aan de wil van iemand die je wel eten kan geven, maar alleen op voorwaarde dat je voldoet aan hun wensen. Zo ben je dus uitgeleverd aan de willekeur van degene die je honger kan stillen. En als je geen toegang hebt tot betrouwbare informatie, ben je een makkelijk doelwit voor manipulatie. Ook daarmee ben je kwetsbaar voor dominatie.

Voor basale non-dominatie is het echter niet alleen belangrijk dat je deze basale capaciteiten hebt. De tweede voorwaarde is dat je – samen en op gelijke voet met anderen die in dezelfde situatie zitten als jij – kunt bepalen of die capaciteiten worden gerealiseerd en op welke manier dat gebeurt. Zo is het bijvoorbeeld niet voldoende dat je op dit moment geen honger hebt, omdat iemand je toevallig eten wil geven. Op die manier ben je immers uitgeleverd aan de willekeur van deze persoon; zij zouden ook zomaar kunnen besluiten je niet te eten te geven. Wat nodig is voor basale non-dominatie is dat je hier dus zelf de controle over hebt, samen met anderen die in dezelfde positie verkeren als jij.

Ik betoog dat groepseigendom aan basale non-dominatie kan bijdragen als deze eigendomsinstitutie op de juiste manier wordt vormgegeven. Hiervoor ontwikkel ik het concept *gemeenschappelijk delen* (*sharing in common*). Mensen delen een object gemeenschappelijk wanneer de leden van een groep zelf op democratische wijze bepalen hoe het object gebruikt mag worden, zowel door de leden zelf als door iedereen buiten de groep. Alle rechten die de individuele groepsleden hebben met betrekking tot het object, zijn vormgegeven, geautoriseerd en aan verandering onderhevig door de groep als geheel.

Deze vorm van delen baseer ik op Elinor Ostrom's sociaalwetenschappelijke analyse van *common property regimes* (CPRs) in natuurlijke

bronnen. Dat zijn constructies waarbij een begrensde groep gebruikers van een bron zelf de natuurlijke bron beheert. Denk bijvoorbeeld aan boeren die samen een irrigatiesysteem delen en zelf bepalen hoeveel water iedereen mag nemen, hoe het systeem onderhouden moet worden, enzovoort. Wanneer zij hun besluiten op democratische wijze nemen, zijn de boeren volgens mijn conceptuele schema bezig met gemeenschappelijk delen.

Groepseigendom *kan* basale non-dominatie helpen realiseren wanneer het zo is vormgegeven dat het mensen in staat stelt een object gemeenschappelijk te delen. Hiervoor moet de eigendomsinstitutie dan wel aan twee criteria voldoen. Het eerste criterium dat ik ontwikkel is het *basale capaciteiten criterium* (*basic capability criterion*). Dit houdt in dat een eigendomsinstitutie mensen moet helpen hun basale capaciteiten te krijgen. Bijvoorbeeld: eigendom van irrigatiesystemen moet zo worden ingericht dat veel mensen op die systemen kunnen rekenen om in hun basisbehoeften te voorzien. De eigendomsinstituties zouden in dit geval moeten stimuleren dat een irrigatiesysteem goed onderhouden blijft en daarmee veel mensen van water kan voorzien. Als instituties echter heel inefficiënt gebruik stimuleren, of er zelfs voor zorgen dat het irrigatiesysteem onbruikbaar wordt, dan is dat heel nadelig voor de basale capaciteiten van de mensen die op het irrigatiesysteem rekenen. Zij kunnen dan namelijk niet het water gebruiken voor het land waar ze van leven. Als er geen andere bron van inkomsten is, kunnen zij daarom niet in hun basisbehoeften voorzien. Zoals gezegd maakt dit ze kwetsbaar voor de willekeurige macht van anderen.

Het tweede criterium is het *controle criterium* (*control criterion*). Dit houdt in dat de mensen die van een object afhankelijk zijn voor het realiseren van hun basale capaciteiten, degenen zijn die op democratische wijze moeten bepalen hoe dat object wordt gebruikt. Om bij het voorbeeld van het irrigatiesysteem te blijven: de boeren die dit systeem gebruiken om

te voorzien in hun levensonderhoud, moeten zelf kunnen bepalen hoe het wordt gebruikt. Dit criterium lijkt misschien al verondersteld in het concept van gemeenschappelijk delen, maar dat is niet zo. Binnen dat concept maakt een groep de dienst uit over hoe een object wordt gebruikt, maar het is niet gezegd dat deze groep ook afhankelijk is van dit object voor hun basale capaciteiten. Daar is het controle criterium voor; het selecteert de juiste groep mensen.

In mijn dissertatie laat ik zien dat het gemeenschappelijk delen van natuurlijke bronnen aan deze twee criteria kan voldoen. Dit druist in tegen wat veel theoretici hebben beweerd over het delen van dergelijke bronnen. Zij hebben lang gedacht dat als mensen een object delen, het onvermijdelijk is dat dit object slecht wordt gebruikt. Dit zou betekenen dat mensen hun basale capaciteiten *niet kunnen verkrijgen via een gedeelde bron.* Gareth Hardin's essay over "*the tragedy of the commons*" (de tragedie van gemeengoed) is een goed voorbeeld voor deze gedachtegang. Het idee is dat wanneer mensen een natuurlijke bron delen, zij de effecten van hun goede of slechte gedrag niet kunnen isoleren. Gedragen zij zich goed, dan heeft iedereen daar baat bij, niet alleen zij zelf. Nemen zij echter te veel, dan hebben zij daar zelf niet veel last van, want deze lasten worden over iedereen in de groep verdeeld. Hardin en de econoom Harold Demsetz voorspelde dat in zo'n omgeving mensen de bron te intensief zouden gebruiken, met als gevolg dat de bron op termijn onbruikbaar wordt. Demsetz stelde bovendien dat mensen niet zouden kunnen samenwerken en afspreken om de natuurlijke bron alsnog goed te gebruiken. Het zou te veel moeite kosten en daarom niet rendabel zijn.

De ideeën van Hardin, Demsetz en speltheoretici die hetzelfde voorspelden zijn zeer invloedrijk geweest, maar empirisch sociaalwetenschappelijk onderzoek laat zien dat ze niet kloppen. Mensen die delen kunnen wel degelijk afspraken maken om hun gebruik in goede banen te leiden

en dit blijkt in de praktijk zeker wel rendabel. Boeren delen met succes hun land en irrigatiesystemen, vissers hun vissersplaatsen, dorpelingen de bossen waar ze van afhankelijk zijn, enzovoort. Deze voorbeelden voldoen dus aan het basale capaciteiten criterium. Sociale wetenschappers en historici suggereren bovendien dat het voor het duurzame en efficiënte gebruik van een gedeelde natuurlijke bron gunstig is als de gebruikers op een democratische manier beslissingen nemen over de bron. Dat betekent dat het controle criterium niet alleen kan worden behaald wanneer mensen gemeenschappelijk delen, maar dat dit zelfs bevorderlijk is voor het realiseren van de basale capaciteiten van mensen.

Deze bespreking van natuurlijke bronnen in mijn dissertatie dient twee doeleinden. Ten eerste laat ik hiermee zien hoe mensen eigendomsinstituties kunnen beoordelen wanneer zij willen weten of deze instituties bijdragen aan basale non-dominatie of niet. Zo vormt de bespreking een illustratie van hoe mijn evaluatieve raamwerk kan worden ingezet. Ten tweede dienen de casussen over natuurlijke bronnen om een breder punt te maken over groepseigendom in het algemeen, namelijk dat het inderdaad basale non-dominatie kan realiseren. Dit kan ook gelden voor eigendom in geheel andere objecten, zowel materieel als immaterieel. De voorbeelden die ik kort aanhaal in mijn dissertatie gaan over het delen van verzekeringsfondsen, bedrijven, kennis en duurzame energiebronnen, zoals windmolens. In al deze gevallen zijn mensen afhankelijk van een gedeeld object voor hun basale capaciteiten en beslissen zij zelf op democratische wijze over hoe het gedeelde object wordt gebruikt. Op die manier draagt groepseigendom bij aan rechtvaardige machtsrelaties. De groepsleden zijn niet afhankelijk van willekeurige macht, en zij zorgen er zelf voor dat ze niet afhankelijk worden van dergelijke machtsrelaties. Ze hebben zelf de controle over de voorwaarden van hun collectieve zelfbeschikking, en voor het hebben van een gelijke individuele stem hierin.

Curriculum Vitae

Yara Al Salman (1991) obtained her Bachelor degree in Liberal Arts and Sciences (*summa cum laude*) from Amsterdam University College in 2013, where she majored in social sciences and law. In 2014 she received her Master's degree in Political Theory (*with distinction*) from the London School of Economics and Political Science. From 2017 to 2021, she pursued her PhD at the Department of Philosophy and Religious Studies of Utrecht University, under the supervision of prof. dr. Rutger Claassen and dr. Dorothea Gädeke. She wrote her thesis on group ownership as part of the NWO project 'Private Property and Political Power in a Liberal Democratic Society.' Starting in September 2022, she will be an assistant professor at Utrecht University, where she will teach ethics and political philosophy.

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