
I, ME, MINE: BODY- OWNERSHIP AND THE GENERATION PROBLEM

BY

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Abstract: The Body Ownership Thesis states that each person owns her body. I address a prominent objection, the Generation Problem: the Body Ownership Thesis apparently implies that parents own their children: as we own the fruit of our property, if a parent owns her own body, she must own her child and her child's body. I argue that a person does not own the fruit of her property when that fruit is a person or the body of a person. Persons have conclusive title to their bodies, but only defeasible title to the fruits of their bodies.

1. Introduction

The Body Ownership Thesis states that each person¹ owns her own body. Although, this claim seems almost self-evident to some, to others it sounds strange or even incoherent. It may appear to have highly counter-intuitive implications. I begin by using Jeremy Waldron's account of ownership to show that Body-Ownership is not incoherent. I then address one particular implausible apparent implication of the Body Ownership Thesis: the Generation Problem.² According to the Generation Problem, the Body Ownership Thesis implies that parents own their children. Children are the fruit of their parents' bodies. Given that we own, or part-own, the fruit of our property, if a parent owns her own body, she must own or part own her child and her child's body. Not only is this highly implausible, it means that the Body Ownership claim implies its own falsity. As most persons have parents who are also persons, those persons will be owned by their parents. They will not own their own bodies. I argue that the Generation Problem can be resolved. A person does not own the fruit of her property when that fruit is a person or the body of a person. Persons have conclusive title to their bodies, but only defeasible title to the fruits of their bodies.

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My solution to the Generation Problem is part of an overall strategy of defusing implausible apparent implications of the Body Ownership claim by revising our understanding of that claim. It means that we have restricted ownership over our bodies rather than the ‘full’ ownership that the debate has often focused on. However, we need not conclude that Body Ownership is not sufficiently analogous to our ownership of ordinary objects. On the contrary, the natural result of extending normal familiar ownership to special objects like the bodies of persons is this restricted type of ownership. This way of understanding Body Ownership allows us to draw substantial ethical conclusions based on the claim that a person owns her own body.

I outline a defence of the claim that each person has conclusive title to her body. This defence is based on three special features of the person’s relationship to her body: it is the locus of her agency, the main locus of her as a patient and a locus of her interest. I respond to various objections to my solution to the Generation Problem and offer some clarifications of my account, including a discussion of whether parents own reproductive material or offspring that are not persons. I show that my solution to the Generation Problem is compatible with various plausible views on ownership of reproductive material or offspring that are not persons. Finally, I respond to some recent objections to body ownership put forward by Ingmar Persson.³

2. *Does it make sense to claim that I own my body?*

I begin by dealing with a worry about whether the Body-Ownership Claim makes sense. Some people find talk of *owning* one’s body peculiar. They think my relationship to my body is so close and intimate that talk of ownership is inappropriate or incoherent. This worry echoes worries about the coherence of the Self-Ownership claim, the claim that each person owns her own person. My response echoes G.A. Cohen’s response to those worries about Self-Ownership. Cohen asks:

What is there in the content of the concepts of ownership and personhood that might disqualify the concept of self-ownership? Persons and their powers can be controlled, among others by themselves, and there is surely always an answer to the question, with respect to anything that can be controlled, who has the right to control it? – even if that answer is: no one.⁴

Cohen claims that self-ownership is coherent because persons and their powers can be controlled either by the person in question or by another. Similarly, I argue that the Body-Ownership claim is coherent because bodies are resources that can be used and controlled either by the person whose body it is or by another. The question therefore arises: who should decide

how this resource is used? On my understanding of ownership, to claim that I own my body is simply to claim that I have a certain type of authority over the use of the resource that is my body. My understanding of what it is for a person to own her body is based on Jeremy Waldron's account of private property. Waldron describes the problem of allocation as the problem of determining peacefully and reasonably predictably who is to have access to which resources for what purposes and when.⁵ A property system is system of rules governing access to and control of material resources – an attempt to solve the allocation problem.⁶ Waldron describes a pure private property system, asking us to 'Imagine that the material resources available for use in a society have been divided into discrete parcels (call each parcel an object) and that each object has the name of an individual member of the society attached to it ... In a private property system, a rule is laid down that, in the case of each object, the individual person whose name is attached to that object is to determine how the object shall be used and by whom.'⁷

Any plausible property system is unlikely to be a pure private property system. It is likely that some resources should not be allocated to private individuals. Nonetheless, Waldron's image of individual names attached to parcels of resources illustrates nicely what I mean when I talk about a person owning a resource. A person owns a resource when there is a relationship between the person and the resource in virtue of which the resource is in some permanent way allocated to that person: it is hers in a way that gives her a privileged status over the use of that resource and its products. This privileged status gives her a *prima facie* authority to make decisions over what happens to that resource based primarily on her own interests, desires, or whims. Thus, the Body Ownership Thesis states that each person's body must be recognised as hers in a way that gives her a permanent *prima facie* authority to make decisions over what happens to it based on her own interests, desires or whims.⁸

My body is a resource. It can be used to achieve ends – either my ends or the ends of others. Moreover, either I or another may take my body being in a certain state as an end. Finally, others can affect it in ways that diminish its usefulness or its value. We thus face the allocation problem with respect to my body: by whom and on what basis should decisions be made about what happens to it? A sensible answer to this question is that I should have a permanent *prima facie* authority to make decisions about what happens to my body on the basis of my interests and desires. If this is so, and the Waldronian understanding of ownership is correct, the claim that I own my body makes sense.⁹

The Body Ownership Thesis is useful even if it does not tell us the whole story about our relationship to our bodies.¹⁰ This is partly because there is a set of familiar rights such that *prima facie* a person who owns a resource has each of those rights over the resource. Establishing Body Ownership is thus an efficient way of reaching important normative conclusions. However, the more important work is done by appeal to the idea of allocation that is part of the Waldron analysis of ownership. When we think about

ownership in terms of resources being allocated to a given individual's use, we see why ownership should be associated with that particular set of rights. The rights of ownership are those that an agent must (*prima facie*) have if a resource is to count as allocated to her use. We also see that an important question is whether a person's relationship with her body is such that it should be allocated to her use rather than to the use of another or to the common good. Many people will be able to agree that a person's body should be allocated to her use even if they cannot agree on the full relationship a person holds to her body and all the normative implications of that relationship.

A final objection to the Body Ownership claim is that we should not speak of a person's body as being allocated to her because this falsely suggests, first, that some agent has done the allocating and, second, that this agent could have allocated the body to someone else.¹¹ We do not need to assume that for my body to be allocated to me some agent must have done the allocating. My body may be allocated to my use by morality itself, or in other words by the correct system of moral rules. It is so allocated if, under the correct system of moral rules, I have *prima facie* authority to decide what happens to my body based on my own interests and desires. It is true that, in some sense, my body could not have been allocated to anyone else. My relationship to my body is such that the correct system of moral rules *must* give me *prima facie* authority over it. This does not undermine the claim that my body is allocated to me. Many, if not most, moral truths are such that they must hold under the correct set of moral rules. This does not stop these moral truths being sensible or helpful things to say. In particular, it is sensible and helpful to say that a person's body must be allocated to her, first, because we can imagine cases in which people act as though this is not the case i.e. in which the body is treated as if it is owned by someone else and, second, because we may want to draw out the implications of this claim.

3. *What kind of ownership?*

The literature on self-ownership typically focuses on 'full self-ownership'. For example, Cohen uses the term self-ownership to refer to 'the fullest right a person (logically) can have over herself provided that each other person also has just such a right.'¹² Full self-ownership has two significant features. First the rights associated with full self-ownership are absolute or conclusive. Second, full self-ownership requires that a person have the full set of standard ownership rights over her person. The full set of ownership rights over an object includes, amongst other rights (1) control rights to possess, use and manage that object; (2) income rights to the income from the object

and, if the object is sold, to the capital value of the object; (3) transfer rights to transfer ownership of the object by sale or gift.¹³

Full self-ownership is generally thought to be inconsistent with both duties to aid others in the ordinary course of events and with redistributive taxation. Cohen argues for this by drawing an analogy with our ownership of other resources: 'If I am the (full) legal owner of a knife, then the state may prevent me from putting it in your back, but it may not, in the ordinary course of events, direct me to place it at your disposal, because, for example, you need it at the moment, or because you deserve it more than I do ... Nor ... may it direct me to use it to some extent on your behalf as a condition of my using it on my own behalf.'¹⁴ The suggestion is that legal duties to aid others involve the state placing my person at the disposal of others. Obligations to pay tax on the earnings I receive as a result of my activities involve the state directing me to use my person to some extent on behalf of another as a condition of my using it on my own behalf. There are two ways of reacting to the claim that self-ownership is incompatible with duties to aid others and with redistributive taxation. Cohen concludes that we must reject the Self-Ownership Thesis.¹⁵ Others, most famously Robert Nozick, have concluded that redistributive taxation is illegitimate.¹⁶

I think that we should reject both the Full Self-Ownership Thesis and the equivalent version of the Body-Ownership Thesis. I suggest that a person's ownership of her body lacks both of the significant features of Full Self-Ownership picked out above. First, the Body-Ownership I endorse does not require that a person's rights over her body be absolute or conclusive. Second, I hold that a person may not have all the standard rights of ownership over her body: most noticeably we may lack the right to transfer ownership of our bodies. The first set of differences means that a person's ownership rights over her body may permissibly be infringed in some cases. Thus, my version of the Body Ownership Thesis is compatible with legal duties to aid others and redistributive taxation. The second set of differences mean that my version of the Body Ownership Thesis is agnostic about whether voluntary slavery is permissible. I am inclined to think that it is not permissible. Nonetheless, it has been suggested to me that whether this is so is a substantial ethical question. Plausibly respect for autonomy can require us to allow a person to kill herself in some situations. Perhaps then respect for autonomy may require us to allow voluntary slavery. As settling this question is outside the scope of this article, I remain agnostic here.¹⁷

I have a fine line to walk here. I argue that each person owns her own body. However, I claim that this ownership differs in important ways from self-ownership as traditionally understood. This leaves me vulnerable to the challenge that on my account we do not own our bodies in anything more than a metaphorical sense. Body-Ownership as I understand it is too different from normal familiar ownership of normal familiar things. Daniel Attas raises this objection to supporters of Self-Ownership: 'I believe it is a

common mistake among libertarians to present an intuitively appealing metaphorical conception of self-ownership and then to derive further moral implications as if persons were literally self-owners.¹⁸ If Body Ownership is not sufficiently analogous to more familiar types of ownership, I will not be able to use the Body-Ownership Thesis to draw conclusions about what persons may or must do.

My tactic is to turn this objection on its head. Full Self-Ownership as traditionally understood differs from normal familiar ownership of normal familiar objects. The natural result of applying normal familiar ownership to special objects like persons or their bodies is a restricted type of ownership. This restricted type of ownership does not have the kind of implications which critics have found troubling. So in moving away from the traditional understanding of Self-Ownership, my understanding of Body-Ownership is closer to, rather than further away from, more everyday examples of ownership. There are many cases in which we own an object but lack some of the rights associated with ownership. Judith Jarvis Thomson gives an example in which a person who owns a house in a historic district lacks authority over some aspects of her house's appearance, being forbidden from painting it without permission.¹⁹

Of course, this may lead to another kind of worry. Is the concept of ownership sufficiently robust for us to be able to draw interesting normative conclusions from the claim that each person owns her body? Citing cases such as Thomson's, disaggregationists about ownership argue that we should not try to pick out a core set of rights that are essential to ownership. Instead, we should recognise ownership as a loose bundle of rights.²⁰ My view shares some of the features of the loose bundle theory: both theories allow that ownership is not absolute, both allow that a person may have some of the standard ownership rights over an object but lack others.²¹ However, on the loose bundle view, there is no central unifying idea behind our concept of ownership. Because of this, knowing that a person owns a given object does not tell us much about which rights she has over it. In contrast, I endorse Waldron's view that there is a single unified idea behind our concept of ownership: for a person to own a resource is for that resource to be allocated to her use. She has a *prima facie* authority to make decisions about how that thing is to be used in response to her own interests and desires. The guiding idea that the object is allocated to the person's use (a) explains what the standard set of ownership rights have in common and (b) interacts with the peculiar features of the situation, agent and object to determine the person's authority over each thing that she owns. *Prima facie*, she has at least the standard set of ownership rights over it. As that authority is only *prima facie*, some of the rights may be restricted or even absent altogether if there is good reason springing from the peculiar features of the situation, agent or object for this to be so. This is, I think, the best way of explaining the variety of rights we see associated with the ownership of everyday objects. It is also

the best way to understand Body Ownership. In the case of Body Ownership, there is good reason based on the nature of what is owned, for some rights, such as the right to own the fruits of one's property, to be restricted and for others, perhaps such as the right to transfer, to be missing altogether. Because on my view we need some good reason springing from the peculiar features of the situation, agent or object for an agent to lack any of the standard set of ownership rights over an object that she owns, we can draw interesting normative conclusions from the claim that a person owns her body.²²

Although on my view the rights of ownership are merely *prima facie* rather than absolute, this does not mean that ownership is left as a relatively empty or formal notion. If I lack too many of the rights of ownership or if the range of circumstances in which my authority over the object is overridden by others is too broad, then we no longer have genuine ownership. For my *prima facie* authority over an object to count as genuine ownership it must have 'bite'. The object must be, for the most part, allocated to my use and not to the use of others. A moral system which paid lip service to our relationship to our bodies by holding that we 'owned' them, and yet entailed that in practice my body must mostly be given over to the use of others would not, on my view, count as a system which accepted the Body Ownership Thesis.

4. *The Generation Problem*

The Generation Problem starts with a plausible observation about one of the oldest ways of increasing one's property. If I own a tree and apples grow on the tree, I own the apples. If I own a cow and a bull and they have a calf, then I own the calf. We might say that, normally, if I own something I own the 'fruits' of that thing. If we generalise this, and assume that it is always the case that I own the fruits of the things I own, we get the Fruit Principle.

Fruit Principle: If I own X, I own, or part own, the fruits of X unless I have implicitly or explicitly renounced ownership of those fruits.

The Fruit Principle gives rise to the Generation Problem because most persons are the fruit of other persons' bodies. We understand 'fruit' in such a way that a calf is the fruit of the cow that bore it and the bull that sired it. But on this understanding of fruit, my daughter and her body seem to be the fruit of my body and my husband's body. Thus, when coupled with the Fruit Principle, the Body Ownership Thesis implies that I part own my daughter and her body. This is highly counter-intuitive. There is an additional problem. The Body Ownership Thesis seems to imply its own falsity: if each person owns her own body, then parents co-own their children's bodies,

and, as at least some children of persons are persons, some persons do not originally own their bodies. This is 'The Generation Problem'.²³

Robert Nozick suggests two ways to respond to this problem. We must argue that either (a) persons and their bodies cannot be owned by other persons or (b) the process whereby parents make their children and their children's bodies does not lead to ownership.²⁴ I take up Nozick's challenge by arguing for (a). I will argue that, if we accept the Fruit Principle, we should accept a restricted version according to which you do not own the fruits of your property if those fruits are the bodies of persons.

There are two aspects of the Generation Problem. One aspect is the fact that the Body-Ownership Claim implies its own falsity. However, another, more basic aspect is the sheer implausibility of the claim that a parent owns (or co-owns) her children and her children's bodies. The implausibility of this claim has appeared to be a particular problem for the Body-Ownership Thesis because normal human reproduction is the most obvious way in which persons and their bodies appear as fruit. So human bodies (and human persons) are the most obvious things that have the bodies of persons as their fruit. However, if we accept an unrestricted Fruit Principle, normal familiar property claims, claims to own everyday objects, face a similar problem. We can imagine cases in which everyday objects have the bodies of persons as their fruit.

Consider the following examples:

The Genesis Tub: Lisa places a tooth in a petri dish of cola for a science school project. After being shocked by static electricity, Lisa touches the tooth and the resulting spark causes life to evolve in the petri dish. Within days, tiny people, populating a futuristic cityscape, have evolved.²⁵

In this example, the tiny people are in fact the fruit of part of Lisa's body: her tooth. We can change the example and suppose that the source of the life was not Lisa's own tooth, but the tooth of an animal that she owned or, if we have worries about the ownership of animals, a plant that belonged to her.

Supercows: A farmer discovers that the cows in his herd have evolved to the extent that they can speak English and that one cow has formed the ambition to go to university to study philosophy.

Robot: Scientists use materials from a privately owned laboratory to create a robot that is sentient, self-conscious and has a conception of the kind of life she would like to live.

Isn't it just as absurd to claim that Lisa owns the tiny people's bodies or that the farmer owns the supercows' bodies or that the scientists own the robot's body as to claim that parents own their children's bodies? Yet this is exactly what follows from the unrestricted Fruit Principle plus the uncontroversial claim that the agents in question own the ordinary everyday objects described.

I think this shows that we shouldn't respond to the Generation Problem by abandoning the Body-Ownership Thesis. Instead, we need to revise the Fruit Principle. It is that principle (in its unrestricted form) which causes all the trouble.²⁶ We should replace the Fruit Principle with:

Defeasible Fruit Principle: If I own X, I own, or part own, the fruits of X unless (a) I have implicitly or explicitly renounced ownership of those fruits, (b) someone else has a title to those fruits that defeats my title or (c) the nature of the fruits is incompatible with ownership.

Exception (a) was already written into the original Fruit Principle. Exception (b) is added to deal with the Generation Problem and the cases described above. I have also taken the opportunity to add a third clause. This is to allow for the possibility that there are some objects that can neither own themselves nor be owned by third parties. Examples might include national treasures, cures for terrible diseases, eco-systems and rare butterflies.²⁷

We can avoid the Generation Problem by accompanying the Defeasible Fruit Principle with the following:

*Conclusive Body-Ownership Thesis: Each person owns her own body. Her title to her body defeats all²⁸ other types of title to that body, except (possibly) titles based on legitimate, autonomous transfer on the part of the person whose body it is.*²⁹

The Conclusive Body Ownership Thesis states that I own my body *no matter what claims other people have to ownership of my body unless (possibly) I have transferred my claim to them.*³⁰ My parents had a claim to ownership of my body. It was the fruit of their bodies and we normally own the fruits of our property. But the claim of my parents on my body was defeated when it came up against my claim on my body. This resolves the Generation Problem. We can recognise that my parents own their bodies and that, normally, persons own the fruit of what they own, without being forced to conclude that my parents own my body. All we need to do is remember that not all claims to property are equal. Once we have done that, we can recognise a defeasible title to the fruits of one's property, while recognising each person's ownership of her body.

A small note of clarification is needed here. I do not say that a person's body ownership is conclusive in the sense that it defeats all other considerations. I do not say that a person is never required to use her body to help others or that it is never permissible for others to damage a person's body. I say that a person has *conclusive title* to her body: she *owns* her body no matter what (with the possible exception of cases in which she has autonomously transferred title to her body). But ownership – even self-ownership – is not itself a conclusive feature of moral situations. Sometimes a person may be required to use what she owns to help others. My boat is still my boat even if I am required to use it to aid others if I hear a distress call nearby.

Similarly, my body is my body even if I am required to use it to pull a drowning person out of the water.

Requirements to put one's body at the use of others must be strictly limited if we are to respect the Body-Ownership Claim. A morality which requires me to put my body at the use of others whenever this will help them more than it hurts me does not respect Bodily Ownership. Bodily Ownership requires a *prima facie* authority over what happens to my body, so that it is, for the most part, at my use and not at the use of others. Nonetheless, this authority need not be absolute. It is important to distinguish the claim that I have conclusive title to my body – the claim that I own my body no matter what – and the claim that I have conclusive authority over my body – the claim that it should be up to me what happens to my body no matter what. I endorse the former but not the latter.

5. *Why do I have conclusive title to my body?*

I have not yet explained why a person should have conclusive title to her body. As this is a large and difficult question and not one that I can properly answer here, I will give a brief sketch of an argument that I have given more fully elsewhere to defend a slightly different claim, the claim that a person's body belongs to her.³¹ Belonging differs from ownership in that it covers cases where something is temporarily allocated to a person or allocated to a person for use but not for profit. Thus (a) belonging need not be permanent or include rights to permanently alter the resource and (b) derivative or second-order rights such as the rights to the fruits of the resource or the right to transfer ownership are not (even *prima facie*) implied by claims about belonging. I think this argument can be expanded to defend the stronger claims that a person owns her body and that her title to her body is conclusive.

A person's relationship with her body is distinctive in many ways. I pick out three features of a person's relationship with her body that make up the body's unique role in interaction with the world.

The first feature is that the body is the locus of agency: it is through my body that I act on the world. When I make anything happen in the external world, I do so by moving some part or parts of my body.

The second feature is that the body is the (main) locus of my patience: (on the whole) it is through my body that the world acts on me.

The third feature is that my body is one of the most important loci of interest for me: what is happening to my body is a significant part of how well or badly things are going for me.

Because of these three features, my body is identified with me in a way in which no other object is.³² Recall Waldron's image of parcels of objects with the names of individuals attached. A person's body is the paradigm example

of an object that comes with a name already attached. My connection to my body is vital to my understanding of myself and my relationship to the external world. Any way of solving the allocation problem that does not give me sufficient authority over my body does not take this connection to be normatively significant. It thus treats as insignificant a fact that is central to my self-understanding. Such an allocation principle is disrespectful.

In addition, my body needs to belong to me to make possible a type of agency that we have reason to want. I call this 'full-fledged agency'. Full-fledged agency involves not simply acting, but selecting one's own ends and adopting a settled course of action in accordance with those ends. By adopting a settled course of action, I mean setting a plan with a genuine intention of pursuing that plan to completion. If my body does not belong to me, my body is not allocated to my use, but to the use of some other or others or to the common good. If my body is allocated to another, I am required to give over my body to their use at their command. If my body is allocated to the common good, my body can be co-opted to the ends of others or to a moral end of impartial overall goodness whenever the balance of needs dictates. In either case, I am under constant threat of a requirement to give over the use of my body to others. This conflicts with full-fledged agency in two ways. First, too many requirements to put my body at the use of others do not give me the freedom to choose my own ends. As my body is the locus of my agency, if my body is too often co-opted to the use of others, I am unable to pursue my own ends. Second, full-fledged agency requires a genuine intention to pursue a project to completion. To have such a genuine intention, I must believe that there is a reasonable chance that I will be able to complete the project. Given that my body is the locus of my agency, the constant threat of being required to give over the use of my body to others means there is no such reasonable chance of completing the project. I cannot form the required intention.³³

Elsewhere, I use these observations to develop an argument for the claim that a person's body belongs to her. In that work, my main concern is to defend the Doctrine of Doing and Allowing (DDA). To complete my defence of the DDA, all that I needed was the claim that a person's body belongs to her. I thus restricted my attention to that more modest claim. In part, this was because I did not want the persistent resistance to the Body Ownership Claim – caused by worries about coherence and about the Generation Problem – to lead to unnecessary resistance to my defence of the DDA. In this article, I tackle those worries head on. I also think that, if successful, my defence of the claim that a person's body belongs to her can be expanded to defend the Body-Ownership Thesis.

The special relationship described is a permanent relationship: it exists as long as the person and the body exist. If respect for this relationship requires us to recognise that each person's body is allocated to her, then it requires us to recognise that her body is allocated to her permanently. Given that her

body is permanently allocated to her use, she should have (*prima facie*) rights to make permanent alterations. This *prima facie* right is compatible with moral restrictions on, for example, self-mutilation or suicide. It is analogous to the homeowner's right to decorate her house, which might be restricted by requirements not to paint offensive slogans: the owner has the right to make permanent alterations unless there is some sufficiently strong reason to restrict that right. The relationship of a person to her body also seems to support that she should (*prima facie*) have the derivative or second-order rights associated with ownership such as the rights to the fruits of the resource or the right to transfer ownership. Failure to recognise these rights in the absence of a sufficient countervailing reason would seem disrespectful to the person's relationship to her body. If second-order rights, such as the right to transfer, are missing, this is not because the relationship a person has to her body is insufficiently strong, but because it is too strong to be voluntarily overridden.

Similarly, our reasons to want full-fledged agency support permanent allocation and *prima facie* rights to make permanent alterations. Temporary allocation would leave full-fledged agency only temporarily possible. It would be possible only while our bodies were allocated to us. In addition, the type of full-fledged agency possible would be of a short-range type. Knowing that our bodies might be reallocated when our temporary title to them expired, we would be unable to form the required intentions for full-fledged agency that occurred outside this time. Restrictions on permanently altering the body would restrict our ability to use our body and constrict our agency. Thus, we need *prima facie* rights to make such alterations, with restrictions made only when there is sufficient reason.

It is a bit more difficult to show that full-fledged agency requires (*prima facie*) derivative and second order rights such as rights to the fruit of our bodies and rights of transfer. However, lacking at least some such rights would make full-fledged agency both psychologically and practically more difficult. If I do not own the fruits of my projects, then much of the psychological motivation to pursue such projects disappears. If what I produce is not allocated to my use, then I cannot complete any step-by-step projects in which later stages use the products of earlier work.

These considerations also support the thought that a person's title to her body must be a conclusive title, defeating all other types of title except (possibly) titles based on legitimate, autonomous transfer on her part. Suppose we held that a person's title to her body was defeated by, for example, the title that her parents have to that body as the fruit of their property. In other words, suppose we think that it should be allocated to their use rather than hers. This would involve holding that the relationship her parents have to that body is more important than her relationship to it. But this surely fails to properly respond to her relationship to her body. Her body is the locus of her agency, the main locus of her patience and one of most important loci of interest for her. To see this relationship as anything other than conclusive

title is to undervalue it in a way that undervalues the person's agency, patience and interests.

Could another person's dependence on my body for the exercise of her agency defeat my title to my body? No. If it is still my body and not her body or our body, then there must be some significant differences between her relationship to it and my relationship to it. If my body counts as a locus of her patience, agency or interest, it does so only derivatively, through its effects on her own body: she does not see through my eyes, move my hands or suffer pain when my arm is burnt. I do. My body is still an object that comes with a name already attached – and it is my name, not hers. Her claim on my body rests on need rather than on a special relationship to my body. Need alone does not determine ownership: something does not become mine just because I need it. On a system on which resources are allocated to whomever needs them the most, no one genuinely owns anything: no one has a *prima facie* authority over how a given resource is used. Rather than influencing who owns what, need is a feature that might over-ride the authority of ownership in certain cases. Even though I own my body, I may be required to use it to aid another person to exercise their agency (so long as my body remains for the most part, at my use and not at the use of others). This position does the best job of respecting my special relationship to my body while responding to the other's need for aid. The alternative – on which the fact that a person needs my body for her agency means she has just as much claim to use it as I do – is unacceptable for two reasons. First, it treats my relationship to my body, which is central to my self-understanding, as insignificant and is thus disrespectful. Second, it leaves both me and the other unable to exercise full-fledged agency – for if my title to my body is defeated by her needs, her title to my body must also be open to defeat by the needs of others. The constant threat that 'our' body may be given over to the needs of others will undermine her ability to form the types of intentions required for full-fledged agency.

This example points to a sad truth. Body ownership is not sufficient for full-fledged agency. The person who is dependent on my body to exercise her agency owns her own body. Nonetheless, her circumstances are such that, without help, full-fledged agency is impossible for her. Unfortunately, we cannot fix this by giving her rights over my body, for this would leave her vulnerable to the claims of others in a way that would also leave full-fledged agency impossible. Without body-ownership, full-fledged agency is impossible for *anyone*; with body-ownership, full-fledged agency is possible for those lucky people in the right circumstances.

6. Objections and clarifications: pre-personhood offspring and reproductive material

I will now address two objections to my solution to the Generation Problem. The first objection is that my Defeasible Fruit Principle may still seem to

have counterintuitive implications regarding parental ownership of children. I suggested that my parents did have a claim on my body based on the fact that my body is the fruit of their bodies but that claim is undermined by the fact that I am a person and each person has conclusive title to her body. Does this suggest that a parent owns her offspring's body if there is no person whose body it is? Do parents own the bodies of their offspring before those offspring attain personhood?

The question of whether a parent owns her pre-personhood offspring differs significantly from the question of whether a parent owns her adult children. The answer to the latter is uncontroversial: parents do not own their adult children. The challenge is to show that the Body Ownership Thesis is compatible with this conclusion. In contrast, there is no general agreement about whether parents own their pre-personhood offspring or pre-conception reproductive materials. The implications of the Body Ownership Thesis about the ownership of pre-personhood offspring and reproductive materials will depend upon substantive views about the moral status of those entities. My main aim here will be to show that the Body Ownership Thesis is compatible with all plausible positions about the ownership of pre-personhood offspring. I will indicate my own views, but leave full defence of those views to another paper.

Suppose someone wants to endorse the Defeasible Fruit Principle and the Conclusive Body Claim while holding that we do *not* own reproductive material or pre-personhood offspring. They must claim that the parent has implicitly or explicitly renounced ownership of the entity; that someone else has a title that defeats the parental title; or that the nature of the entity is incompatible with ownership.

Several authors have emphasised the asymmetry between male and female roles in reproduction to claim that genetic fathers either implicitly renounce ownership of reproductive materials or that their claims are defeated by those of the genetic or gestational mother.³⁴ My own view is that the reproductive roles of both gestational mothers and genetic mothers give them a stronger title to pre-personhood offspring than mere genetic fathers, but that this title does not defeat the father's claim. It is important to distinguish between competing titles that defeat a person's title and competing titles that result in unequal part ownership. In any case, such appeals to competing titles and implicit renunciation do not help those who want to claim that neither parent owns early reproductive material and/or offspring. They imply that genetic or gestational mothers, if not fathers, have ownership. To support positions on which neither parent owns reproductive material and/or pre-personhood offspring while retaining the Body Ownership Thesis, the most plausible options are to argue either that the offspring themselves have a title that defeats that of the parent or that the nature of some or all of these entities is incompatible with ownership.

Here we need to distinguish reproductive material or pre-personhood offspring to whom we cannot owe duties and reproductive material or pre-personhood offspring to whom we can owe duties. It seems highly implausible that we owe duties to sperm, unfertilised eggs or embryos just after conception. If no duties can be owed to F, then it is hard to see how F could own itself. So if parents do fail to own sperm, unfertilised eggs, or embryos just after conception, then it does not seem this can be because those entities have a title to themselves that defeats the parents title. It must be because the nature of such entities is incompatible with ownership. This is not my own view, but it is compatible with the Fruit Principle and the Body Thesis.

As the offspring develops, it becomes plausible that parents start to owe duties to it. A variety of positions are open here. First, one might argue that all entities to which we can owe duties have conclusive title to their bodies and thus cannot be owned by their parents. Second, one might claim that although such entities do not own their bodies, they do have some claim to their bodies, which is incompatible with ownership.³⁵ Third, one might claim that although we can own some entities to which duties are owed, for example, pigs and cows, the duties owed to pre-personhood offspring place so many restrictions on use that they are incompatible with ownership. Finally, one might argue that parents do own offspring for at least some of the period between the offspring becoming the subject of duties and the offspring obtaining personhood. Each of these is compatible with the Defeasible Fruit Principle.

Objections to the idea that we can own reproductive material and pre-personhood offspring often focus on restrictions on what it is morally permissible for parents to do with such entities.³⁶ On my understanding of ownership, ownership is compatible with substantial restrictions on the standard set of ownership rights. We see restrictions on the authority of ownership with many precious objects: works of art, listed buildings, areas of natural beauty. Nonetheless, at some point, what a person may do to an object may become so restricted that it no longer makes sense to see the object as allocated to her use. Even if she has the authority to make decisions over what happens to it, her own interests and desires are permitted to play only a very small role in those decisions. In such cases, we should no longer see the object as owned by the person. Instead she is better regarded as a trustee over it. We should not expect there to be a hard line between trusteeship and restricted ownership: it is not likely that there is a determinate point after which suddenly there are too many restrictions in place.

I think that a parent's relationship to reproductive material and pre-personhood offspring starts at restricted ownership and gradually changes to trusteeship during pregnancy. There are restrictions on what can legitimately be done with reproductive material and many restrictions on what may legitimately be done with early offspring, for example pre-implantation embryos. Nonetheless, parents retain sufficient authority over these entities

for them to count as allocated to their use. Consider a pre-implantation in vitro fertilised egg. The parents may decide whether the fertilised egg is implanted in the genetic mother, donated to another couple, respectfully destroyed, or used for important medical research.³⁷ They may decide which of these options to take based on their own desires to be (or not to be) parents, on their attachments to particular other would-be parents, on their interest in particular diseases.³⁸ As the offspring develops, the parents' decisions about what to do with their offspring are increasingly constrained by the offspring's own interests until it no longer makes sense to see them as owners of the offspring.

7. *Objections and clarifications: Persson's particle puzzle*

Ingmar Persson raises a puzzle which he claims shows that we cannot have rights over our bodies. Persson claims that a person can have a right to her body only if we have rights to all the parts into which it can be divided. This is because if she does not have rights to all the parts, they could each be removed without any of her rights being infringed. This would not leave anything of her body. So her right to her body would be otiose.³⁹ However, as Persson points out, each person's body is composed of particles that are continuously shed and replaced. It is possible that the particles currently composing one person's body were earlier the parts of other people's bodies. If the other persons owned their bodies, they must have owned the parts of those bodies. Thus, unless they have done something to waive their rights over those microparticles, they still own them. It thus seems that the person whose body is made up of the microparticles cannot own those parts of her body and thus cannot own her body.⁴⁰

Persson's argument is based partly on the claim that rights to an object must be based on (a) the fact that we are the first to occupy that object or (b) that rights to the object have been autonomously transferred from the first occupier.⁴¹ Persson argues that the transference of microparticles means that we may not be first occupiers of all parts of our bodies nor did the first-occupiers autonomously give these parts of their bodies away.⁴² I do not think that body-ownership is based on first occupancy. Nonetheless, Persson's argument poses an important challenge for anyone who wants to hold that we own our bodies. We need an account of the ownership of body parts that gives sensible answers to what rights we have over body parts when they are part of our bodies, when they are not attached to any body and when they are attached to another body. On my view, a person does not own her body in virtue of owning the parts of her body. The key relations that ground body-ownership hold between the person and her body as a whole rather than between the person and her body parts. My ownership

of my body forbids you from removing my body parts because, and to the extent that, doing so would alter or damage my body. It seems to me possible that we do not have rights against the removal of microparticles from our bodies. When we are in a crowded lift, you do not have to avoid brushing against me in case you thereby knock off some skin particles and violate my bodily rights. It does not follow that you may remove every microparticle, one after another, thereby destroying my body. It can be impermissible to do a series of acts even if it would be permissible to do each act in the series if you did not do (some of) the others. Suppose you are wearing armour, it is permissible for you to brush against me, knocking off some skin particles. It is not permissible for you to repeatedly brush against me, knocking off a few skin particles each time, until my skin is raw and bleeding.

So I suggest that Persson is wrong to claim that if we do not own each part of our bodies, no matter how small, we do not own our bodies. Nonetheless, it does seem that we generally own body parts such as hands, organs, growing body hair. I think that a person owns these parts of her body because they are part of the whole body that she owns.⁴³ Persson argues against such a 'top-down' approach. He suggests that we do not have a right to something simply because it is part of the whole to which we have a right. 'If somebody has stolen some organ from the patient Pat's body and transplanted it into my body, it does not follow that I have a right to it, even if we suppose that I have a right to the other parts of my current body. It is still Pat who has a right to this organ, despite the fact that it is now embedded in my body.'⁴⁴ This case is much less clear-cut than Persson assumes. There are many distorting factors: Pat has been subject to a horrific rights violation and the recipient has benefited from this; to remove the organ from the recipient would require infringement of his rights to bodily integrity. Most importantly, it is not clear whether the transplanted organ is part of the recipient's body. Consider the, rather grisly, alternative scenario in which rather than transplanting Pat's organ, the villain cooked it and fed it to the (unaware) recipient. It has now been digested and used by her body. By miracle, all the particles from the organ have appeared in the same place: they have been used to heal a wound in the recipient's kidney and form an identifiable patch of scar tissue. In this case, the scar tissue is clearly part of the recipient's body and belongs to the recipient, despite the fact that its raw material came from an organ that belonged to Pat and was obtained through violation of his rights.

There are two important differences between the transplant case and the digestion case. First, in the digestion case the erstwhile organ has been deeply integrated into the recipient's body. The particles have been broken down, processed by his system and formed into cells structured by his DNA rather than Pat's. In the transplant case, the organ is only very weakly integrated into the recipient's system. It is being used by this system, but it is still a recognisably distinct object. Second, in the digestion case, the erstwhile organ is no longer the same thing which Pat originally owned. His primary

title of ownership was to the organ. As Persson notes, the matter making up the organ is continuously lost and replaced. Yet the organ – and the ownership – remains. If an object we own is destroyed, we have a defeasible title to ownership of the resulting matter. However, this title is weaker than our title to the original object. In the transplant case, the transplanted organ is still the same organ, in the same form, which was removed from Pat's body.⁴⁵ These two factors combine to explain why the scar tissue counts as part of the recipient's body but the organ does not.

Something can count as part of a person's body even if it is less deeply integrated than the scar tissue. A legitimately transplanted organ does become part of a person's body, even if it retains the donor DNA. Non-organic objects may count as part of a person's body: a pacemaker, an electronic voice box, an artificial limb, all might be part of someone's body. However, our assessments of whether such objects count as part of a person's body will be strongly influenced by the claims others have on the object in question. The more integrated something is into the person's body, the more likely we are to count it as part of that person's body, even if another person has an ownership claim on the object. Equally, the weaker that others' claims are on less than fully integrated 'body parts' the more likely we are to count them as part of the person's body. This is compatible with my claims that body-ownership is conclusive because each person owns her body and its parts, no matter what. The ownership claims of others come into play when deciding whether a non-paradigm body part counts as part of the body or not.

8. *Concluding remarks*

I have defended the Body-Ownership Claim against a persistent objection: The Generation Problem. If each person owns her own body and each person owns the fruits of her property, then each person is (at least originally) owned by her parents. I have argued that we should reject the unrestricted Fruit Principle. We should not hold that each person owns the fruits of her property. The unrestricted Fruit Principle is as implausible in cases involving the fruits of ordinary everyday objects as it is when applied to Body Ownership. Instead we should say that each person owns, or part-owns, the fruits of her property *unless* (a) *she has implicitly or explicitly renounced ownership of those fruits*, (b) *someone else has a title to those fruits that defeats her title* or (c) *the nature of the fruits is incompatible with ownership*. We should also say that each person has conclusive title to her body. I do not own the fruits of my property if the fruit is a person's body. This is true whether the original property is an ordinary external object or my own body.

This solution to the Generation Problem provides a model for responding to other similar objections to the Body Ownership Claim. We should not understand Body Ownership along the lines of the ‘full’ ownership that has been the traditional focus of the Self-Ownership Debate. Body Ownership should be understood as a restricted form of ownership. Nonetheless, this does not mean that a person only owns her body in a metaphorical sense. This restricted ownership is the natural result of extending normal familiar ownership to special objects like the bodies of persons. The Body-Ownership Claim can be used to draw interesting moral conclusions.

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NOTES

¹ Throughout this article, I will use the term ‘person’ as it is standardly used in moral philosophy to refer to entities with both the capacities and the high moral status associated with adult humans. There is some controversy about which capacities are crucial for personhood, but candidates include agency, a conception of the self and the ability to reason.

² In using this terminology, I follow Persson, 2013, pp. 60–63. The Generation Problem is based on the Paradox of Universal Self-Ownership, a classic objection to the Self-Ownership Thesis. The Body Ownership Thesis and the Self-Ownership Thesis are very closely related. Thus, the defender of the Body Ownership Thesis must answer many of the objections levelled at the Self-Ownership Thesis. However, the Body Ownership Thesis is distinct from the Self-Ownership Thesis and interesting in its own right. I thus focus on the Body Ownership Thesis, although much of what I say in defence of the Body-Ownership Thesis would also serve to defend Self-Ownership. For the Paradox of Universal Self-Ownership, see Locke, 1764, Essay I, Sections 52–55; Nozick, 1974, pp. 287–9; Becker, 1977, pp. 37–39; Okin, 1989, pp. 79–88; Steiner, 1994, pp. 104–106; Attas, 2000, pp. 19–20.

³ Persson, 2013, p. 52.

⁴ Cohen, 1995, p. 210.

⁵ Waldron, 1988, p. 32.

⁶ Waldron, 1988, p. 31.

⁷ Waldron, 1988, p. 38–9.

⁸ Where Waldron focuses on authority to make decisions, I think that the basis on which decisions must be made is also important. If I make decisions on what happens to an object, but must do so in such a way as to maximise other interests then I am a trustee.

⁹ Parts of the preceding three paragraphs overlap with Woollard, 2015, pp. 76–77 and 187–188. There, I use Waldron’s account of private property to understand what I see as a thinner and more basic notion, the notion of belonging. Belonging differs from ownership in that it covers cases where something is temporarily allocated to a person or allocated to a person for use but not for profit. Thus (a) belonging need not be permanent or include rights to permanently alter the resource and (b) second-order rights such as the right to transfer ownership are not (even *prima facie*) implied by claims about belonging.

¹⁰ I thank Elseltijn Kingma for pressing me on this.

¹¹ I thank Chris Janaway and Genia Schönbaumsfeld and others for these objections.

¹² Cohen, 1995, p. 213.

¹³ See Honore, 1961, p. 108; Vallentyne, 2012.

¹⁴ Cohen, 1995 p. 215–216.

¹⁵ Ibid., pp. 229–244.

¹⁶ Nozick, 1974, especially p. 172.

¹⁷ I thank Nicholas Shakel and an anonymous referee for helpful comments on this issue.

¹⁸ Attas, 2000 p. 2, fn 2,

¹⁹ Thomson, 1992, p. 338.

²⁰ See Grey, 1980. For critical discussion see Munzer, 1990, pp. 31–36 amongst others.

²¹ I thank the anonymous referee who pressed me to be clearer about the difference between my view and the loose bundle view.

²² This paragraph expands on an argument suggested in Woollard, 2013, p. 330. However, note that the former work discusses ‘belonging’ a slightly different concept from ownership.

²³ For references see footnote 2.

²⁴ Nozick, 1974, pp. 288–289. Note Nozick focuses on the Paradox of Universal Self-Ownership, which is the analogous objection to self-ownership. Hillel Steiner offers an ingenious version of approach (b) (1994, pp. 237–248) but I believe this argument ultimately fails. For criticism of Steiner’s argument, see Curchin, 2007; Persson, 2013 pp. 62–63.

²⁵ ‘The Simpson’s Treehouse of Horror VII’, written by Ken Keeler, Dan Greaney, David S. Cohen, for 20th Century Fox, first aired 27 October 1996.

²⁶ My solution to the Generation Problem has something in common with L.C. Becker’s proposed solution to the Paradox of Universal Self-Ownership, (1977, pp. 37–39). Becker argues that Locke can avoid paradox by noting that self-ownership, as the ground of ownership of the fruits of one’s labour, must take priority over the latter type of ownership.

²⁷ It has been suggested to me that I could avoid the Generation Problem more efficiently by replacing Exceptions (b) and (c) with a single exception stating that I do not own the fruits of my property if ‘the nature of those fruits is incompatible with ownership by a third party’. I have chosen not to take this route because it seems to me that it blurs the distinction between two importantly different reasons that a person may fail to own the fruits of her property. I thank Alex Gregory for the suggestion.

²⁸ According to Nozick, Locke does not argue that the nature of a person is such that they cannot be owned – even by those who make them – because he claims that God owns each of us as our maker. To accommodate this, Locke could say that a person’s claim to her person and to her body defeats all other *non-Divine* types of title to that body.

²⁹ An analogous ‘Conclusive Self-Ownership Thesis’, stating that each person has a title to her person that defeats all other types of title to that person, can be used to avoid the parallel Paradox of Universal Self-Ownership.

³⁰ As noted, I remain agnostic in this article about whether we can voluntarily transfer title to our bodies.

³¹ Woollard, 2015, pp. 187–204.

³² Is this true for persons with certain disabilities who have devices that assist them with core functions, such as a wheelchair or voice box, or even companion animal? Sufficiently integrated devices may count as part of the person’s body despite being inorganic. (See discussion in Section 6.) Other assistive devices maybe nearly, but not quite as strongly identified with the person as their body, giving the person a very strong authority over the object.

³³ Of course, we do not always pursue our projects to completion. We may find ourselves required to call a project to a halt if it becomes clear that continuing it will harm others. We may need to stop in response to an immediate emergency. We may simply decide that there is something else we would rather be doing. This is compatible with full-fledged agency for there is a reasonable chance that we will complete the project and therefore it is possible for us to form the required intention.

³⁴ Overall, 1993, pp. 85–92. Note Overall does not think that the genetic mother's claim is best understood as a form of ownership. See Rothman, 1989, p. 258; Kingma 'Nine Months', work in progress.

³⁵ This appears to be the position put forward by Ingmar Persson (2013, p. 61). The suggestion appears to be that owing duties to a creature implies that the creature has a right to itself that is incompatible with ownership. This seems wrong. Duties can be owed to many creatures that we can sensibly talk of owning. If I buy a dog, I owe duties to the dog. I have a duty not to mistreat it. I have a (*prima facie*) duty to provide the ingredients for its flourishing. Nonetheless, I still have rights over it that it seems to make sense to see as rights of ownership: I can teach the dog to round up sheep and profit from its shepherding activities; I can choose where to live based mainly on my own interests and – so long as this is not incompatible with the dog's flourishing – I can bring the dog along with me even if it would prefer to stay where it is.

³⁶ See for example, Persson, 2013, p. 71; Kolers and Bayne, 2001, p. 278.

³⁷ I here ignore cases where the parents are in disagreement over what should happen to the fertilized eggs. See comments on the asymmetry of parental titles above.

³⁸ Such decisions are subject to reasonable beliefs that their offspring would have a reasonably adequate life and that, if taking on parental obligations, they would fulfill these reasonably well. (See O'Neil, 1979, pp. 25–38.) This can be explained by standard duties not to wrong others or to cause oneself to have obligations that one won't fulfill. These restrictions do not undermine claims to ownership.

³⁹ Persson, 2013, p. 51.

⁴⁰ Persson, 2013, p. 52.

⁴¹ Persson, 2013, p. 50.

⁴² Persson, 2013, p. 52.

⁴³ For a similar approach, see McElwee, 2010, p. 216.

⁴⁴ Persson, 2013, p. 54.

⁴⁵ Pat's claim to the organ once removed is different from his claim to the organ when in situ. When the organ is in situ, he has a claim to the organ as part of the body to which he has a conclusive body-ownership claim. Once removed, he has a derivative right to the organ as a former body part.

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