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WHY METAPHYSICS MATTERS: THE CASE OF PROPERTY LAW

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ABSTRACT. Are property rights absolute? This paper attempts to reframe this question by drawing on insights from the field of social ontology. My main claim is that, even if we accept the most extreme view of the absoluteness of property rights, there are some non-normative conceptual limitations to these rights. The conceptual limitations are based on two claims about the nature of property rights and their subject matter, namely objects in the world: (1) property law regulates relations between persons through the use of objects, and not relations between persons and objects; (2) even when owned, objects retain some of their 'independent', unowned, existence. Taken together, these claims confine property law to the *institutional* meaning that is given to objects, which is distinct from their *social* and *natural* meanings. Since property law defines objects in a certain way, it makes space for other social considerations but without the need to qualify property rights.

I. INTRODUCTION

Scholars have long debated the question of whether ownership rights are absolute – that is, whether, *prima facie*, owners are free to do what they want with their property – or, conversely, such rights are inherently qualified and limited by other social values. This issue has important implications for the legitimacy of state actions and how the law accommodates non-owners' interests. In this paper, I attempt to provide a new perspective on the question of the degree to which ownership (and property rights in general) are absolute, by drawing on insights from the field of social ontology. My main claim is that, even if we accept the most extreme view of the absoluteness of property rights, there are some conceptual, non-normative limitations to these rights.

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The classic example of an absolutist view is the so-called Blackstonian view of property rights, according to which owners, have a 'despotic dominion' over their property.[1] But, even for absolutists, ownership and property rights are limited by property-independent restrictions – that is, limitations posed on owners and non-owners alike. For example, the fact that I am not permitted to stab someone with my knife is not a property-limitation rule, for the prohibition on stabbing people applies to everyone, regardless of whether the individual owns the tool used for the stabbing or not.[2] This kind of property-independent limitation does not seem to pose a challenge to absolutists because, even *prima facie*, this kind of act is not included in the concept of ownership.

Here, I seek to show that there is another, distinct, kind of property-independent limitation, that is non-normative in nature. Most of the examples of property-independent rules are normative in the sense that they derive from normative considerations such as the right to life, the moral status of animals, or the public interest. Therefore, common examples of property-independent restrictions are the duty not to commit murder, torture animals, or surpass highway speed limits, and legal regulations dictating how buildings must be built in accordance with safety standards. In contrast, the uniqueness of the limitations I discuss in this paper lies in the fact that they do not stem from anyone's rights or interests. For example, I argue that non-owners sometimes have the liberty to use certain owned artifacts located in the public sphere because, apart from being owned, those artifacts also form part of the city landscape. This is not because non-owners have a *right* to use the city (or any such idea)[3] but, simply, because the owner does not control every aspect related to the object. On the one hand, the existence of this sort of property-independent limitation exemplifies from another angle the conceptual limitations of an absolutist view of ownership, since it shows that the concept of ownership and property rights is limited in certain *non-normative* ways. On the other hand, this kind of limitation also challenges some non-absolutist views of property rights because it shows that what, at first sight, seems to be a property-limitation rule is, in fact, a property-independent limitation.

[1] For a discussion of Blackstone's view, see, e.g., J. W. Harris, *Property and Justice* (OUP 1996): ch. 3.

[2] Harris, *supra* note 1.

[3] See *infra* note 31.

The conceptual limitations that I will argue for are based on two claims I make here about the nature of property rights and the nature of their subject matter, namely objects in the world: (1) property law regulates relations between persons through the use of objects, and not relations between persons and objects (I will later call this 'the interpersonal claim'); (2) some aspects of owned objects are not under the control of the owner. In other words, even when owned, objects retain some of their 'independent', unowned, existence ('the independence claim'). As I argue in detail below, taken together, these claims confine property law to the *institutional* meaning that is given to objects, which is distinct from their *social* and *natural* (*physical*) meanings. Since property law defines and refers to objects in a certain way, it does not refer to everything related to these objects and, thus, makes space for other social considerations but without the need to qualify property rights.

I start my inquiry from an atypical point of departure: the Talmudic principle of 'one benefits and the other does not lose'. In Section II, I explore this notion, according to which, if you use my property without permission but do not subsequently damage it, you should not be required to recompense me for using it. While one line of interpretation explains this principle in moral terms, another provides a metaphysical account for why the user need not pay. The latter explanation is my main concern here, and it will form the unifying thread of my argument. The central claim of the metaphysical account of the 'one benefits' principle is that, insofar as you do not damage the object in question, you do not use *my* object but *an* object. I extract from this interpretation the two aforementioned claims – the independence of objects and the interpersonal character of property law. In Section III, I turn to contemporary property law theories, especially the 'law of things' view developed by Henry Smith and others. The aim of this section is twofold: to show that the two claims are reflected in current discussions in property law theory; and, based on discussions in social ontology, to introduce the dual nature of artifacts – that is, how they can be understood in terms of *social* facts vs. *institutional* facts. In Section IV, I point to some practical implications of making a distinction between social and institutional facts by examining cases involving unjust enrichment, projection onto buildings in the public sphere, and even the

right to privacy in public spaces. Section V is devoted to the distributive implications of the claims I develop throughout the paper. Section VI concludes.

II. 'ONE BENEFITS AND THE OTHER DOES NOT LOSE'

Imagine that you go on vacation. You packed at the last minute and, in your haste, dashing to the airport, you forgot to turn the lights off and lock the front door. Now imagine that I witnessed this scenario unfolding and decide to take advantage of the open door, entering your house and staying there for a couple of days. I make sure I do not damage anything, and I do not use any of your food or any other fungible item. In fact, if I decide not to tell you I have been staying at your house, you will not even notice because everything is just the way it was when you left.

Similar situations have been discussed in the literature and are typically framed under the problem of gain-based remedies.[4] Since you, as the owner, suffered no *actual* loss, the question is whether you are entitled to any compensation based on the benefits I, as the user, gained. Jewish law has a peculiar approach to such scenarios, for the Jewish legal tradition rejects the claim that the owner should be compensated. The Babylonian Talmud calls such a situation 'one benefits and the other does not lose', and presents it as follows:

> … one who resides in another's courtyard without his knowledge, must he pay him rent or does he not need to? […] [Is the squatter legally] able to say [to the owner]: "What loss have I caused you [as you would not have rented it out anyway]?" Or perhaps [the owner is legally] able to say: "You have derived benefit from my property [and therefore you must pay me]"?[5]

The Talmud explains that the circumstances are such that, although the space in question is appropriate for habitation, the owner never intended to derive benefit from it by renting it out. While the Talmud does not provide a definitive answer, historically, it has been accepted by post-Talmudic Jewish law scholars that, when one benefits by using another's property without causing damage, the user need not pay the owner. Most of the Talmud's commentators explain this principle (hereinafter: 'one benefits') by applying another

[4] See, e.g., Hanoch Dagan, *Unjust Enrichment: A Study of Private Law and Public Values* (Cambridge University Press, 1997): pp. 2–12; Ernest J. Weinrib, *Corrective Justice* (Oxford University Press, 2009): ch. 4.

[5] Babylonian Talmud, Bava Kamma, 20a.

Talmudic principle, which condemns the abuse of rights: 'one is compelled not to act in the manner of Sodom' (hereinafter: 'manner of Sodom'). The latter principle is a moral one (which has been transformed into a legal principle): if I caused no damage to your property, and you did not plan on deriving benefit from it, it is morally wrong of you to insist that I pay you for my use of it.[6]

This moral justification – identification of 'one benefits' with 'manner of Sodom' – is the most prevalent explanation in Jewish sources of why the user need not pay. But some commentators have suggested another kind of explanation, one based not on moral but on metaphysical grounds. In this paper, I will be focusing on this alternative.

The commentators of the Talmud who disagree with the abovementioned majoritarian opinion challenge the claimed unison between 'one benefits' and 'manner of Sodom', on several fronts, but, for our purposes, it suffices to mention one. The notion of 'manner of Sodom' is based on coercion: 'one is *compelled* not to act in the manner of Sodom'. If we apply this principle in cases involving ownership rights, it implies that the user has rights over the property of the owner. This is because (following the supposed duty–right correlation), if the owner has a duty not to act in the manner of Sodom, it follows that the user has an actual *right* to use the owner's property. Granting such a right to users weakens owners' ability to control their property, and this violates the most fundamental right associated with ownership – the right to exclude.[7] Therefore, these commentators reject the 'one benefits'/'manner of Sodom' equation

[6] Porat discusses this approach at length. See Benjamin Porat, 'Ownership and Exclusivity: Two Visions, Two Traditions', 64 *American Journal of Comparative Law* (2016): p. 147. Seemingly, what motivates this interpretation is that, as long as the user's use does not interfere with the owner's, the underlying principle of the owner's rights – their ability to use their own property, or, in short, the usufructuary principle – is not violated. But, even for the moralist approach, ownership rights are not reduced to usufructuary rights. Namely, this approach also wants to provide the owner with an arbitrary power to exclude others, even if the owner does not plan on using the property. Therefore, over the decades, Jewish law scholars have developed some restrictions to the 'one benefits' principle, so as to ensure that the concept of ownership is not eliminated altogether or replaced by a usufructuary, first-come-first-served principle. For a philosophical account of ownership not limited to usufructuary rights, see, e.g., Martin Stone & Rafeeq Hasan, 'What Is Provisional Right?' 131 *Philosophical Review* (2022): pp. 51–98.

[7] One might argue that a better way to frame the situation is by saying that the user has a claim-right not to be sued, or enjoys *immunity* from being sued. From this perspective, it is not that the user has a right over the property, only that the *owner* has no right to recourse. Fair enough. But the consequence is the same: the owner is limited in using their property and excluding others from doing so.

and claim that the former principle rests not on a moral foundation but, rather, should be explained using a different approach.[8]

Instead of providing a moral justification for the 'one benefits' principle, these commentators support a metaphysical explanation. According to them, when no damage is involved, the user does not use the *owner's* object but *an* object. Simply put, if you sit in a chair that happens to be mine, as long as you do not damage it, you simply sit on *a* chair – not *my* chair.[9]

This suggestion is quite radical since it undermines the very idea of trespass and squatting: entry onto one's premises without permission does not count as a legal transgression. From a metaphysical perspective, this explanation is also problematic, for it seems to imply that the characteristic 'being owned' is intrinsic to owned objects. In other words, it suggests that this characteristic renders the object a new, different object, which is distinct from its previously unowned condition (and that these two objects – the owned and unowned – simply happen to share the same physical properties). In Section III, I seek to qualify this proposition by using the distinction between the *social* and *institutional* meanings of artifacts. Still, I think this interpretation is right in two respects. First, it emphasizes that owning something does not mean that everything related to the thing is under the control of the owner. Objects retain their pre-owned existence; being owned is just one aspect added to them. In other words, this interpretation maintains that even an owned object has a certain independent existence: there are objects in the world that can be owned, but their being owned does not render their autonomous nature inexistent. This is true, first and foremost, conceptually: prior to being *my* house, the house is also just *a* house, which has physical features, occupies space in the world, and so on. But the independence claim has another implication. As I explain in more detail below, apart from being mine, my house is also part of a street or the city's landscape; and, in so being, there are some things that I cannot control with regard to my house – I cannot forbid

[8] This approach is much more similar to the common law approach to property law, since it emphasizes the idea of *exclusivity* over the idea of *exclusion*. See Larissa Katz, 'Exclusion and Exclusivity in Property Law', *University of Toronto Law Journal* 58 (2008): pp. 275–306; Ernest Weinrib, 'Ownership, Use, and Exclusivity: The Kantian Approach', 31 *Ratio Juris* (2018): pp. 123–138. For a detailed discussion of the difference between the majoritarian opinion in Jewish law and the common law approach, see Porat *supra* note 5.

[9] For a discussion of the alternative approach, see Norman Solomon, 'Concepts of Ze Neheneh in the Analytic School', III *Jewish Law Annual* (1980): pp. 49–64.

people from looking at it, pointing at it, taking pictures of the street in which my house also appears, and so on. All these examples reflect the fact that my ownership does not cover every aspect related to the house, for it has other, unowned meanings. Therefore, although the idea of ownership and property rights refer to and regulate some features of owned things, they do not refer to or regulate all those aspects. From this, it does not follow that, when you do not damage my chair, you use another object, which is different from mine. All it means is that, although the chair is mine, some of its features are not under my control.

Second, the metaphysical interpretation captures the idea that property rights are relations between persons, and not relations between persons and things. Property rights constitute an imposition of normative meaning on objects in the world; and, although this meaning is one of the ways in which we understand these objects, it does not follow that the idea of ownership refers to *all* features of owned objects. As I later claim, this is true even if we take property law to *define objects* and not only to *attribute* normative status (such as rights, obligations, and so on) to owners.[10]

If we accept that (1) owned objects have an independent existence (hereinafter: the independence claim) and (2) property rights are normative concepts regulating relationships between persons (hereinafter: the interpersonal claim), what follows is that objects should be treated as owned objects only when their being used by someone else has wronged the owner in some way. Another means of expressing this is to say that owners must demonstrate that the user has done something also *to them* (through the use of their property), and not only to *the object*.[11] As we have seen, scholars who interpret 'one benefits' in metaphysical terms distinguish between uses that do not cause damage and uses that do. Only in the latter case can the user's using be considered as having derived a benefit from the

[10] Note that, apparently, what follows from the metaphysical interpretation is that the question of whether the user is allowed to use the property can be raised both retrospectively and prospectively. That is to say, the question at hand is not whether the user must compensate the owner but, rather, whether the user can use it in the first place. The owner should show that the use of the property matters to them in some way, and they can demonstrate this by living there, renting it out, letting their friends stay there, etc. As long as the owner decides to leave the place vacant, however, the user is free to use it.

[11] To some extent, this point seems to be deeply related to the traditional interpretation of Marx's idea of fetishism: capitalism makes social relations between people appear to be relations between things. On this matter, See G. A. Cohen, *Karl Marx's Theory of History* (Princeton University Press, 1978): ch. 5.

owner. As one scholar observes: ''It seems to be clear that when [the owner] suffers no loss, [the user] does not 'benefit *from his fellow*'.''[12] Since property rights are a reflection of normative relations between owners and non-owners, from this perspective, what matters is not what has been done to the physical expression of these normative relations (the property itself) but to its owner.

In view of the independence and interpersonal claims, to be actionable, a (legal) claim should show that harm has been caused to the owner and not to the object. But it is important to emphasize that, to understand the concept of property law, these two insights must be taken together. The normative relations relevant here are those reflected by *the use of objects*. The alternative analysis of 'one benefits' does not deny that the user wronged the owner by using the latter's possessions. It just points out that a use is legally wrongful only insofar as it affects not only the object but also the owner. Therefore, this interpretation would define property rights as interpersonal rights *with respect to* things, a definition to which I will return in the next section. Even if we do not accept this view to its fullest degree (namely, if we want to keep in place the idea of trespass and squatting, since we think that invading someone's private space does, indeed, affect him or her), we can still extract from it these important claims.

Two important points need emphasizing here. First, note that immediately following from the metaphysical view of 'one benefits' is the question of the conceptual limits of property rights. Again, the motivation of those holding this interpretation is that the alternative-moral justification of the principle undermines the idea of ownership as exclusive control. By contrast, the alternative explanation defines ownership as exclusivity and, at the same time, narrows the limits of property rights because it claims that the exclusive control of the owner relates only to those aspects of the object with which property law deals in the first place. Therefore, this approach is able to accept the so-called Blackstonian notion of ownership – property as

[12] Shimon Shkop (1859–1939), *Novelties on Bava Batra* (Hebrew): sec. 6. One objection might be that, although the owner suffered no loss, the user benefited by saving the amount of money that would otherwise need to have been spent on rent. This benefit might therefore fall under the law of unjust enrichment or be defined as gain-based tort. From this perspective, there is no clear difference between *saving* and *earning* money. To avoid such a challenge, commentators advocating for the metaphysical view argue that users would need to claim that, had they known they would need to pay, they would have opted to spend the night on the streets; therefore, they saved no money by staying at the owner's house.

the sole and despotic dominion of the owner – and yet simultaneously emphasize that this dominion does not extend to all the aspects associated with the owned object.

Second, even according to the metaphysical view, there is a normative implication here: you now have a *liberty* to sit on my chair. For the moral interpretation, this normative situation (the permissibility of your sitting on the chair) stems from your *right* to use my chair so long as you do not cause any damage. By contrast, for the metaphysical interpretation, this normative situation has a non-normative cause. Consider in this context the two following examples: if I license you to sit on my chair, my normative power is what makes your sitting on the chair permissible. My legal power changed the nature of your act but without changing the non-normative circumstances (it is the same chair, regardless of my permission; it is the same act called 'sitting', regardless of my permission). If, by contrast, my friend convinces me to let you sit on my chair, their convincing does not have any normative significance, and, yet, it has a causal effect on your liberty to sit on my chair.[13] According to the metaphysical interpretation, the 'one benefits' case is more similar to the latter scenario: the permissibility of the user's residing in the owner's house is not due to a change in the normative status (i.e. the owner licensing the user to reside on their premises, or the owner's duty to let other use their property), but it is a kind of neutral, non-normative circumstance. Again, there is a normative implication to this neutral, non-normative circumstance – you can now sit on my chair, and no one can object to your doing so. But the cause of this permissibility is non-normative.

Having laid out the competing view of the 'one benefits' principle, I now turn to demonstrating that the insights discussed thus far can shed light on discussions in contemporary property law theory scholarship. Besides showing the relevance of the metaphysical view of 'one benefits', I seek to illuminate the relationship between this view and the important distinction between *social* and *institutional* facts.

[13] For more on these examples, see, e.g., Joseph Raz, 'Voluntary Obligations and Normative Powers', 46 *Aristotelian Society Supplementary* (1972): pp. 59–102; Christopher Essert, 'Legal Powers in Private Law', 21 *Legal Theory* (2015): pp. 136–155.

III. THE 'LAW OF THINGS' VIEW AND NORMATIVE BOUNDARIES

For many years, the dominant approach to property law has been the 'bundle of rights' theory. For our purposes, it is enough to mention two of the theory's chief claims.[14] First, this theory rejects the traditional understanding of property rights as rights *in rem* – that is, as the owner's rights against the world as a whole. According to 'bundle of rights' theorists, property rights are multiple interpersonal rights against every other person in the world, separately. Therefore, property rights differ quantitatively (but not qualitatively) from other interpersonal rights (that is, rights *in personam*, such as contractual rights). Second, and more relevant here, this theory claims that property rights are not rights *to things*. Property law, from this perspective, does not describe any external object to which someone has a claim, but rather is simply a bundle of legal relations between persons.

Several property-law theorists, however, have issued challenges to the 'bundle' metaphor. One of these challenges is concerned with re-evaluating how 'things' play a role in shaping property law. While the 'bundle of rights' view does not take the place of things seriously (and sees property law as merely interpersonal rights), its opponents emphasize the importance of things in the context of property law. According to a prominent view – one held by Henry Smith, Thomas Merrill, and James Penner, among others – property law refers to a distinctive set of rights to exclude others from *things*. Unlike the 'bundle of rights' picture, when we talk of property rights, there is, indeed, a 'thing' that we refer to.[15] But, even from this perspective, property rights are interpersonal rights *with respect to* that thing. On the one hand, this formulation of property rights acknowledges the place of things in the understanding of these rights. On the other, it dispels the mystified conception of property rights as rights *to* a thing, which implies that there is a direct normative relationship

[14] There is no reason to recount the extensive literature on this approach. It suffices to mention that the 'bundle of rights' approach is based on two seminal articles, namely: Wesley N. Hohfeld, 'Fundamental Legal Concepts as Applied in Judicial Reasoning', 26 *Yale Law Journal* (1917): pp. 710–770; and Anthony M. Honoré, 'Ownership', in: Anthony G. Guest (ed.), *Oxford Essays in Jurisprudence* (Oxford University Press, 1961). For a critical analysis of this approach, see, e.g., James E. Penner, 'The Bundle of Rights Picture of Property', 43 *UCLA Law Review* (1996): pp. 711–820; James E. Penner, *Property Rights: A Re-Examination* (Oxford University Press, 2020): ch.1.

[15] See, e.g., Henry E. Smith, 'Property as the Law of Things', 125 *Harvard Law Review* (2012): pp. 1691–1726.

between persons and things.[16] Importantly, however, those 'things' are not 'out there all ready to be appropriated as property'.[17] In short, property law 'defines what a thing is to begin with'.[18] That is to say, not only does property law attribute normative status to persons who hold 'things' (such as ownership rights) but it also defines the circumstances under which external resources gain the status of '"things' subject to the law of property" or '"things' that can be owned."[19]

Assuming that the critique of the 'bundle of rights' approach is convincing, the fact of re-evaluating the place of things requires us to better understand the relationship between how external resources are defined in the context of property law and their meaning in other contexts. As mentioned, contemporary theorists claim that '"things' that can be owned" are defined socially, i.e. by the law. This is true for any material that is the subject matter of property law: 'land's soil nutrients, moisture, building support, or parts of everyday objects like chairs', are transformed 'into the parcels of real estate or tangible and intangible objects of personal property'.[20] This transformation gives an artifactual character to the subject matters of property law. In short, 'things', even those that are physical objects in the world, are artifacts. The crucial issue here is that the 'artifactualization' of

[16] As Merrill and Smith observed: 'It is often said that property is concerned with the rights and obligations of persons, but the critical qualification is that property concerns the rights and obligations of persons *with respect to* things' (emphasis in original). See Thomas W. Merrill & Henry E. Smith, 'The Architecture of Property', in: Hanoch Dagan & Benjamin Zipursky (eds.), RESEARCH HANDBOOK OF PRIVATE LAW THEORY (Edward Elgar Publishing, 2020): p. 140. This formulation of property rights can be traced back to Kant: see Mary Gregor, 'Kant's Theory of Property', 4 *The Review of Metaphysics* (1988): pp. 757–787.

[17] James E. Penner, *The Idea of Property in Law* (Oxford University Press, 1997): p. 126. For Penner, '"Thing' here is a term of art which restricts the application of property to those items in the world which are contingently related to us."

[18] Smith, *supra* note 15, at 1704.

[19] See Henry E. Smith, 'On the Economy of Concepts in Property', 160 *University of Pennsylvania Law Review* (2012): pp. 2097–2128. Still, this approach differs from the 'bundle' view in that it does not reduce legal concepts to legal norms. The law also creates concepts, not only norms. Furthermore, for Smith, in the context of property law, 'things' are concepts – that is, they are modes of presentation that help us organize data we receive from the world in a particular way. So, rather than listing all the things that non-owners are not allowed to do on a piece of land that belongs to someone (e.g., not to trespass, not to cause damage to it in some way, and so on), we could, instead, denote all the legal norms associated with the piece of land being owned by someone. This approach is enacted by denominating the said piece of land 'Blackacre'. This is not unique to property law. Concepts in other legal areas are used by Essert against Smith's 'law of things' view. See Christopher Essert, 'Property in Licenses and the Law of Things', 59 *McGill Law Journal* (2014): pp. 587–590. Although my concern here is with the creation of *things* and not the *rights related to them*, Penner's discussion of two kinds of nominalism seems relevant. See Penner, *Re-Examination, supra* note 14, at ch. 2.

[20] Smith, *supra* note 15, at 1704.

external resources that are subject to property law applies, in most cases, to things that are already artifacts (such as cars, houses, and so on). So, we have artifacts that are defined in some way socially; and, in the context of property law, we have concepts that are also defined socially but, this time, via property law, or as MacCormick puts it: ''All the 'things' of the law have their 'thinghood' or 'reality' defined by or under law, and, beyond law, by very basic conventions deeply rooted in human cultures.''[21] To use Searle's terminology, statements about cars, houses, and so on involve *social* or *artifactual* entities; and, where *rented* cars, *leased* houses, and *owned* buildings are concerned, these statements also involve *institutional* entities (I discuss this distinction in more detail below).[22] Following the alternative interpretation of the 'one benefits' principle, these facts do not completely overlap. That is to say, when I state a social fact, such as 'there is a building at 88 Bloor street', it is not quite the same as stating an institutional fact, such as 'Michael Jordan owns the building at 88 Bloor street', even if both facts refer to artifacts that share the same physical features (what Searle terms *brute* or physical facts). In other words, although pointing to the same object located in the world, the 'building' in the first affirmation is not exactly the 'building' in the second affirmation, for the institutional meaning of a 'building' is defined by law, whereas the social meaning is defined by other social practices. This distinction between the social and institutional meanings of artifacts reflects the 'independence claim', since it shows that artifacts have broader, non-institutional meanings. And note that this social meaning is not necessarily normative. For instance, sometimes the 'building' is considered just a part of another social-artifactual kind, such as a 'street'.

The duality of artifacts, as reflected by the distinction between social and institutional kinds, demonstrates the independence claim. What I would like to show now is that, with this claim, comes along another, according to which the boundaries of institutional kinds are drawn normatively. For our purposes, the meaning of 'normative' is

[21] This is more obvious concerning incorporeal things, but '[i]t should not, however, be supposed by contrast that the identity and separateness of corporeal movable things is entirely independent of human rules and conventions – think of what makes it possible for there to be cars, or knives, or sacks of potatoes. This is even more obviously true of items of corporeal immovable property, each lot of which is identifiable only by recourse to elaborate rules of land-measurement, boundary-drawing, and mapping'. Neil MacCormick, *Institutions of Law: An Essay in Legal Theory* (Oxford University Press, 2007): p 137.

[22] See, e.g., John Searle, *The Construction of Social Reality* (The Free Press, 1995).

twofold: first, the definition of 'things that can be owned' depends on normative questions, such as why we think that this or that 'thing' should be subject to property law: ''If an object is viewed in predominantly negative ways, such that there is no interest in harvesting or utilizing it, like mosquitos or gnats, it will not be regarded as eligible for treatment as property … these objects are not 'legal things', in the sense of things that constitute the foundation of a system of property.''[23] Second, and more importantly, when we deal with law-dependent 'things', we switch from talking about objects in the spatio-temporal world to the world of norms. Again, in many cases, the normative implications of property law refer to objects with physical features, but the mode of thinking changes. Property law draws normative boundaries around its 'things', and *normative* boundaries are distinct from their *physical* (and *social*) boundaries.

The idea of normative boundaries, as opposed to physical ones, might be clarified with the following two examples. First, think of social and legal norms such as those requiring owners to remove snow and ice from public sidewalks abutting their property. Although the sidewalk is formally a public area, the owner's private property, to some extent, 'extends' into this sphere as well.[24] In other words, the 'normative territory' of the owner is different from the physical boundaries of the territory.

The other example concerns the idea of nuisance. As many scholars have shown, in many cases, nuisance cannot be understood as a physical invasion.[25] A better way to understand nuisance is to see it as a reflection of the idea that ownership rights sometimes extend beyond the physical confines of the property. So, even if I do not physically invade your premises, I still might invade your normative space, or as Essert puts it: 'there is no a priori reason to think that this (= ownership) right will precisely protect some physical space against physical invasions understood empirically. Rather, the

[23] Smith & Merrill, *supra* note 15. See also James Toomey, 'Property's Boundaries', 109 *Virginia Law Review* (forthcoming, 2023).

[24] Various jurisdictions impose similar duties, albeit these are different in important respects. This does not mean, of course, that the public sidewalk is always treated as private property. For examples and different accounts of this phenomenon, see Larissa Katz, 'Governing through Owners: How and Why Formal Property Rights Enhance State Power', 160 *University of Pennsylvania Law Review* (2012): pp. 2031–3032.

[25] See, e.g., Penner, *Re-Examination*, *supra* note 14; Christopher Essert, 'Nuisance and the Normative Boundaries of Ownership', 52 *Tulsa Law Review* (2016): pp. 85–120.

normative boundaries of the right will be set by normative considerations grounded on the value that justifies the right'.[26]

Comparing more purely abstract legal entities (such as stocks, copyrights, or patents) with legal entities with physical features might be useful here. Clearly, abstract legal entities are pure artifacts, namely, they are products of human agency. So, the law creates and defines the meaning and limits of these artifacts. And, even if we call a patent a 'thing', this does not mean we can put our finger on the place where the patent 'exists'.[27] And, yet, we can talk about the boundaries of this concept. This is because its boundaries are normative. By contrast, in cases of corporeal things, we apply new social and institutional meanings to existing external resources: we call a pile of stones and metal 'a building' (social/artifactual meaning), and we provide it with a new status of private property (institutional meaning). And, yet, my claim is that, just like in the case of abstract entities, the building's social and institutional statuses do not start and end with the physical, brute boundaries of the object.[28]

In sum, if we accept that, in property law, 'things' are not only artifacts but also have normative boundaries, contemporary discussions in property-law theory seem to align with the independence

[26] Essert, *supra* note 25, at 103 (emphasis in original, brackets are mine). According to Underkuffler, one of the dimensions that the idea of property consists of is *what thing* a theory of property applies to – that is, its 'space' or 'area of field'. For Underkuffler, this dimension 'is obviously (as a literal matter) more readily applicable to land or other corporeal property than it is to property of a different sort'. In the case of incorporeal property, ''descriptions such as 'scope', 'extent', or 'limits' may more appropriately apply.'' Laura Underkuffler, *The Idea of Property: Its Meaning and Power* (Oxford University Press, 2003): p. 22. Following Essert, I believe the latter terms are more appropriate even in cases of corporeal property. Again, the emphasis on normative boundaries does not ignore the physicality of many objects that are subject to property law. Sherwin also emphasizes the importance of boundaries that define 'things' in property law. Where non-physical things are concerned, these boundaries must be determinate; hence, they should be set by rules, as opposed to standards. See Emily Sherwin, 'Two- and Three-Dimensional Property Rights', 29 *Arizona State Law Review* (1997): pp. 1084–1092: '[T]he objects of property need not be physical things, they need only be sufficiently well defined to retain their identity in a variety of settings. They must be legal things, the boundaries of which are not physical lines, but legal rules expressed in a particular form' (p. 1088).

[27] Peukert provides a fuller ontological account of intellectual property based on Searle's social ontology. He does so by contrasting this kind of ontology with a traditional, Platonic type. See Alexander Peukert, *A Critique of the Ontology of Intellectual Property Law* (Cambridge University Press, 2021): ch. 2. For a similar analysis, see Alexandra George, *Constructing Intellectual Property* (Cambridge University Press, 2012): ch. 3.

[28] Searle elaborates on this idea as follows: 'Such material objects as are involved in institutional reality, e.g., bits of paper, are objects like any others, but the imposition of status-functions on these objects creates a level of description of the object where it is an institutional object, e.g., a twenty dollar bill. The object is no different; rather, a new status with an accompanying function has been assigned to an old object …'. For Searle, the only difference between abstract and non-abstract institutional entities is that the former might be called an 'institutional *object*', whereas the latter is only an 'institutional *fact*'. See Searle, *supra* note 22, p. 57; Amie L. Thomasson, 'Realism and Human Kinds', 67 *Philosophy and Phenomenological Research* (2003): pp. 580–609.

and interpersonal claims we drew from the metaphysical explanation of the 'one benefits' principle: (1) the independence claim: since, in property law, things are artifacts defined by property law, they are distinct, first, from their *physical* components. But, since these concepts are tailored to property law, they are also different from their broader *social* meaning. In other words, (physical) resources subject to ownership might be reflected in three kinds of factual statements: *brute* facts (concerning their physical materiality), *social* facts (concerning their existence as a product of human agency),[29] and *institutional* facts (concerning their existence as a product of constitutive rules, made by property law);[30] and (2) the interpersonal claim: given their normative boundaries, 'things' are defined in order to settle relationships between owners and non-owners; therefore, the 'things' of property law must be understood only within the confines of the owner–non-owner relationship.[31]

Having understood that the 'independence' and 'interpersonal' claims are reflected in contemporary property-law theories, and the link between these claims and the distinction between institutional and social facts, let us now turn to some of their practical implications.

IV. THE DUALITY OF ARTIFACTS AND ARTIFACTS IN THE PUBLIC SPHERE

If we take the distinction between social and institutional facts seriously, it seems that, however the law views 'things', those same things will always be invested with more meaning from the social perspective. In other words, by their very nature, ownership rights are conceptually limited: even if defined in Blackstonian-absolutist

[29] I use here Marmor's definition of artifacts. See Andrei Marmor, *Foundations of Institutional Reality* (Princeton University Press, 2023): ch. 5.

[30] For Searle, institutional facts have a uniform formulation based on constitutive rules: *X* (a brute fact or a pre-institutional fact, e.g., a green piece of paper) counts as *Y* (an institutional fact, e.g., a dollar bill) in context *C* (if the bill was issued by the Bureau of Engraving and Printing). In addition to constitutive rules, another component of institutional facts, according to Searle, is the *collective acceptance* of the constitutive rule. This is, admittedly, a simplified version of Searle's social ontology. For a much richer and more developed analysis, see, e.g., Brian Epstein, *The Ant Trap: Rebuilding the Foundations of the Social Sciences* (Oxford Studies in Philosophy, 2015). Epstein discusses Searle's view at length in chapter 6.

[31] We might think of artifacts in the way that the law assigns them normative meaning as the spatio-temporal implications of the mind-dependent artifact called 'the law'. Marmor explains that position eloquently. See Andrei Marmor, 'Law, Fiction and Reality', in: *Law as an Artifact* (Luka Burazin, Kenneth Himma, & Corrado Roversi eds., 2018): pp. 58–59.

terms, owned objects hold wider social meanings that give room for other considerations, interests, and values.

Let me clarify this with a somewhat trivial example: you are free to contemplate on an artifact (such as a house), and no legal system can forbid you from ''using'' it in this way (that is, by thinking about it). Or, if you are passing by my house, the law cannot forbid you from looking at it. I think it would be unintuitive to frame such situations through the prism of a balance of rights (your, say, freedom of movement vs. my right to privacy) because the issue should not be raised in the first place. Apart from being mine, the house is also part of the street; this feature of my house is not under my control. There is something about this house that cannot be called mine because houses have other, social, meanings that the concept of private property cannot capture. The other reason that the law does not address such issues is the other point I derived from the 'one benefits' principle: your contemplating on my house or actively looking at it has little – if anything – to do with me, hence it is not a legal matter.

Take a more serious example: imagine a tour-guide who earns a living by showing tourists around the City of Toronto. As part of her tour, she shows them its most famous building, the CN Tower, which is (for the sake of argument) privately owned. All she does is point out this tower as the tour bus passes by it: she and the accompanying tourists neither touch nor get very close to it. Although some might argue that the tour-guide makes money out of 'using' the CN Tower and therefore owes money to the building's owner, I hold that, even from the perspective of unjust enrichment, there is no claim to answer here. Again, we could frame this situation through the prism of a balance of rights but, to me, that framework would not quite fit. It is more intuitive to say that the CN Tower is part of Toronto's landscape, and its owner does not 'own' this feature of the tower. (To those who do think the tour-guide should pay the owner, how would you respond if the viewing were occurring virtually, on a Google Street View tour?I believe there is no relevant difference between the two scenarios.)

This argument applies not only to iconic buildings considered part-and-parcel of what defines the city but also to almost every object in the public sphere.[32] I would reason that, while, in principle, every building in Toronto is owned by someone, it is also part of a social phenomenon called 'the street' and, more broadly, 'the landscape of the city of Toronto'.[33]

In this context, the question of the legality of the use of light-projections onto buildings will serve as a good example. Such light-projections are used to communicate commercial, political, and other messages, and, when these are projected without the building-owner's consent, different legal issues arise, most prominently the question of nuisance. The cases are compelling because such projections present no physical interference for the owner (at least, in cases where the message is projected onto a windowless wall).[34] While the tendency might be to consider all cases of projection alike, in my opinion, an important distinction should be made between those in which the sentiment of the message is against the owner and those in which a building is simply used as a backdrop as part of the wider city landscape.

Consider the following two scenarios: (i) after Donald Trump was elected president of the United States, imagine someone projected anti-Trump messages onto the façade of Trump Towers; and (ii) following an incident involving police violence, imagine that demonstrators projected 'Black Lives Matter' onto another building in Manhattan. While, in the first case, the building is specifically

[32] My argument here, which emphasizes the non-normative aspects of artifacts in the public sphere, stands against social and legal movements that call for recognition of the 'right to the city'. See, e.g., Sheila R. Foster & Christian Iaione, 'The City as a Commons', 34 *Yale Law & Policy Review* (2016): p. 281. See also Katya Assaf-Zakharov & Tim Schnetgoke, 'Reading the Illegible: Can Law Understand Graffiti?' 53 *Connecticut Law Review* (2021): pp. 117–153.

[33] On the development of the idea of landscape and its use for the domination of space, see, e.g., Denis Cosgrove, 'Prospect, Perspective and the Evolution of the Landscape Idea', 10 *Transactions of the Institute of British Geographers* (1985): pp. 45–62.

[34] Brady defines the injury accompanying projection as appropriative harm. For her, '[p]rojections cause harm to property owners both by diminishing the property's use and by affronting the owner's dignity and privacy interests by making him or her an unwitting billboard'. Maureen E. Brady, 'Property and Projection', 133 *Harvard Law Review* (2019): p. 1149. Brady suggests a broadening of the definition of 'nuisance' to include unwanted projections. Her analysis might view more projection cases as violations of ownership rights than I suggest here. But it is worth noting that, by the very recognition of projection as tort, Brady understands the boundaries of property as normative ones, for she steers away from a physical or sensory definition of nuisance ('[t]hese displays are violations of and intrusions on the owner's sovereignty – intangible ones, yes, but intrusions nonetheless' (p. 1166). Either way, I do not aspire to provide a full account of what kinds of projections should be actionable. I merely seek to demonstrate that projection is another area in which 'the duality of buildings' might play a role.

chosen to communicate a message aimed against the owner of the building, in the latter, the building is simply used as a backdrop to communicate a message against, say, the Police Department. The activists projecting 'Black Lives Matter' do not care to whom the building belongs; to the extent that they even think about the building itself, they likely see it as part of a city that might be associated with racial violence. Therefore, it is only in the first scenario that light-projection should be considered a nuisance. This is because, when targeting the owner, the perpetrator is using the building *as it relates* to the owner, as opposed to simply using a thing that is part of a broader landscape. Put differently, not only does the distinction reflect the independent existence of objects but also the second insight – that property law settles relations between persons, and not between persons and things.

I mentioned earlier that the metaphysical understanding of 'one benefits' does not deny that property law is concerned with the violation of owners' rights *through the use of objects*. The case of projection is helpful in this context also: if I project something insulting about you onto your building, this will be legally considered both an act of nuisance and a matter of property law. But, if I project the very same message onto a building located across from your building, this will not be a matter of property-rights violation because you do not own the object used for insulting you. Hence, also from this perspective, property rights concern relationships between persons *through the use of their objects* and not other kinds of relationships between persons.

Albeit with some caution, the claims suggested here might be extended to other areas such as the right to privacy in public spaces. Privacy scholars have debated the applicability of privacy claims in non-private areas. It is clear that the extent to which privacy claims apply in public spheres is narrower than in private ones; the question is how much narrower and why? Is it because, by and large, by entering a public space, one is automatically understood to be waiving one's right to privacy? Or, rather, is it because the right to privacy does exist in public spaces but to a lesser extent?[35]

This question extends far beyond the scope of this paper. Yet, I maintain that the distinction I made earlier between targeting a

[35] See, e.g., Elizabeth Paton-Simpson, 'Privacy and the Reasonable Paranoid: The Protection of Privacy in Public Places', 50 *University of Toronto Law Journal* (2000): pp. 305–346.

building's owners and merely using it as an integral aspect of the public sphere may also apply here. If I take a picture of the Eiffel Tower and you happen to be standing next to it, your part in my picture is negligible. All I want is to take a picture of the tower and you are an incidental part of the view. It could be anyone else, and I could not care less about who happens to be standing next to the tower. If, by contrast, I deliberately direct my camera at you and your partner when you are kissing – that is, you become the main subject of the photo – this might be something else.[36] In the first case, where my intention is to capture the Eiffel Tower, I treat you and anybody else that happens to be standing next to it as an incidental part of the Tower's 'landscape'. In the other case, by contrast, my intention is to capture your image, to which the Tower forms an incidental backdrop, hence I should take your privacy concerns more seriously.[37] In other words, there is an important difference between seeing someone merely as an incidental part of the landscape and aiming to capture their particular identity in photographic form. But, since issues of privacy are not my concern here, I leave this point open. My only purpose here is to show that, at least to some extent, it is not only artifacts that can be seen as part of the city's landscape but persons too.

[36] In an important Canadian case, the Supreme Court made a similar distinction. According to the majority, even if we recognize that individuals do have a right to privacy in public spaces, this right might be outweighed by the public interest, such as where the person is not the principal subject of the photograph and appears in it purely by happenstance: "An image taken in a public place can then be regarded as an anonymous element of the scenery, even if it is technically possible to identify individuals in the photograph. In such a case, since the unforeseen observer's attention will normally be directed elsewhere, the person 'snapped without warning' cannot complain. [...] On the other hand, the public nature of the place where a photograph was taken is irrelevant if the place was simply used as background for one or more persons who constitute the true subject of the photograph" (*Aubry v. Éditions Vice-Versa Inc.* 1 S.C.R.591, 157 D.L.R. [4th] 577, 616–617, per L'Heureux-Dubé and Bastarache).

[37] A possibly comparable example is the legal requirement to obscure the identity of persons photographed or videotaped in public. What difference is there between a blurred-out photo of a person and a clear one? I am tempted to say that it has something to do with *numerical* and *narrative* identities (see David DeGrazia, *Human Identity and Bioethics* (Cambridge University Press, 2005)). Even if we accept the view that we have a right to privacy in public spheres, this view is concerned with things that are associated with the unique characteristics of the person, those that make him or her (identifiably) the person they are. For this reason, privacy and anonymity are so closely related.

Let me conclude this section by addressing a possible objection to my 'duality of artifacts' claim. It might be argued that, as I (the owner) can consume or dispose of my object as I please, it is impossible to assert that there are features of the object that are not under my control.[38] Why is there virtually no limit to what I can do with my property if I do not own all of its features? My answer, to which I will return in Section V, is that the other features are not owned by *anybody*: perhaps the distinction between the social and the institutional meanings of artifacts emphasizes that the social, non-institutional facts are not part of property law. They are not owned by the public and therefore there are no others except the owner that have proprietary claims over his or her artifacts. (Note that this is even truer with regard to persons and the right to privacy – just because you are standing next to the Eiffel Tower and, by that, you might be conceived as part of its landscape, it does not follow that the public owns some features of your person.) Another (related) response might be: just as my building is seen as an incidental part of the city landscape, so is its absence. The only point that follows from the fact that my house is part of a landscape is that, insofar as it is a part of that landscape, others may use it as such; but, once I decide to take it out of the landscape (and, by analogy, if you walk away from the Eiffel Tower), no one can prevent me from doing so.

Be the response as it may, I want to reemphasize here that we are talking about two types of entities (social and institutional) that share the same brute entity. Since these entities do not overlap, it is only reasonable that there might be clashes between them. Imagine, for example, that when I see that someone is projecting 'Black Lives Matter' onto my building, something that (according to my claim above) is not forbidden, I find a way to prevent him from doing so, for instance by covering my building with something that blocks the projection lights. In such a scenario, I exercise my property right and

[38] Freeman partly answers this apparent difficulty in his discussion of owners' rights to a marginal product; and, to some extent, his response applies also in other contexts: '[E]ven if we concede that owners may serve a valuable function and have a right to some return on investment, abstinence from consumption does not by itself imply that owners of capital should have complete rights to the monetary value of the entire marginal product of the resources they legally own. The mere fact that the capitalist could consume his capital instead cannot establish a right to the entire marginal product'. Samuel Freeman, 'Capitalism in the Classical and High Liberal Traditions', 28 *Social Philosophy and Policy* (2011): p. 39. While providing some pointers to the answer, seemingly, the cases I have discussed here are more challenging.

the demonstrator exercises their liberty to project – but, this time, the two interests clash and cannot prevail simultaneously. I cannot see why such a situation creates any problem with the claims I have raised above. All it shows is that the coexistence of social and institutional entities sometimes leads to unresolvable clashes. My ability to dispose of my property, even though it can have other social meanings, is just another possible expression of such a clash.

V. DISTRIBUTIVE JUSTICE

I started this paper by contrasting two views of the 'one benefits' principle – moral vs. metaphysical. In this section, I want to return to the relation between moral and metaphysical explanations and show how the metaphysical explanation I have developed throughout this paper corresponds to moral views regarding distributive considerations. For the sake of simplicity, I will focus on comparing my claims with one prominent moral approach: left-libertarianism. My rationale for concentrating on this view is that it seems to me that most of what I have said also makes sense if we accept a left-libertarian view of property rights. Therefore, to clear up this point, it might be useful to show how, despite the resemblances, the metaphysical perspective I adopt here leads to some different conclusions than this view.[39]

By and large, the left-libertarian view is willing to accept (by extension of the idea of self-ownership) that people have ownership rights over the products of their labor: by mixing my labor with an external resource, this resource becomes mine. At the same time, proponents of this view argue that individuals have no right to a disproportionate share of the external resources of the world. The latter claim is partly based on the Lockean *proviso*.[40] But, in part, it is also based on the assumption that some parts of the external resources subject to ownership are not products of the owner's labor. This understanding can be traced back to Henry George, who claimed that '[a]s a man belongs to himself, so his labor when put in

[39] For brief introductions to left-libertarianism, see Peter Vallentyne, Hillel Steiner, & Michael Otsuka, 'Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried', 33 *Philosophy and Public Affairs* (2005): pp. 201–215; Peter Vallentyne, 'Left Libertarianism', in: David Estlund (ed.) *Oxford Handbook of Political Philosophy* (Oxford University Press, 2012): pp. 152–168.

[40] See, e.g., T. Nicolaus Tideman, 'Takings, Moral Evolution, and Justice', 88 *Columbia Law Review* (1988): pp. 1723–1725.

concrete form belongs to him'. He also stated the negative corollary: 'If a man be rightfully entitled to the produce of his labor, then no one can be rightfully entitled to the ownership of anything which is not the produce of his labor'.[41] Since land is not a product of the labor of any person, it cannot belong to anyone in particular. Therefore, even if you produce something on the land – perhaps you build a house there – you cannot assert rights over the land itself, and the wealth generated by using the land should be distributed to all people.

The Georgian claim and its extensions[42] may sound very similar to what I suggest here: there are some aspects of your property, such as the land on which it is built or the view it affords, that do not belong to you even though it is in your possession. However, despite this resemblance, there are some important distinctions. As mentioned, the left-libertarians' point of departure is the Lockean labor justification of ownership. By contrast, what I suggest here is not dependent on this particular justification. Regardless of the justification of ownership, my claim is that there are some aspects that ownership over external resources does not cover. This is, after all, what yields the difference between moral and non-normative-metaphysical explanations.

As noted in Section IV, another important difference vis-à-vis the Georgian claim arguably concerns the *status* of the aspects that are in the possession of the owner but are not hers. For example, left-libertarians hold that natural resources are owned in some egalitarian manner. Therefore, they would argue that, even if a river runs through your private property, the benefits from it should be distributed to all people. In contrast, I do not take a stand on this matter. Yet, it seems that, even if *some* aspects are owned by the public, not all aspects can be subject to ownership, either private or public. For instance, it seems unintuitive to deem it necessary to state that the public owns the right to watch the building; there are some uses that are just not part of any kind of property law whatsoever.

Lastly, the Georgian argument (at least the original one) seems to lack a crucial point. As noted earlier, as viewed through the lens of

[41] Henry George, *Progress and Poverty* (1881): Book VII, ch.1.

[42] See, e.g., Philippe Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Clarendon Press, 1995).

the law, natural resources, in general, and land, in particular, have artifactual features. This is more obviously true when we speak of the *value* of land, the 'thing' that Georgians claim should be distributed. Value is an artifact, and therefore any justification for redistributing the value of land must demonstrate why this human product does not belong exclusively to the possessor of that land. In this respect, my claim is in line with Barbara Fried's distinction between owning things and owning the value of things – a distinction that, for Fried, does not require a commitment to the Lockean view of property.[43]

VI. CONCLUSION

Throughout the paper, I have sought to elucidate how taking a metaphysical perspective might clarify some theoretical issues in the field of property law, and to indicate some of the practical implications this lens might have. This perspective on property law, relatively underdeveloped in the scholarship, has led me to survey a wide range of property-related issues. I hope the arguments I have advanced strike the reader as convincing. But, even if some of them do not, I believe any specific pitfalls in my reasoning do not undermine the big picture I have painted here: that however absolute property rights are seen, they have some non-normative-conceptual limitations.

I have mainly focused on the conceptual limitations of property rights, to show how absolutist conceptions of such rights should be qualified. However, there is a flip side to this line of thought: limitations that, at first glance, might seem to be limiting property rights should not necessarily be seen this way. Hence, debates over the absoluteness of property rights, and questions about whether some considerations operate as internal or external limitations on private property, should be seen in this new light.

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[43] Barbara Fried, ''Wilt Chamberlain Revisited: Nozick's 'Justice in Transfer' and the Problem of Market-Based Distribution'', 24 *Philosophy and Public Affairs* (1995): pp. 226–245. See also Daniel Attas, 'Fragmenting Property', 25 *Law and Philosophy* (2006): pp. 119–149. Armstrong also points out this problem to left-libertarians: ''[I]f our goal is (as it usually turns out to be) to equalize the *value of*, or the *benefits and burdens flowing from*, natural resources, then we must face the fact that this value, or those benefits and burdens, are deeply social. The claim to redistribute that value therefore cannot rest on the argument that it is itself 'natural'.'' Chris Armstrong, *Justice and Natural Sciences* (Oxford University Press, 2017): p. 103 (emphasis in original).

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