

PRIVATE AUTHORITY

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In his book *Private Wrongs*, Ripstein argues for a view of tort law which Gardner sums up as follows: “tort law’s special concern with our bodies and our property can best be understood as a concern to protect a certain special zone or sphere of authority that is reserved to each of us”.² It is not hard to see why Ripstein thinks of our rights over both our body and our property as a form of authority. I can permit or forbid you to use my car or touch my body. If you use my car or touch my body without my permission I can demand that you desist and seek various forms of redress. Such normative power is a kind of authority. Nor does Gardner disagree but they do disagree over what explains or grounds such authority.

In Gardner’s eyes it is not that Ripstein offers a poor explanation of private authority, he simply offers no explanation at all: “I do not see anywhere in *Private Wrongs* an ... account of what, for Ripstein, does normally justify such private authority when it is justified.”³ Ripstein might not see things this way. For example Ripstein tells us that: “You are in charge of your own body and property but other people are in charge of their bodies and property”.⁴ Perhaps Gardner would regard this statement as a mere tautology, reminding us that ours is ours and theirs is theirs but it can also be read as an explanation, as stating that I am in charge of my own body and property *because* it is mine.⁵ Ripstein clearly intends there to be a contrast in this respect between private and public authority. Nicholas II imagined that he ruled Russia because Russia and all her

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² John Gardner *Ripstein on Private Authority* 14 *Jerusalem Review of Legal Studies* 52 52 (2016).

³ *Id.* 61.

⁴ ARTHUR RIPSTEIN, *PRIVATE WRONGS* 34 (Cambridge: Harvard University Press 2016).

⁵ The extent of Ripstein’s explanatory ambitions are unclear to me. See Arthur Ripstein *Property and Sovereignty* 18 *Theoretical Inquiries in Law* 243 252 (2017).

souls were his. According to modern ideas, our rulers do not rule us because we are theirs and if the quoted statement successfully indicates where the difference between public and private authority lies, it can't be a tautology.

Gardner has his own way of explaining private authority over things other than the body that makes no appeal to notions of 'mine' and 'thine'. Furthermore it is an explanation that, as he notes, tends to collapse the distinction between private and public authority (though without vindicating Nicholas II).⁶ So we have a real and foundational disagreement here, one worth pursuing further. I'll first explore Gardner's own proposal about private authority over things and then ask if he might do well to take at least one leaf out of Ripstein's book.

Gardner on Private Authority

Having endorsed the claim that tort law is concerned to protect a sphere of private authority, Gardner adds "Maybe, to put it in the language of authority, your own authority claims over yourself should be approached with the same critical eye as the authority claims of others over you."⁷ He then expounds Raz's theory of political authority, one centered on the normal justification thesis, namely the idea that political authority is normally justified by the fact that those bound by its commands are more likely to conform to whatever reasons they already have if they obey the commands of the authority. Here is the justification of property rights that Raz's thesis suggests to Gardner:

A parallel defense of liberal property rights, which confer wide authority on property-holders, is fairly easy to conjure up. While such a system leaves unfortunate latitude for wasteful, capricious, petty, and cruel exercises of authority by individual property-holders—say, leaving perfectly good homes unoccupied, or overworking farm-land to the point of degradation—considered as a whole the liberal property system yields better use of the various things to which it applies, and more generally better engagements with the value of those things, than do other candidate systems. The trick is not to let the system get out of hand, such that the means (the grant of wide authority that may be unwisely

⁶ *Supra* 62

⁷ *Id.* 54

exercised) becomes the enemy of the end (the minimization of unwise exercises of authority).⁸

Gardner's story has a familiar shape. The way to ensure that human beings make the best use of things around them is to institute a system of property law allocating a certain amount of control over particular things to individual people. This story makes no appeal to notions of 'mine' and 'thine'. The interests at stake in our dealings with things don't differentiate what is mine from what isn't. Many things are such that I might benefit from controlling them and which of them I should control is matter of what works best or, in the language of Raz, what system of allocation best ensures conformity with reasons.

Gardner does feel the need to make a slight detour on the way to his conclusion:

A distinctively liberal case for liberal property rights will treat a global wisdom-deficit in property-dealings as capable of being compensated, at least up to a point, by freedom-gains that do not bring wisdom-gains. These gains manifest what we may call the "distinct" value of freedom

And so

One should not only support people to do what they already have reason to do. One should also factor in the distinct value of their being free to do it or not.⁹

At first sight this looks like a fairly substantial concession to the "liberal". The value of control over things is no longer purely instrumental, no longer purely a matter of its promoting the end of minimizing unwise exercises of authority: control has acquired a distinct value of its own. However, Gardner sees this more as an irrelevant complication introduced only to be set aside.

In defending ... the existence of the private authority itself, little is to be gained by pointing to the distinct value of the property-holder's freedom

This is because

the distinct value of freedom figures on both sides of the equation, counting both

⁸ *Id.* 57

⁹ *Id.* 59

for and against her authority. It counts for her authority inasmuch as it gives her options in respect of how others are to interact with her property (and gives those others options that depend on her options); it counts against her authority inasmuch as it limits the freedom of others to interact with her property independently of the property-holder herself. I see no reason to suppose that the value of freedom on one side of the equation will tend, in general, to be more significant than on the other.¹⁰

Having said this, Gardner concludes that

The case for the private authority of property-holders largely stands and falls, it seems to me, on the normal justification thesis alone. This being so, it is after all pretty much fatal to an exercise of authority by a private property holder that it cannot be defended according to the terms of the normal justification thesis.¹¹

Let's call this the 'cancelling-out argument'. At least as applied to the body, it seems to mischaracterize the value of freedom. The liberal thought was not merely that there is a value in people controlling some bit of the world or other, though that may indeed be true. The idea was rather that for each of us there are specific bits of the world such that there is a special value in our controlling *them* and furthermore the specific bits of the world that there is a special value in my controlling are different from the specific bits of the world that there is a special value in your controlling. Once that point is conceded, Gardner cannot maintain that the special value of freedom should make no difference to the distribution of control. True any exclusive control I am granted over my body will deprive you of an equivalent amount of control over my body but we cannot infer from this that any gain involving the value of bodily self-control to me is cancelled out by the loss of the value of inter-personal dominance to you. Even if such inter-personal dominance can have genuine value, the distribution of liberty is not (in general) a zero sum game.

Gardner may protest that he is not talking about bodily rights, rights which he explicitly denies to be any form of property right.¹² We'll apply Gardner's

¹⁰ *Id.* 60

¹¹ *Id.* 61

¹² *Id.* 61

argument to property in external things below. In the meantime, let's observe (with Ripstein)¹³ that tort law is interested in bodily rights, whether or not they count as property rights and so we can ask of Gardner the very thing he demands of Ripstein, a justification of the private authority we have over our own bodies. At this point one *could* apply the normal justification thesis to the body, maintaining that we are allocated control over our own bodies only to the extent that such control best ensures our conformity with reason. Gardner does not take this rather heroic course, instead adopting something like the following view: (1) human persons have a certain intrinsic value, a value which entitles them to govern their own lives (2) each human person is identical with a human body therefore (3) each person has the right to govern the life of the body which they are.¹⁴

Such a view puts clear water between bodily rights and property rights as no sane person thinks they are literally identical with their clothes or their car but this clear water is bought at the price of rendering our special claim to control our own body hostage to theoretical fortune. We have a close psychological connection with our bodies, one that both leads us to identify with our body and grounds our interest in controlling or governing that body. It is much less obvious that we are literally identical with that body i.e. that my body is the object to which my utterances of the word 'I' refer. Such identity-claims may in the end be vindicated but they raise delicate logico-metaphysical issues. A prudent liberal should cleave to the vaguer, less metaphysically loaded idea that we (aptly) identify ourselves with our bodies. Let's see whether something like that thought can be used to ground property rights also.

Indexical Interests

Gardner assumes that any justification of property rights must proceed via our engagement with the value of things, a justification specifying how the use of things can be good for us, what human interests they serve.¹⁵ I side with Gardner

¹³ 'The law of torts treats your body and your property in strikingly parallel ways' *Supra* 40.

¹⁴ JOHN GARDNER, *OFFENCES AND DEFENCES* 12-6 (Oxford: Oxford University Press 2007)

¹⁵ *Id.* 9-10.

and against Ripstein¹⁶ in adopting this assumption but on another point I want to take Ripstein's part and maintain that our justification of property must employ notions of 'mine' and 'thine' at the foundation, namely in formulating the interest that justifies the right.

The interest I have in mind is captured in the following claim:

Personal Sovereignty: It is good for *me* to have things controlled by *myself* because they count as *mine*.

Personal Sovereignty contains a triple indexical: the exercise of control is mine, the things controlled count as mine and the benefit is to me. We have an interest in control over things which is not just an interest in getting the things that are good for us; *Personal Sovereignty* adds that we have a further and more specific interest in controlling things that count as ours. This personal interest isn't the only indexical interest relevant to an understanding of property rights – the members of a family may have an interest in controlling what counts as *theirs* – but we shall focus on the interest which underlies personal property.¹⁷

I wish to remain neutral on whether the 'control' at stake here is physical control or normative control or perhaps a bit of both. It is often thought that the kind of control over the normative situation that a property holder has (e.g. the ability to buy, sell, contract) can be a benefit to them only in so far as it gives them control of the non-normative situation, of what actually happens to the thing in question. I don't agree but nor do I want to fight that battle here, only to leave open the possibility that people have an interest in controlling (for its own sake) the normative as well as the physical situation and that property rights may be needed to serve that 'authority interest'.¹⁸

¹⁶ *Supra* 68-73 and 267

¹⁷ Note my project is justificational rather than genealogical. Perhaps human beings developed this indexical interest only *after* enjoying socially sanctioned control over things, a control that was not initially given to them in order to serve this interest. I doubt that we began as monks and then turned into proprietors but I shan't deny it. What I do maintain is that the indexical interest plays a significant role in the justification of our present system of personal property.

¹⁸ See Part 2 of DAVID OWENS, *SHAPING THE NORMATIVE LANDSCAPE* (Oxford: Oxford University Press 2012). I think we need to this authority interest in order to explain why

Personal Sovereignty is most likely to win favor in the sphere of bodily rights. We have a special connection with our own bodies, both a distinctive way of knowing about them (proprioception) and a direct control over how they move (a capacity for basic action).¹⁹ That special psychological connection is what makes our body the immediate object of our will. In virtue of this connection, it is good for each of us that we control both the physical movements of our bodies and the rights and obligations of others in respect of them. As to the latter I have for example a special interest in controlling whom I marry and you have a special interest in controlling whom you marry, interests which are not well served by the converse arrangement.

Our interest in having these forms of control over our own bodies and their immediate environment cannot be reduced to our general interest in controlling the world in which we live. Take Palatine slavery.²⁰ The court eunuchs of Byzantium and China, several Grand Viziers under the Mamluk Dynasty, the Ottoman Janissaries and the *familia caesaris* of Ancient Rome all had more control over their world than most of us will ever have over ours. Being in control has value only when the thing controlled is of some significance and the things the Palatine slave controlled were hardly trivial.²¹ Nevertheless we pity them because they lacked basic forms of control over their own lives (over surgery on their body, over whether and whom they married, over their line of work etc.) The one does not compensate for the loss of the other. Of course, such slaves must have had some bodily self-control if they were to be able to exercise

property violations that do no harm can nevertheless be wrongs (Gardner *Supra* 11-12). Note this authority interest may be distinct from without being independent of an interest in physical control.

¹⁹ On both phenomena, see Part 2 of BRIAN O'SHAUGHNESSY, *THE WILL: VOLUME ONE* (Cambridge: Cambridge University Press 1980). It is worth noting that when my left eye is transplanted into someone else's head, an object with which I had this two-fold psychological connection becomes connected to someone else in the same way. I doubt the metaphysics of body-self identity will be of much help to us in settling when such transplants are permissible.

²⁰ See Chapter 11 of ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH* (Cambridge: Harvard University Press 1982).

²¹ As Gardner notes, a value may be distinct from another value even though it is dependent on that other value (*Supra* 59 n.12). So my control over my marriage may matter to me because whom I am married to matters to me even though this control does not matter to me simply as a means to making a good marriage.

authority over others – for example they must be able to decide how to move a pen across paper – but this control was ceded to them only for the purpose of governing the empire (albeit in accordance with their own judgement of what is best for the empire) and not to meet their need to control their own lives.

These examples reveal a gap in certain familiar accounts of the value of controlling one's own life. For example, Mill argues that we need such control in order to cultivate our faculties, both cognitive and conative, and thereby develop a distinctive character.²² Fair enough but this does little to explain what is wrong with Palatine slavery. Palatine slaves can cultivate their faculties (both cognitive and conative) by making and implementing plans for the empire and develop their individuality as rulers just as we do in settling our holiday and our marriage plans. Mill also thought that each of us is generally better placed to run our own affairs than other people's and so the reasons that apply to me are more likely to be conformed to if, in this sphere, I am in control.²³ But none of these observations will satisfy the liberal. Even if masters were on the whole better placed to manage the lives of their slaves, there would still be a problem with slavery, a crucial human interest that even Palatine slavery neglects.

With the need for control of our own lives established, it is not hard to see what rationale might be offered for expanding our sphere of dominance into the world around our bodies. We can hardly implement our plans for ourselves without having some control over our immediate physical environment and to carry out plans of any complexity, our control must reach much further.²⁴ True the Palatine slave is also given control over many aspects of their immediate environment but for a quite different purpose. They decide who sleeps in their bed only so they can get up in the morning and serve the empire. Hence they own no bed. I do own a bed provided I am give control over it in order to serve my interest in running my own life (amongst other interests).

²² JOHN STUART MILL, ON LIBERTY AND OTHER ESSAYS 55-72 (Oxford: Oxford University Press 1991).

²³ *Id.* 80-1

²⁴ THOMAS SCANLON, WHY DOES INEQUALITY MATTER? 105-7 (Oxford: Oxford University Press 2018).

This easy extension of bodily rights into the world around us is a bit too easy. With the body, it is not the case that any functional equivalent will do; I'm not entitled to remove your front teeth (or even your left eye) whilst you are asleep provided I replace them with things that serve your purposes just as well.²⁵ The objects of our bodily rights are not fungible in that way. You ought to control what happens to this particular body because it is *your* body and this goes beyond the idea that you need some convenient physical instrument to execute your worldly plans. In this respect at least, property rights are like bodily rights – you are not entitled to mess with my bed or my car behind my back even if you leave it as you find it or replace it with a functional equivalent. I ought to control what happens to my bed or my car because it counts as mine and not just because of how well these things serve my need to sleep and travel.

Now Gardner does consider the idea that the point of property might lie not just in its “use-value” but also in what he calls its “identification-value”, namely in “the symbolic value of artificially extending oneself out into the world”.²⁶ Though he does not reject it, Gardner introduces this idea with a sense of unease, perhaps because it represents both our body and our property as apt objects of identification. In the rest of this paper I set Gardner's reservations aside and try to develop this thought along the lines suggested by *Personal Sovereignty* in order to account for the extension of private authority into the world around our bodies.

Body and property rights lie on a continuum. In the case of some parts of my body, they are mine prior to any social recognition of this fact. I'm thinking of things like our limbs and eyes to which we bear the psychological relations already noted. Normal human beings have a pre-conventional sense of these specific arms and legs as being theirs, a pre-social sense of bodily ownership

²⁵ Suppose I have an interest in it's being my judgement rather than yours that determines which things are functionally equivalent. The question remains why such an interest should be especially focused on things which count as mine (as opposed to anything I might use to pursue my purposes).

²⁶ *Supra* 12

which both grounds certain 'natural' bodily rights and also gives us an interest in our ownership of those bodily parts being socially recognized. At the other end of the continuum are things like houses and cars. Here there might be no particular house or car that I need to count as mine and no house or car is mine until my ownership of it is socially recognized.²⁷ Still cars and houses can become mine in part *because* I have an interest in such items counting as mine.²⁸ Finally, lying somewhere in the middle are things like hair, nails, genetic material and prosthetic devices. Unlike with most houses or cars, there is likely to be a particular set of nails and specific prosthetic devices with which it would be good for me to be able to identify. Unlike with my eyes and limbs, this is so even though I may not pre-conventionally identify with them. Here social convention settles whether they actually count as mine.

If this is all along the right lines, we can explain the non-fungibility of both body and property. My interest in there being a house and a car that count as mine helps to explain how I come to have authority over such things of the same general sort that I have over my own body.²⁹ Unlike with my limbs (and perhaps also my hair) there may be no particular house or car such that I have an interest in its counting as mine. Nevertheless, once a particular house or a particular car has been recognized as mine, I have a non-fungible indexical interest in maintaining control of it, just as I do in respect of my limbs or my eyes. If anything like *Personal Sovereignty* is true, it should come as no surprise that tort law applies the same normative apparatus both to the body and to property.

²⁷ The beauty of some things (beards?) might depend on that beauty's being socially recognized whilst the beauty of other things (symmetrical faces?) does not. Still beards could be beautiful in the very sense in which mountains are beautiful. Lockeans about property may be right to think that my house is 'mine' in the same sense that my body is 'mine' without this telling us anything about whether house ownership is conventional.

²⁸ Among these external items, my interest in being able to identify with some may be greater than my interest in being able to identify with others. Most of us will come to feel more of a connection with our home than with our car.

²⁹ There are many things that I have a substantial interest in controlling because they affect how I lead my life but where I do not need to control them because I need stuff to count as mine e.g. the prevailing weather or rate of interest.

Property and Identification

Bodily rights and property rights are both personal rights, by which I mean that they are both grounded in part in the interests of the right-holder. It is often said that monks, trustees and so forth are given very extensive control over particular things without being given ownership of those things. In my view, this is the right way to describe their situation because they are not given such control with a view to serving their personal interest in having that control. In particular they are not given such control in order to serve their interest in controlling what counts as theirs. The operative justification for the rights of monks and trustees appeals entirely to some other concern. The authority granted them may happen to serve some of their personal interests (e.g. in self-development) but that is no part of why they have it and so acceptance of this authority does not violate the monastic vow of poverty.

An interest in control over what counts as yours is not the only human interest grounding personal property rights and often not even the most important. *Personal Sovereignty* is consistent with many views as to the relative weight of the interest in control over what counts as yours when compared with our individual interests in food, education etc., with the interests of others and with collective interests, all of which may be served by personal property rights. Liberals will tend to give the individual's control interest substantial weight but it may be that its importance has been somewhat exaggerated.³⁰ Other interests, individual and collective, serve to both reinforce and restrict the scope of personal property. My only point is that this personal control interest must play a significant role in grounding a system of personal ownership.³¹

³⁰ *Supra* 60-1

³¹ How is this account of personal ownership to be extended to property rights in financial instruments or land in distant places, things with which sane people are not much inclined to identify? This is a good question that cannot be addressed here but I'm inclined to think of property rights in such distant or abstract things as parasitic on a more basic phenomenon. A human society that did not recognise any form of personal property is rather harder to imagine than one without financial instruments etc.

We can better appreciate the significance of this interest in controlling what counts as yours by revisiting Gardner's 'cancelling-out' argument, now as applied to property. Gardner maintains that the value of freedom should make no difference to the scope of our property rights because any gain in freedom to the property holder would be cancelled out by a loss in freedom to others. To put the point in the language of indexical interests, the value of allocating some objects to me in the service of my interest in controlling things that count as mine will be cancelled out by the disvalue of depriving you of the same benefit. But this isn't the only way in which an interest in controlling what counts as ours might figure in the process of setting the scope of our property rights. For a start there is the issue of when we can override someone's control over their own life in order to further their non-control interests e.g. by stopping them farming their own field to exhaustion. Such paternalistic interventions will be harder to justify once the individual's interest in controlling the field because it counts as theirs is in play. Furthermore there is the issue of when we can infringe someone's property rights in order to further some collective non-control interest e.g. in improving the transportation system. Here again, exercises of eminent domain and so forth will be harder to justify once the individual's interest in controlling the field because it counts as theirs must be considered.

An analogy may help motivate *Personal Sovereignty*. People need friends, they need particular people to matter to them in the way that friends do.³² Now personal friendship (like family life) is inevitably exclusionary. Sarah's becoming my friend involves our acquiring various habits and emotional propensities through spending time together, engaging in joint activities and so forth. The activities, the confidences, the peculiar history defining our friendship and its special value can only evolve if we are allowed to exclude others from our friendship and we can enjoy the friendship once it exists only if we can continue to exclude them. Mere acquaintances shouldn't join us on holiday or try to overhear what we say to each other in a bar. These exclusionary norms can be justified by our shared need for someone to matter to us in this special way.

³² I do not come into the world needing to have Sarah as my friend (she is not my Platonic soul-mate) but once Sarah has become my friend, Sarah cannot be replaced by a functional equivalent.

Things are not our friends but just as we need some people to matter to us in the way that friends matter to us, so we need some things to matter to us in the way that objects that are ours (such as our body) matter to us. And like friendship, that form of mattering involves the ability to exclude other people from the item in question, to decide how others interact with it. Things won't come to matter to us or continue to matter to us in that way unless we have some control over access to them and our need for things to matter to us in this way justifies these forms of exclusion. For example, a healthy relationship with my own body is incompatible with my having no control over how and when it is observed by other people. The same may be true of my paintings or my garden. Each of these objects – my body, my painting, my garden – will matter to me in a way which makes them a focus both for emotions of self assessment (like pride and shame) and for the special kind of concern (hopes and fears) one has about one's own fate, only in so far as I identify with them. And I live better when surrounded by things that matter to me in that special way.

Identifying with something in the relevant sense is not simply caring about it. If I care about something then I'll do what I can to further its interests but it need not matter to me whether I play any role in ensuring that it flourishes and its demise may sadden me without provoking any special fear or shame. To *identify* with something (as I am using the term) is care about it in a way that makes one feel the need for some influence over its fate. The point is most obvious in the case of our bodies: the concern each human being feels about the fate of their own body is bound up both with a propensity to be proud or ashamed of it and with the felt need for a special form of control over it. Similarly the peculiar pride or shame I feel at the state of my home (or the hopes and fears that focus on how or by whom it is inhabited) is something I feel only in so far as I also feel the need for physical and/or normative control over such things.

I leave it open precisely what forms of authority over things such identification requires. You can't think of an object as yours in the relevant sense without feeling the need to exercise some form of control over it but the needed forms of

control may vary across periods and cultures. Does control of a room in a house or a time-share in a cottage enable you to identify with the place, to 'call it home'? People in different places and at different times will find these forms of possession enable identification in various degrees. Are rights of bequest and inheritance, either within the family or beyond, supportive of identification or do they tend to undermine it by rendering property fungible? We should not expect a single or even a default answer.³³ What systems of personal property have in common is that they assign control over things to us partly in the service of our indexical control interests.

Is this all rather fetishistic? Having told us that "the basic value of property is instrumental" Gardner argues that we are in danger of losing sight of this fact because of the rise of what he calls "consumerism".³⁴ Consumerism is the tendency to identify with self-chosen possessions like clothes and electronic gadgets.³⁵ Let's agree with Gardner that such commodity fetishism is a development that has recently got out of hand but we need to distinguish the lasting human tendency to feel possessive about the things around us from the consumerist tendency to identify with items because you have chosen them (e.g. as an act of self-expression). Many people identify with things they have *not* chosen and sometimes precisely for this reason. The reality of 'identification value' is not tied to the fate of consumerism.

Here is a Russian soldier writing to a friend towards the end of the First World War to explain why he is about to join the White Army and make war on his erstwhile comrades:

these are the people who smashed our old mahogany chairs; these are the people who tore up my favorite books, the ones I bought as a student; these are

³³ Thus I do not agree with Ripstein that property "is, by its nature, transmissible" (*Supra* 253).

³⁴ *Supra* 10-1.

³⁵ On the one hand Gardner thinks consumerism has "got wildly out of hand" but on the other he allows that "up to a point....it effects the moral change which its participants seem to presuppose" by adding an "identification value" to the "use value" of things (*Id.*).

the people who cut down our orchard and cut down the roses that mama planted; these are the people who burnt down our home.³⁶

This soldier's attachment to the family furniture, to his books, to the house in which he was raised is no more fetishistic than the feelings he has for his friend. And our soldier is no consumerist. True he values his books in part because he chose them but the family furniture, mama's roses etc. etc. matter to him in the way that they do precisely because he did *not* choose them. Our soldier's involvement with these things, his tendency to value them because he identifies with them, because he thinks of them as *mine* (or at least as *ours*)³⁷ is deeply ingrained in human beings of all ages and classes, a fact registered in the persistent attempts to eradicate it.

Many of these things matter to our soldier in the way they do only because certain people also matter but the converse is no less true. His family relationships take the (valuable) form they do only because they involve a certain exclusionary relationship to things.³⁸ A family needs a home just as a home needs a family. It would be perverse to think of those with whom we share our home as interior decor that make the bricks and mortar feel warm and familiar but, I reckon, it would be equally obtuse for our soldier to regard the family orchard or their mahogany chairs as mere mnemonics for the people who worked or sat in them, rather than as one of the places that defined their relationship. Neither other people nor other things should be instrumentalized in this way. Their significance for us is coeval.

Of course what is required to connect us with inanimate objects differs from what is required to connect us with other people: dominating things is good for us in a way that dominating people is not. The sort of control we need over both our body and property is entirely asymmetric whilst that which benefits us in the

³⁶ ORLANDO FIGES, *A PEOPLE'S TRAGEDY* 556 (New York: Viking 1996).

³⁷ This example reminds us that private property need not be personal property. Familial holdings also provide suitable objects of pride, shame and for the special hopes and fears one has about the fate of what is one's own.

³⁸ Chris Essert *Property and Homelessness* 44 *Philosophy and Public Affairs* 266 279-81 (2016).

context of friendship and other adult relationships (the ability to exclude third parties and aid one another) is shared or at least reciprocal. We must control things in a way they could never control us if they are to play the right role in our lives. And where they could control us, as in the case of slaves, claims of ownership are deeply problematic.³⁹

Finally let's return to my original observation that Ripstein points us in the direction of a genuine justification for private property when he remarks that the function of tort law is to protect a sphere of authority that is reserved to each of us. I have transformed this into the proposal that a property right is to be justified at least in part by reference to an individual's interest in having a bit of the world that they control because it counts as theirs. This may not be Ripstein's own view, even allowing for his renunciation of any appeal to human interests. Ripstein remarks that the proprietorial right to exclude is *not* granted "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 one is in charge of anyone else".⁴⁰ Be that as it may, we have gone well beyond the non-indexical interests invoked by Gardner.

Towards the end of his discussion, Gardner tells us that "the distinction between public and private purposes breaks down. Resorting to the authority of law, including private law, is just one of many possible techniques for helping people to do what they ought to do anyway".⁴¹ If I'm right, there is a fundamental difference here which Ripstein's formulations pick up on and Gardner misses: while the interest postulated by *Personal Sovereignty* does nothing to explain why Donald Trump has the authority of the Presidency, it does help to explain the authority I have over my home. The problem with "slavers and feudal lords"

³⁹ One's own children are a difficult case, at least so long as they are children. People regularly exclude others from the rearing of a given child on the grounds that it is *their* child and claims made on this basis are given a fair amount of weight. Ownership of animals is also worthy of more detailed consideration.

⁴⁰ *Supra* 252. I doubt we can manage without postulating a more general interest in controlling things that we identify with, invoking only some interest in not having other *people* control them. For example, my interest in having authority over whether you interfere with the anchor that protects my boat from being 'stolen' by the tide makes sense because I have an interest in controlling where my beloved boat is. This is an instance of dependence without reduction (see Note 21).

⁴¹ *Supra* 62

is not that their claims are too broad, though that may well be true.⁴² Their overreach lies in their assuming authority over others on the wrong basis, on the grounds that these slaves and serfs are theirs. That is not the basis on which a public authority should operate, however circumscribed its claims.

⁴² *Id.* 53