Law and Philosophy (2024) 43: 303–331
https://doi.org/10.1007/s10982-023-09488-8

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PUBLIC OWNERSHIP

(Accepted 17 October 2023)

ABSTRACT. The two questions I seek to address in these pages are what is public property and why does it matter. Public property, like property more generally, is a powerful legal arrangement of allocating control and use rights with respect to resources. Unlike private property, public property does not establish normative powers with which private individuals can shape their practical affairs in and around social spheres such as housing, work, commerce, and worship. Rather, its distinctive value lies in extending autonomous agency to the construction of public spaces and resources. Public property places individuals in a position of collective self-government, manifested in the following two particular ways: first, expressing the ideas and commitments that the political community as a whole affirms; and second, exerting control over the construction and direction of the resources that make up the environment they occupy.

I. INTRODUCTION

What is public property and why does it matter are the two questions I seek to explore in these pages. I defend what can be called the ownership conception of public property while also criticizing the more familiar conception, namely, the easement conception of public property. Further, I argue that public property is non-instrumentally valuable in the sense that no other regime of property rights—including private property—can realize the values underpinning public property.

The key to defending public property, I argue, lies in disambiguating the sense in which this system of rights is public and, ultimately, about *our* property. Public property can be said to be ours in the sense that we can freely *use* it. It also can be ours in the different sense that we are entitled to *control* it. The easement conception reduces public property to the former, in which case the

control side of the property equation takes the backseat and perhaps even disappears. Rather than taking this view, I argue that the latter provides an appealing case for the distinctive role of a system of public property in a liberal legal order.

II. THE EASEMENT CONCEPTION OF PUBLIC PROPERTY: AN EMERGING TREND

A highly abstract answer to the question of what public property is suggests that public property is a system of *in rem* rights held by the public as a whole, as opposed to private persons taken severally.[1] The public as a right-holder may do the 'holding' directly or indirectly through its representatives or agents. State property can be viewed as an instance of the latter alternative. As in the case of *in rem* property rights more generally, public property rights are held against other persons and entities, including the state.

There exists a vast and diverse body of literature that goes beyond this abstract characterization, addressing (among other things) the basic questions of precisely what is public property and what are its values. I wish to focus on three prominent approaches in contemporary property theory: welfarist, (an influential strand of) Kantian, and democratic accounts of public property.[2] Despite the substantial *normative* differences between these accounts, they implicitly or explicitly presuppose a similar *characterization* of public property.

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[1] Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), pp. 40–43.

[2] A leading welfarist exposition is Carol Rose, 'The Comedy of the Commons: Custom, Commerce and Inherently Public Property', *University of Chicago Law Review* 53 (1986): 711. The Kantian approach is on full display in Arthur Ripstein, *Force and Freedom* (Cambridge, Mass.: Harvard University Press, 2009), pp. 261–65; Arthur Ripstein, Public and Private in the Tort of Public Nuisance (unpublished manuscript, May 2022); and in Christopher Essert, Yours and Mine: Property Law in the Society of Equals (unpublished manuscript). The democratic approach to public property is discussed in Elizabeth Anderson, 'The Ethical Limitations of the Market', *Economics and Philosophy* 6 (1990): 179, pp. 195–96; Bonnie Honig, *Public Things: Democracy in Despair* (New York, NY: Fordham University Press, 2017); John Page, *Public Property, Law and Society: Owning, Belonging, Connecting in the Public Realm* (New York, NY: Routledge, 2021). There are other accounts of public property, to be sure. Plato and Marx are famous examples. See Karl Marx and Friedrich Engels, 'Private Property and Communism', in *The German Ideology* 51–54 (Amherst, NY: Prometheus Books, 1998); Jonny Thakkar, 'Moneymaking and Craftsmen: A Platonic Approach to Privatization', *European Journal of Philosophy* 24 (2016): 735, 745. Other, more recent discussions of public property can be found in Billy Christmas, *Property and Justice: A Liberal Theory of Natural Rights* (Milton: Taylor and Francis, 2021), p. 95; Shmuel Nili, 'The Idea of Public Property', *Ethics* 129 (2019): 344; Leif Wenar, 'Property Rights and the Resource Curse', *Philosophy & Public Affairs* 36 (2008): 2, 11–12. I leave these other accounts for another occasion.

On this characterization, public property rights are akin to a public easement: public property entitles the public freely to enter and use a certain space or resource.[3] For instance, the freedom to enter and use a public park need not be limitless and all-encompassing. There could be some limiting rules concerning timing (say, dawn to dusk), maximal capacity of entrants, types of permissible use, and some other housekeeping rules. Moreover, by saying that public property is akin to an easement I do not mean that it is an easement simply as such. Instead, it means that the content of this *in rem* right picks out certain attributes of easements—it occupies a middle ground between possessory rights and a license. It is a nonpossessory right to use a certain space without the leave of its owner. Unlike a mere license, the right in question is not revocable. Hence, our right to use a highway may be suspended (say, due to inclement weather), but it cannot be revoked. Notice that this right does not control the question of which space is or should be subject to the public's free entry and usage. Instead, it operates on a prior determination—a theory of the public domain, really—that a certain space is or should be the public's (on which more below).

Unlike typical easements, the easement conception of public property incorporates an egalitarian commitment into the right. If one person can visit the place at issue, then all people must be able to visit the same. Public property reconciles freedom with equality, by conferring the same entry and use rights on each and every member of the public. The reconciliation is not a byproduct of realizing some other purpose or value. Instead, it is a signature feature of public property as viewed through the lens of the easement conception.

To further unpack the easement conception of public property and to introduce some of its normative underpinnings, it will be apt to begin with an illustration often invoked by proponents of the easement conception, namely, public parks. To begin with, an urban park is a paradigmatic case of public property if, and only if, it is all-inclusive, entitling us all to meet there and interact as each other's equals. Thus, people of different social-economic backgrounds, races, conceptions of the good, nationalities, and so forth can enter and use the park, and by doing so, may find the society of others conducive to their own personal or collective ends. Of course some users may

[3] There are different types of easements as well as different ways of creating one. The easement at the center of the discussion is called public easement in gross (as opposed to easement appurtenant).

exercise their rights for more instrumentalist reasons, such as using the park to walk from one private place (such as their home) to another (such as a grocery store). Be that as it may, the important point at this stage is that public property, as represented in the public park example, establishes the normative unity of freedom and equality.

Why does it matter? I outline three different answers, drawn from a welfarist, Kantian, and democratic accounts of property's value. Begin with welfarism. Carol Rose has famously observed that although open commons often give rise to the so-called tragedy of the commons—viz., overproduction and resource depletion—free use of some resources can be conducive to 'aggregate efficiency'.[4] These latter resources, she argues, sustain a 'comedy of the commons'.[5] Drawing on Frederick Law Olmsted's pioneering work, Rose notes that 'rich and poor would mingle in parks, and learn to treat each other as neighbors'.[6] For Rose, the value of public parks hinges on scale economies on the demand side: the value of a 'socializing activity' increases when participation is all-inclusive.[7] This insight can be further extended, as Rose demonstrates, to any other activity whose value exhibits a similar quality—what she calls 'the more, the merrier'.[8] Thus, channels of commerce, such as public roads and waterways, should be subject to the public's right of access because, it can be argued, commercial activities have increasing returns without limit.[9] On the welfarist argument, therefore, the public's property amounts to no more, but no less, than a right freely to enter and use certain resources. The doctrinal source of these rights may vary, to be sure, but its essence remains easement-like.

Now consider the democratic account of public property. On this account, the equal freedom to enter and use certain resources creates the conditions for democratic equality. The argument from democratic equality consists in two stages. The first one concerns public property's role in constructing the conditions for equal citizenship. According to Elizabeth Anderson: 'The fact that all members gain

[4] Rose, 'The Comedy of the Commons', p. 720.
[5] Ibid., pp. 768, 723.
[6] Ibid., p. 779.
[7] Ibid.
[8] Ibid., p. 768.
[9] Ibid., p. 770.

access to the park freely and in the same way ... enable[s] all to meet each other on terms of equality', which in turn helps to 'cultivate relations of civility among citizens of all walks of life'.[10] Anderson emphasizes the significance of public property by contrasting it with an 'exclusive country club'.[11] A stronger version of this argument suggests that equal citizenship depends on a practice of relating as equals and, further, that public property is the normative infrastructure of such practice.[12]

The second stage moves from equal citizenship to egalitarian politics. It identifies public property's role in facilitating political engagement of a certain kind, namely, a non-commercialized space of political action for equal citizens.[13] As Anderson correctly observes, a public's space, that is, a space over which the public holds a property right, is 'good for political action precisely because a wide diversity of people would go there anyway, for their own reasons'.[14] For this reason, public property is not merely 'a locus for spontaneous interaction' but rather also 'political activity'.[15] Against this backdrop, the democratic account of public property identifies an importantly different value than the welfarist one. It is of a piece, however, insofar as its underlying value identifies public property with the public's right to enter and use spaces.

Finally, the Toronto school of Kantian political theory grounds the public's property in the basic commitment to freedom as independence.[16] Independence is defined contrastively as not being subject to the choice of another private person.[17] The generic wrong

[10] Anderson, 'The Ethical Limitations of the Market', p. 195.

[11] Ibid.

[12] Cf. Elizabeth S. Anderson, 'What is the Point of Equality?', *Ethics* 109 (1999): 287.

[13] Anderson, 'The Ethical Limitations of the Market', p. 196.

[14] Ibid.

[15] Ibid. p. 195.

[16] The Kantian account presented in the main text follows the Toronto school of Kantianism. It is not, or not necessarily, the only Kant-inspired theory of property there is. See, e.g., S. M. Love, 'Communal Ownership and Kant's Theory of Right', *Kantian Review* 25(3) (2020): 415–40, 418; Christine M. Korsgaard, *The Constitution of Agency: Essays on Practical Reason and Moral Psychology* (Oxford: Oxford University Press, 2008), p. 238.

[17] Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), p. 63, [6:237].

it sets out to prevent is a relationship in which one person is 'in charge of' another.[18] This Kantian case for public property begins with private property as a normative buffer against the ability of others to make determining choices for us—for instance, owning a dwelling house does not merely provide one the right to use it as one sees fit but rather also the entitlement to deny other private persons the ability to determine how to use this place. That said, a system of private property cannot eliminate people's vulnerability to domination by others the moment one sets one's foot in the public domain. Public property is one necessary remedy—to wit, we all should have an *in rem* right to enter and use public spaces.[19] This right removes our legal susceptibility to the choice of other private persons with respect to entering and using public spaces. The value underlying this right can be described in instrumental and non-instrumental terms. Public property is instrumentally valuable in the sense that it enables us to move from one private space to another.[20] It is, or can be, also non-instrumentally valuable in the sense that it constructs an all-inclusive public space, one which creates (some of) the conditions for social and political interactions among equally independent persons to occur.[21]

Notice that in spite of the different normative underpinnings, the Kantian account (or more precisely, the Toronto school of Kantian political theory) adopts the welfarist and the democratic answer to the question of what public property is: the public's property is, in substance if not in form, an easement right.

III. AGAINST THE EASEMENT CONCEPTION: MISCONCEPTION, REDUCTIONISM, AND PRIVATIZATION

The easement conception of public property fails doubly. I seek to show that it suffers from troubling misconceptions and reductionism. As a result, I argue, it cannot defeat the charge of privatization that asks: why it is that the publicness of a space makes it valuable? I

[18] Arthur Ripstein, *Private Wrongs* (Cambridge, Mass.: Harvard University Press, 2016), p. 7, 8. Freedom as independence shares some, though not all, elements of the republican conception of freedom developed in Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999).

[19] Ripstein, *Force and Freedom*, ch. 8. Essert, Yours and Mine.

[20] Ibid. See also Ripstein, Public and Private.

[21] Essert, Yours and Mine.

show that the easement conception is fully compatible with private control of the resources that are subject to the public's right to use.

A. Misconception

The easement conception runs together two different distinctions, namely, private versus public property and exclusion versus inclusion. It identifies private property with the right to exclude and public property with the right to be included. The confusion lies in the fact that the exclusion/inclusion distinction cuts across the private/public distinction. The public holds an easement-like right with respect to *both public and private* property. The public also can be excluded, or can be held to be under an obligation to exclude itself, from *both public and private* property. It follows, I argue, that the private/public distinction does not stand in for, or otherwise reflect, the distinction between exclusion and inclusion. To see this, consider the following contrasts.

Some public spaces—held either by the state or directly by the public as its beneficial owner—are not subject to the public's entry and use rights. There could be different compelling reasons for this exclusionary approach—for instance conservationist easements, environmental public trust doctrine, and preservationist legal measures that call for denying public access to *publicly*-held wildlife habitats and other areas of wildness. There are of course many paradigmatically public resources—military bases, government buildings, and more—that are genuinely the public's even when they do not give rise to an easement-like right on the part of the public. This is not to say that proponents of the easement conception cannot justify the absence of access rights to such resources. Rather, the argument is that the attempt to identify public property with inclusion fails because the category of public property cuts across the distinction between inclusion and exclusion.

Some private spaces—held by private entities—are burdened by the public's right to enter and use them. For example, places of public accommodation—big or small—are formally and substantively private entities, but their owners' freedom to run their busi-

nesses as they see fit does not include an unrestrained right to exclude, discriminate, or fail to accommodate others.[22] Other privately held spaces—such as dry sand beaches—are not considered places of public accommodation, but their owners are nonetheless duty-bound to render them publicly accessible.[23]

The misconception under discussion is not merely a conceptual confusion concerning the connection between two sets of distinction, namely, private/private property and exclusion/inclusion. Instead, the misconception is also a source of unwarranted essentialism—private property is identified with exclusion whereas public property is identified with the public's easement-like rights. The former essentialism has received ample, critical attention.[24] The latter, by contrast, remains virtually unaddressed. I wish to argue that the identification of public property with the public's right to enter and use resources suffers from an indefensible reductionism: it strips public property of its distinctive value.

B. Reductionism

Almost all property rights feature some combination of use and control *in rem* rights. Private ownership—the standing to determine the normative situation of others with respect to a thing—can sometimes involve a maximalist combination of use and control rights, depending on the resource in question.[25] Other property rights may feature substantial control with very little use rights (consider bailment and the bailee's custody over the bailor's resource). Easement, by contrast, represents the inverse case as it

[22] See, e.g., Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a. See further Joseph William Singer, 'We Don't Serve Your Kind Here: Public Accommodations and the Mark of Sodom', *Boston University Law Review* 95 (2015): 929, 941.

[23] Notable decisions are State of Oregon ex. rel. Thornton v. Hay, 462 P.2d 671 (Or. 1969); Matthews v. Bay Head Improvement Ass'n, 471 A.2d 355 (N.J. 1984); Raleigh Avenue Beach Ass'n v. Atlantis Beach Club, 879 A.2d 112 (N.J. 2005); Glass v. Goeckel, 703 N.W.2d 58 (Mich. 2005). See Gregory S. Alexander, *Property and Human Flourishing* (New York: Oxford University Press, 2018), pp. 180–81; Timothy M. Mulvaney, 'Walling out: Rules and Standards in the Beach Access Context', *South California Law Review* 94 (2020): 1.

[24] For a recent example, see Hanoch Dagan and Avihay Dorfman, 'Public Nuisance for Private Persons', *University of Toronto Law Journal* 73 (forthcoming 2023).

[25] See further Avihay Dorfman, 'Private Ownership and the Standing to Say So', *University of Toronto Law Journal* 64 (2014): 402.

entitles its holder to some use rights with no, or almost no, control rights over a certain place.[26] A paradigmatic case is the right to pass and repass on highways as well as the right to enter and use parks, beaches, and libraries.

The easement conception of public property reduces the public's property to a use-based notion of property. The control side of the property equation takes the backseat and perhaps even disappears. This is true not only at the characterization level, but also—and more importantly—at the normative level. Indeed, the welfarist, democratic, and Kantian accounts of public property under discussion suppose that the value of public property lies in creating the conditions for people to interact on equal terms by rendering certain spaces universally accessible as a matter of right. These people are in a position of *consuming* a good without also occupying the role of determining what goods there should be in the first place and what the proper ways of consuming them should be. The latter two elements reflect the control, rather than use aspect of property rights. I argue that their absence, or marginalization, undermines the easement conception of public property.

C. Privatization

The easement conception is grounded in a set of values (welfare, democracy, and equal independence) whose realization does not require public property. It can be fully satisfied within a system of private property. Another way to make this point is to say that the easement conception cannot but fail to explain why the 'publicness' of the space or resource matters in the first place. A public easement can be seamlessly assimilated into a system of private property. Arguably, such a system is not just another plausible variation on the private property theme but rather an appealing one—to wit, a system governed by the liberal commitment to respect individuals as substantively free and equal persons.[27]

To see this, consider the following three resources: beaches, natural parks, and urban parks. They are functionally suitable for

[26] See further Avihay Dorfman, 'Property and Collective Undertaking: The Principle of Numerus Clausus', *University of Toronto Law Journal* 61 (2011): 467, 496–501.

[27] Avihay Dorfman, 'When, and How, Does Property Matters?', *University of Toronto Law Journal* 72 (2022): 81; Hanoch Dagan and Avihay Dorfman, Relational Justice: A Theory of Private Law (forthcoming 2024), ch. 13.

sustaining activities that welfarists, democrats, and (Toronto's) Kantians define as valuable. For instance, all three support social interactions and at least some of them support political action on top of the more rudimentary provision of pathways to other places. Further, they could all cultivate the right kind of interactions, namely, between free persons of 'all walks of life' and on terms that reflect their equal status.[28] Finally, access to these resources also can be designed in ways that secure the freedom of users from being 'at the mercy' of or under the 'charge of' these resources' owners.[29] In this way, the equal right to enter and use such resources ensures not only against horizontal domination, but rather also vertical domination. It means that private owners cannot prevent these resources from being used by the public, which is another way of saying that using them is the public's as a matter of right.[30]

The important point is that the three conditions just mentioned—functional suitability of resources for desirable interactions and activities, horizontal non-domination, and vertical non-domination—can be fully secured, irrespective of the *identity* of the resource's owner. Indeed, these conditions do not single out the state, or some other political authority, as the requisite owner of the resources at issue. Even purely private persons can own these resources and use them to pursue the purposes they set for themselves, provided that they are bounded by these three conditions. Against this backdrop, their ownership becomes no less private, and the public's right no less public, as a result.

A public easement that gives effect to this property arrangement is not merely the upshot of abstract speculation. Indeed, property law provides vivid illustrations to this effect. The doctrinal hooks on which the public's right to use a privately-held resource may vary. They can be the traditional customary rights to use uncultivated private areas and the more recent customary rights to access privately-owned dry-sand beaches, including for non-commercial purposes.[31] Prescriptive easements, acquired by a long period of public

[28] Anderson, 'The Ethical Limitations of the Market', p. 195.

[29] Pettit, *Republicanism*, p. 5; Ripstein, *Private Wrong*, pp. 7, 8, respectively.

[30] Indeed, privately-held resources, such as shopping malls and private universities, may even be duty-bound to respect the constitutional rights to free speech of their visitors. See, e.g., Robins v. PruneYard Shopping Ctr., 592 P.2d 341 (1979) *aff'd*. 447 U.S. 74 (1980); State v. Schmid, 423 A.2d 615 (N.J. 1980). Being duty-bound in this way does *not* turn such entities to political authorities.

[31] State of Oregon ex. rel. Thornton v. Hay, 462 P.2d 671 (Or. 1969).

use, have historically accounted for the public's right to use privately-owned streets and roads.[32] And perhaps most pertinent to my argument, the public trust doctrine endows the public with the right that even state legislatures may not extinguish: the use of privately-owned areas.[33] This doctrine has already released its commercial shackles, protecting the public's right to engage in recreational activities on privately-held resources.[34]

Now consider privatization.[35] By privatization, I mean the creation of a legal buffer that denies the government and, indirectly, the public the boss-like right to direct the deliberation and action of the private contractor *at any point* during the course of performing the task. The outsourcing contract establishes this buffer when it sets, usually in general and underspecified terms, the end to be pursued meanwhile giving the contractor the authorization to make substantive decisions on how to pursue it. As long as it does not violate the contractual provisions, the government lacks the entitlement to compel the contractor to deliberate and act according to the general interest as judged from the point of view of the public (either directly or indirectly by the relevant public officials). In that, privatization grants contractors the liberty of pursuing their own sectarian and/or commercial interests as long as the pursuit of their interests does not violate the contractual provisions. Their performance of the contracted-for tasks is, therefore, done for us, not by us (including indirectly by our government).[36]

Imagine that for some legitimate reasons (such as costs saving) some local governments have transferred their ownership of urban parks to competent and accountable private entities.[37] The business model of these entities does not turn on charging fees from park-goers (perhaps because they generate revenue by selling permits to

[32] Rose, 'The Comedy of the Commons', pp. 723–24.

[33] See Raleigh Avenue Beach Ass'n v. Atlantis Beach Club, 879 A.2d 112 (N.J. 2005). Cf. Illinois Central Railroad Co. v. Illinois, 146 U.S. 387 (1892).

[34] See Alexander, *Property and Human Flourishing*, p. 180.

[35] The discussion in this paragraph draws on Avihay Dorfman and Alon Harel, 'The Case Against Privatization', *Philosophy & Public Affairs* 41 (2013): 67, 86.

[36] Notice that my characterization of privatization is functional, rather than formal. If the outsourcing agreement grants the government an unrestrained right to direct the deliberation and conduct of the contractor then the contractor should rightly be viewed as a governmental entity, functionally if not formally.

[37] See Commonwealth v. Rush, 14 Pa. 186 (1850). Notice that the transaction in the main text does not entitle the buyer to convert the park into a housing area or any other commercial or non-commercial project.

concession stands). Further suppose that these entities prove just as good at maintaining and even improving these parks. Save for the identity of the owner, nothing has changed, not even the public's ability to enter and use the resource. This state of affairs can at times (as in the beach access cases just noted) even be legally reinforced by subjecting such parks to the public trust doctrine, in which case the right of the public to use it in a particular manner survives privatization.

The crucial question then becomes what is missing in this world of private urban parks? The answer that the easement conception of public property can provide is that nothing is missing. The public keeps holding the same right which, in turn, ensures against horizontal and vertical domination. As a result, neither other park-goers nor the park owner can prevent members of the public from engaging in personal, social, or political interactions (within the limits defined by the easement). In principle, the privatization hypothetical can be extended to capture all publicly-owned resources that figure prominently in the welfarist, democracy, and Kantian accounts of public property discussed above. And such an extension demonstrates that the easement conception reduces the public's right, well, to an easement.

It may be the case that state or city ownership of resources such as parks and beaches may be more conducive to efficiency, democratic culture, and equal independence. For instance, it is often the case that a private owner's profit motive may come at the expense of the public interest (though recall that privatization can involve the ceding of authority to not-for-profit organizations). It also may be the case that, if not administered appropriately, privatization can breed corruption, incompetency and poor performance. However, these concerns do not save the easement conception from my critique, for they defend the value of publicness on instrumental grounds, and to this extent contingent grounds. A better scheme of incentives or commitment mechanism can turn the comparative assessment on its head. More generally, considerations of institutional competency do not possess the normative materials to make a *principled* argument against the private control of the resources deemed valuable by the welfarist, democratic, and Kantian accounts of public property discussed above. Affirmatively, the easement

conception, precisely because it reduces public property to use rights, does not explain what is distinctively valuable in subjecting resources to public, including state, *control*. I argue that only the latter dimension of property—control, not use—reflects the non-instrumental value of a system of public property. Only it can come to terms with the question of why public property matters.

IV. THE OWNERSHIP CONCEPTION OF PUBLIC PROPERTY: CHARACTERIZATION

If the easement conception focuses on the public's entitlement to use certain resources, the ownership conception begins with the public's control over resources. It does not eliminate the use component of the right but rather insists that the *distinctive value* of public property lies in control rights. The value underlying such control have two important implications: they establish first, why control by and for the public matters, and second, why some resources should, and sometimes even must, not be subject to private ownership.

A. Characterization

The ownership conception is best elaborated by reference to its three basic properties: the owner's identity, the interest public ownership serves, and the central rights held by the owner. I take each in turn.

Who is the (public) owner? The ownership conception suggests that public property is not merely held and run for the public. A public owner is neither merely a central planner nor a fiduciary. Instead, it is us, including our representative bodies. What public owners do, therefore, is to act in our name, rather than for us. The distinction at issue articulates a basic intuition that although private owners could act for the public, none can speak and act in its name. Thus, for example, a private owner can manage a resource—such as an urban park or a highway—for the public if its controlling power is subject to regulation, supervision and a structure of incentives that creates sufficient alignment between its own interests and the general interest. Alternatively, a not-for-profit organization can own and manage a resource—such as a natural park—for the public as its fiduciary. Contrary to market actors who pursue their profits, fidu-

ciaries can act impartially by discharging loyalty and care for the interests of the public.

However, private owners (for- and not-for-profit alike) are not acting in our name. A public owner is ultimately the public. In most political communities today, the public acts through institutions and officials. The latter are deem public if, and only if, they speak and act in our name, rather than for us. They are not our bosses (or commanders); nor are they akin to fiduciaries who function as our money managers or guardians. Instead, they are public because and insofar as their decisions reflect (in the right sense) the perspectives of those who are subject to their rule.[38] On this view, to count as a genuinely public owner, the right-holder must be identified not merely with a commitment to advance public purposes, but also with representing the public.[39]

Moreover, public ownership can have different institutional instantiations. A body of elected representatives, civil servants, and government departments and agencies in consultation with community members are familiar examples of institutions that could, if properly structured, function as public owners. In principle, other institutional arrangements, such as mini-publics, in which some subset make decisions for the others, and different discursive methods of decision-making, could also fit the bill. Recent technological progress can potentially improve the accuracy and effectiveness of political representation further still.[40] I take this to be a question of political science (perhaps even political technology) and, so, leaves it for another occasion.

Must all members of the public need to be included—directly or indirectly—in decisions about public resources? The 'public' in public ownership admits of scope. The 'public' who owns an urban park in a small town is not the same 'public' for the purpose of owning an urban park at the center of a capital city (consider, in this respect, the

[38] See Avihay Dorfman and Alon Harel, *Reclaiming the Public* (forthcoming 2024), ch. 1.

[39] Id.

[40] See, e.g., Hélène Landemore, *Open Democracy: Reinventing Popular Rule for the Twenty-First Century* (Princeton: Princeton University Press, 2020); Bailey Flanigan et al., 'Fair Algorithms for Selecting Citizens' Assemblies', *Nature* 596 (2021): 548.

National Mall in Washington D.C.). Further complications arise when the resource at issue is, simultaneously, of local and national significance.[41] I leave these questions for another occasion.

Whose interest occupies the moral center of public ownership? It will be apt to address this question by contrasting public with private ownership as both feature control and use rights with respect to resources. I argue that this contrast shows that public ownership, unlike its private counterpart, is best viewed as a subset of sovereignty powers.

Private owners hold the standing to change other people's normative situation with respect to a thing. This standing is not conditioned on the latter's consent. Are private owners small scale versions of public owners? My answer is in the negative. The standing of private owners serves to pursue (what they view as) their own interest, rather than the interest common to us all as a community. Furthering one's own interest can encompass other people's interest as well—the property rights held by employers or by NGOs represent instances of incorporating some measure of other-regard to the exercise of private ownership.

That said, such aspects of other-regard are typically limited in their scope and often draw on preexisting associations or consent. More importantly, they do not arise independently of the owner's *own* interest in furthering its and other people's interest. Public owners, by contrast, act from, and for, the general interest. Accordingly, whereas private ownership conditions other-regard on some notion of self-regard, public ownership has no self-regard dimension in the first place. This point—which is a basic pillar of the liberal tradition—complements the previously discussed element of public ownership in the following way. Public owners (1) speak and act in our name (2) in respect of an interest common to us all and to no one person in particular. To this extent, public ownership is not only a doctrine of property but also one of sovereignty.

Finally, what are the core rights of public ownership? I argue that unlike the easement conception's fixation on use-rights, the most important set of rights associated with public property are those of

[41] Another important question concerns the existence of a political space between the traditional local and the national: Are there regions or other in-between spaces that pick out a 'public' of their own? For more see, Yishai Blank and Issi Rosen-Zvi, 'The Legal Forms of Regions', *Theoretical Inquiries in Law* 24 (forthcoming 2023).

control. This is not to say that use-rights do not matter; they do. However, as I argued above, the right to use resources such as urban parks, wilderness, and beaches can be made fully compatible with a system of private ownership with respect to these resources. It is, therefore, the right to control the resource, rather than merely to use it, that allows us to see what might be distinctively valuable in a system of public property.

To better appreciate how and why control rights transform public property, recall the easement conception. Consider a privately-owned urban park to which the public holds the same access rights they would normally hold in the case of a publicly-owned park. The public can engage, as free and equal park-goers, in any number of recreational activities, as well as form social and political gatherings. Basically, they face a broad menu of use options from which to choose.

But here is the nub: what these people lack is the ability to determine what is on that menu. At a more fundamental level, what is missing is their entitlement to shape the world in which they live beyond the private spaces they occupy for purposes of working, shopping, dwelling, and worshiping. (This is not to deny that the people can change property law and regulation all the way up to the constitutional constraint on taking and regulating private property, e.g., abolishing the U.S. Constitution's Takings Clause. Doing so may well put them in the position of shaping their world; indeed, it would be tantamount to making private property wholly public, substantively if not formally speaking.)

At times, 'shaping the world' comes down to deciding what uses should be on the menu of a certain space or resource. This could involve the somewhat less dramatic choice between different activities of a similar kind (such as choosing more baseball fields vis-à-vis more basketball courts). But it can also involve the substantial discretion 'in setting and revising priorities and permissible uses'[42] with respect to a very large unit of land. This task implicates those in control to consider diverse and often incompatible purposes, such as 'dedicating a valley or forest to wilderness preservation, hiking, and

[42] Jedediah Britton-Purdy, 'Whose Lands? Which Public? The Shape of Public-Lands Law and Trump's National Monument Proclamations', *Ecology Law Quarterly* 45 (2018): 921, 941.

camping; open other parts of a region to motorized access and hunting; and provide for timber sales or mineral leases in selected areas'.[43]

At other times, 'shaping the world' has an irreducibly constructive dimension, which means that exercising control rights is, so to speak, where the action is. In particular, there exist three types of such public resource constructivism. The first is control-only ownership. There, controlling a space may involve the decision to conserve an area (such as a wildlife habitat) by barring public access entirely. Preservation is not entirely devoid of use as it is often grounded in securing the ability of future generations to use areas currently subject to conservation. It is, nonetheless, an instance of control without use for those who currently hold and exercise the right to dedicate a certain space as not-for-use.

A second type of public resource constructivism concerns the expressive function of control rights as manifested most prominently in erecting and/or removing monuments.[44] Controlling a certain space, such as a square, is necessary in order for the public to signify defining moments, figures, and symbols and to communicate what matters to them as a community. This instance of power is not reducible to use rights of those who 'consume' the public spaces adjacent to these monuments. The mere presence of monuments may, or may not, have some material impact on how these spaces are being used. That said, their more significant contribution goes to the 'constitution of social meaning',[45] and, further, the construction of a collectively shared consciousness on the part of users. It is about controlling the narrative, rather than merely the physical space itself.[46]

And third, sometimes the very decision concerning what to construct also partially determines how it can, and cannot, be used. Certainly, the public cannot use a tract of land as a picnic area if it is already dedicated to swimming. But the control-use nexus can go

[43] Ibid., p. 942.

[44] For more see Gregory S. Alexander, 'Of Buildings, Statues, Art, and Sperm: The Right to Destroy and the Duty to Preserve', *Cornell Journal of Law & Pubic Policy* 27 (2018): 619, 647–51.

[45] Sanford Levinson, *Written in Stone: Public Monuments in Changing Societies* (London: Duke University Press, 2018), p. 31.

[46] On the emotion-laden potential of public display of art, see C. Thi Nguyen, 'Monuments as Commitments: How Art Speaks to Groups and How Groups Think in Art', *Pacific Philosophical Quarterly* 100 (2019): 971.

deeper than that. In particular, the design of the space can affect the very use it is designed to facilitate. In the swimming pool example, the shape of the pool—its length, depth, and so on—can determine what sort of pool-based activities are possible (diving requires a certain depth, lap swimming requires a certain shape, and so forth). The control-use nexus is far more consequential when we move from the benign case of the pool to the design of *the* town square. A town square, to be sure, is not simply a square in the town; instead, it is (broadly speaking) 'the stage upon which the drama of communal life unfolds'.[47] In that, the town square is not merely the physical venue where people interact to create and communicate messages; it is also a medium and, as such, it is (in part) the message itself.

This observation becomes vivid when we compare alternative designs of town or public squares. A Twitter-like platform is sometimes described as a digital public square.[48] But even a genuinely public version of this platform would provide an entirely different good than the traditional town square. Precisely because of the way it is *constructed*—consider, for instance, its character limitation—Twitter transforms the standard of successful engagement with ideas from one based primarily on quality to a quantitative form of assessment (number of views, likes, retweets, and so on). In this way, the particular medium affects what happens, or what could happen, when people engage each other.[49] Choosing between different designs of 'town square', therefore, implicates those in control in the business of partially determining the character or quality of the human interaction in question.

It is important to note that the ownership conception does not rule out the existence and significance of use rights in connection with public property. Indeed, the category of property held by the public (or state) is heterogeneous as it includes a large variety of 'public things'[50]; at times, using, rather than controlling, them figures more prominently in our lived-experience. That said, recall that the point of introducing the ownership conception is not to do

[47] Stephen Carr et al., *Public Space* (Cambridge: Cambridge University Press, 1992), p. 3.

[48] See, e.g., Packingham v. North Carolina, 137 S. Ct. 1730, 1737 (2017).

[49] The classical account, according to which the medium is the message, is Marshall McLuhan, *Understanding Media: The Extensions of Man* (New York: New American Library, 1964), p. 7.

[50] See Honig, *Public Things*, p. 4.

away with use rights, but rather to identify and defend the distinctive place of control rights as only they can answer the foundational question of why it is that the publicness of a resource makes it valuable.

V. WHY DOES PUBLIC PROPERTY MATTER? PROPERTY'S PUBLIC AUTONOMY

I argue that public property is non-instrumentally valuable because it gives effect to the *public* autonomy of individual persons.[51] Public autonomy adds another, necessary dimension to people's overall autonomy (which, I suppose, consists in private and public autonomy). Whereas private autonomy entitles people to decide what form of individual life, such as in matters pertaining to vocation, to pursue, public autonomy concerns people's ability to shape the collective aspects of their life (on which more below). Public autonomy matters because private autonomy alone cannot secure our status as free and equal agents in society. Although we can interact with other private persons as free and equal agents, for instance in commercial and employment settings, we remain unfree if we do not have some measure of control over the construction and governance of our public spaces. For us to be free, our control over the design and governance of public spaces (among other public matters unrelated to property) must reflect our status as the agents rather than merely beneficiaries of public property.

A. Public Autonomy

A commitment to private autonomy suggests that an individual person is free not merely in the sense of being independent of the determining choice of another but also in the more demanding sense of being in a position to direct her life.[52] Protecting certain basic

[51] I borrow and modify the idea of public autonomy as it has been developed in Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge: MIT Press, 1996). According to Habermas, public autonomy is identified with democratic legitimacy: 'only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted'. Ibid., p. 110. On my account, by contrast, public autonomy makes no essential reference to assent (actual or hypothetical).

[52] See Dagan and Dorfman, *Relational Justice: A Theory of Private Law*, ch. 3.

rights, such as to physical integrity, privacy, free expression, and being treated as an equal, are necessary prerequisites.[53] Some private property rights are also required in order to empower individuals to lead an autonomous, self-determining life.[54]

Even if a maximal set of such rights could secure the necessary conditions for their autonomous agency to thrive, private individuals may not be sufficiently autonomous. Missing from this picture is the ability of these individuals to have some measure of control over—and hence responsibility for—their collective life. It involves making decisions in matters that concern the general interest. Some such decisions purport to create or change the rights and duties of some or all members of the society, as in the case of imposing duties of disclosure on commercial sellers. Other binding decisions do not affect the normative situation of others but nonetheless shape material and expressive aspects of society's collective life, such as designations of national holidays, affirming certain cultures and traditions, conveying public condemnation of criminal behavior, and communicating public recognition of widely-shared commitments.

Assuming, as I do, that public autonomy is an appealing value that any liberal society must embrace in one way or another, the question becomes what is the connection between public property and public autonomy? What role, if any, does public property play in an autonomy-respecting society? The answer is that public autonomy requires public property, properly conceived in terms of the ownership conception.

B. Condominium and Control: A Challenge

To motivate the case for public property's necessary place, consider the analogy of condominiums. There, control rights with respect to the building have both a private and a collective facet. Each unit owner possesses some significant control over the interiors of the unit, the identity of their guests, who the owner will sell the unit to, and so forth. More generally, unit owners are empowered by the institution of private property to write and rewrite the story of their

[53] Avihay Dorfman, Conflicts between Equals: A Vindication of Tort Law (unpublished manuscript).

[54] See further Hanoch Dagan and Avihay Dorfman, 'The Human Right to Private Property', *Theoretical Inquiries in Law* 18 (2017): 391; Hanoch Dagan, *A Liberal Theory of Property* (New York: Cambridge University Press, 2021).

respective lives by making authoritative decisions concerning their units. Private ownership of condo units can, therefore, contribute to what can be called private autonomy

Since condominiums consist of privately- and commonly-held property, what is the case for having *control* rights over the collective facilities of the condominium? The worry might be that having such rights is of instrumental value only. This may be true with respect to having a say over things like whether to install this or that veneer in the building's elevator.[55] Unit owners do not have to have control rights in order to preserve, or even enhance, their autonomy. Surely, all that is needed is that these common facilities be governed in the right way—to wit, for the right purposes, and by competent and accountable managers. Hence, use rights to common facilities are not only necessary but also can be sufficient to guarantee unit owners' autonomy (within the context of the condominium).

Does this line of thinking implicate the case for the ownership conception of public property? Should rights to public spaces be modeled on rights to the collective spaces of condominiums? I answer in the negative to both. Control rights over public spaces are non-instrumentally valuable because they are integral to the *public* autonomy of the individual. Here is why.

C. Public Property and Public Autonomy

The condominium setting suggests that controlling collective spaces need not matter—it may be valuable but only as a means to securing the proper management of these spaces. Why is this so, and, more importantly, why do rights to control *public* spaces matter? The answer turns on two properties: the nature of the space and the character of the right-holders' group. Concerning the space, collective facilities in a condominium are typically ancillary spaces. Elevators and stairways, for instance, are predominantly ingress and egress pathways. Some public spaces are functionally similar to condominiums' collective spaces. That said, the more important instances of public space assume a qualitatively different role. Town squares, national parks, and public beaches are not some functional

[55] It may not be true, however, with respect to having a say over whether to prohibit any owner from disseminating political ads in the building's lobby. I assume that control rights over the condominiums' common facilities are typically less dramatic than that.

equivalents of elevators and stairways (although they surely are these also). Instead, they are designed to house valuable activities. An entitlement to control such spaces, therefore, can be closely related to the values associated with the activities at hand.

The second distinguishing property concerns the character of the group of right-holders: unit-owners in a condominium vis-à-vis members of a political community. A group of unit-owners in a condominium may share certain similarities with a political community. It also may form the basis for a 'building's community', predicated upon thick relations of reciprocity (at least in some cases). A political community, by contrast, does not feature neighborly relations among its members. Still, it is immensely important as it assumes unusual normative powers. It claims the authority to upset most other forms of authority, including condominiums', within its jurisdiction. Relatedly, it also claims the authority to make binding decisions on most aspects of our life, including, most importantly, the provision of major goods such as national security, education, health, social services, markets, and legal institutions. Many of such decisions, moreover, cannot be made without having control over resources, including spaces.

Thus, even given that control rights are not necessarily valuable in and of themselves, the special case of public resources may reveal a robust connection between control and value. The control/value connection is best explicated in terms of a distinction between two ways in which controlling public resources can be non-instrumentally valuable. The first concerns what can be called *qualitative* control whereas the other concerns *quantitative* control. I take each in turn.

D. Qualitative Control

Political communities hold the power to shape the *material* world by making binding decisions concerning the built and the natural environment, that is, the structures and infrastructures that make up public spaces. Their power, moreover, extends beyond the material world to capture the *expressive* dimension of collective life. The entitlement to decide on the symbolic design of the public space is a central case in point.

Erecting symbolic structures such as a monument can achieve a variety of desirable goals. It makes our environment more beautiful, interesting, and challenging (among other things). Consider the radical change in the character of the goods provided by displaying such structures once their provision is handed over to a private owner. This owner displays the exact same structures that would have been displayed by the public. Further, the location for the display is central, easily visible and accessible to the public (let's say a privately-owned park at the center of town, held open to the public).

There nonetheless exists one respect in which the private display of symbolic structures necessarily falls short of its public counterpart. To the extent that any such display is meant to convey some ideas and judgments, a private display cannot but fail to make these ideas and judgments the public's. It is one thing publicly to communicate the message X; quite another for X to be communicated in the name of the public. Doing the former can be valuable, to be sure, but it does not provide the one thing that only public ownership could, namely, the right to convey collective approbation (or disapprobation) of ideas and judgments.[56]

Thus, the ownership conception of public property gives effect to the power of the public to shape non-trivial aspects of the universe. What, then, is the connection between this power and public autonomy? I argue that the former is an instantiation of the latter. To see this, consider the comparison between a company town and a traditional town. The former is run by a private corporation, whereas the latter is run by the political community and its representatives. The two look alike in terms of the design of their respective built and natural environments, down to the choice of symbolic structures. Thus, in terms of the aesthetic and cultural goods provided by erecting these structures, the (private or public) identity of the provider need not matter.

That said, residents of the company town occupy the role of passive consumers of the structures at issue; their agency is not manifested in the construction of their symbolic environment. By contrast, citizens of the traditional town are respected not merely as consumers, but rather also as those who are entitled to have their

[56] It is telling, in my view, that in response to the charge that a certain religious display on federal land violates the Establishment Clause, U.S. Congress has conveyed the cross and the land on which it stands to a private party. See Salazar v. Buono, 559 U.S. 700 (2010).

convictions duly reflected in the design of the universe they occupy. Their entitlement originates from the control rights they have *qua* owners of public spaces. All else equal, therefore, these citizens enjoy greater public autonomy, and hence overall autonomy, than their company town peers. They live in built and natural environments that are, to an important extent, *theirs*.

E. Quantitative Control

Whereas the preceding discussion argues that the provision of certain expressive goods depends on public ownership, the argument going forward will identify the values that are realized by the public's control of the material world. I explore what might be lost, normatively speaking, if public spaces and resources are no longer subject to a system of public property. Unlike cases of qualitative control, the present argument does not claim that public ownership of a *certain* type of resource—such as a statue—is necessary, but rather that public ownership of *some*, non-trivial amount of resources is necessary. The former argument implies that it is impossible to provide a certain good—for instance displaying public repudiation of certain past injustices—without subjecting a specific resource to the control of the public. The following argument makes a different claim, namely, that some measure of control over resources (plural!) is necessary in order for individuals to sustain their public autonomy. The former focuses on the quality of public ownership, whereas the latter takes up the quantitative dimension of the case for public ownership.

Suppose that all public resources are legally controlled by either for- or not-for-profit private entities. Further suppose that the entities are sufficiently committed to handling all of these resources for the benefit of society. The commitment mechanism can vary, to be sure. An elaborate structure of incentives in one case and a demanding scheme of loyalty to the general interest in the other could provide the public with the same, and even better, quality of public spaces and resources to which they can access. One important positive consequence of this state of affairs is that the public will be relieved of the burden that might come with having rights to control these resources. The burden in question is not merely the material one,

consisting of the time and energy that often go into the ongoing enterprise of owning a resource. Rather, it also includes the *normative* burden that comes with ownership, which is responsibility. By responsibility, I mean moral and civil responsibility which may, though not necessarily, support legal responsibility. It is the responsibility that is attributed to owners by virtue of being owners.[57]

That said, eliminating the responsibility both for making decisions about public resources and for the consequences of these decisions undermines the public autonomy of members of the political community. Indeed, responsibility is a major element of autonomous agency in general. Consider in this respect small children and their gradual moral development into autonomous agents—this process cannot be completed successfully without holding the child to increasingly demanding standards of moral, civil, and legal responsibility. Because it is a necessary pillar of our overall autonomy, public autonomy is structurally similar. In order for them to count as members of a community organized around the principle of collective self-government, individual persons must have some measure of responsibility for how their universe is constructed and reconstructed. Denying this means that they occupy the position of the beneficiaries of benevolent private entities who are, in turn, duty-bound to exercise their ownership powers for the benefit of their patients. Against this backdrop, public property that follows the ownership conception, as opposed to the easement conception, matters precisely because it is a form of taking responsibility for shaping the world in which we live, and by doing so, members of the political community can claim their status as autonomous agents.

It might be protested that doing away with public ownership need not impinge on people's public autonomy. For, ultimately, the public and its representatives decide voluntarily to alienate the right to control public resources to private entities. In fact, the entire system of private ownership can be viewed as the upshot of a series of public decisions to vest private persons with control and use rights with respect to resources. Because such decisions are made voluntarily and, let's assume, grounded in sound reasons, members of the political community do not act in a way that undermines their public

[57] On the responsibility of owners qua owners, see Avihay Dorfman and Jacob Assaf, 'The Fault of Trespass', *University Toronto Law Journal* 65 (2015): 48.

autonomy. For this reason, they should also be deemed responsible for the decisions made by private owners. Or so one could argue.

I resist this line of argument. Making a decision at the get-go stage to vest private entities with control rights can, as I explained above, cut the public off from the private exercise of these rights. It is of course true that in a typical case of privatization members of the political community can be held directly or indirectly responsible for selecting the appropriate contractor and monitoring its performance. That said, none of these could compensate for the lost control over the manner in which private entities exercise their ownership rights, at least insofar as they act within the boundaries set in the outsourcing agreement with the state. Those members of the political community who protest against decisions made by the private entities in question can maintain that these decisions are not made in their name. It is this aspect which underlies the fundamental difference between public and private control of resources; only public agents act in our name whereas private entities are (at best) contractually obligated to act for us.

Lastly, notice that the argument from public autonomy calls for *some* measure of control over public resources. It is, recall, about quantitative control.[58] It rules out doing away with public property but it does not deny that at times private control of 'public' resources can be desirable for any number of reasons. Nor does it deny that imposing crushing responsibility on the public may undermine public autonomy. It only points out that public autonomy (and its underlying commitment to responsibility) should be balanced against countervailing considerations.

Two such considerations should figure prominently for the purpose of striking the right balance. First, there are resources that better not be subject to the control of the public, not even indirectly through their representatives.[59] Controlling such resources and influencing the course of their employment may require special expertise, confidentiality, or some other qualities that render them unsuitable for public control. And second, resources whose control does not give rise to major normative questions or trade-offs, such as the ones between present and future generations, equality and effi-

[58] See further Dorfman and Harel, Reclaiming the Public, ch. 5.

[59] The university, properly conceived, is a case in point.

ciency, domestic and cosmopolitan justice and so on, do not seem to contribute much to people's public autonomy. In the absence of some such trade-offs, insisting on public ownership can only be justified instrumentally, such as when private owners are less likely to succeed in providing the goods associated with such 'low stakes' resources. Such resources do not bring out what is the most important question that the ownership conception of public property is designed to address, namely, why it is that the publicness of a resource makes it valuable?

VI. CONCLUSION

Some societies are subject to authoritarian rule, including by a benevolent absolutist. Their members may enjoy a substantial measure of private autonomy in and around their market transactions as workers, consumers, and home buyers or lessees. Their rights and duties as private owners may even conform to the demands of transactional justice (including relational justice). They cannot, however, have public autonomy as their rulers purport to make (good or bad) binding decisions for them, rather than in their names. As John Rawls has explained, such states do not count as well-ordered societies precisely because they deny their subjects 'a meaningful role in making political decisions'.[60] In these societies, public property amounts to no more than the easement conception: people are equally free to use public spaces,and the government is duty-bound to respect that.

Democracies, too, could divest their citizens of the right to control public spaces. One way of doing so is privatization, according to which the state cuts itself off from the private control of otherwise public resources. I have argued that doing so erodes our public autonomy and, therefore, should be avoided entirely with respect to constructing the expressive dimensions of our collective life and, moreover, should be limited to the extent possible with respect to having control over our built and natural environments.

There is, however, another way to deny the public a meaningful role in constructing the environment. Instead of privatizing, the government can insulate its public property from the influence of the

[60] John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), p. 63.

public by vesting technocrats with the power to control the relevant spaces. These technocrats are public officials, and as such owe the public duties of loyalty and of care (among others). They may make responsible decisions concerning what to make of, and how to use, public spaces and resources. But the one thing they cannot do is to make those decisions in the name of the public. That is, they cannot make the built environment *our* environment, namely, an environment over which the public is entitled to possess controlling influence.

Public property, like property more generally, is a powerful legal arrangement of allocating control and use rights with respect to resources. It forms correlative relationships of (Hohfeld-like) powers and liabilities between right- and duty-holders. Unlike private property, public property does not establish normative powers with which private individuals can shape their practical affairs in and around social spheres such as housing, work, commerce, and worship. Rather, it extends, or at least makes possible the extension of autonomous agency to the construction of public spaces and resources. Public property places individuals in a position of collective self-government, manifested in the following two particular ways: first, expressing the ideas and commitments that the political community as a whole affirms; and second, exerting control over the construction and direction of the resources that make up the environment they occupy.

ACKNOWLEDGEMENTS

This article has benefited from responses received at the 2023 Group Ownership Workshop at the University of Toronto and the 2023 Progressive Property Workshop. I would like to thank the participants in these occasions. I would also like to thank Debby Becher, Bethany Berger, Billy Christmas, Hanoch Dagan, Rashmi Dyal-Chand, Chriss Essert, Alon Harel, Doug Harris, Ronit Levine-Schnur, Shelly Kreiczer-Levy, Suzie Love, John Lovett, Hanri Mostert, Tim Mulvaney, Manish Oza, Marc Roark, Yara al Salman, Konstanze von Schütz, Nicholas Vrousalis, Rachel Walsh, and two anonymous Law & Philosophy Reviewers for helpful comments on earlier drafts.

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