Our bodies, whose property? / Anne Phillips.

Summary: "No one wants to be treated like an object, regarded as an item of property, or put up for sale. Yet many people frame personal autonomy in terms of self-ownership, representing themselves as property owners with the right to do as they wish with their bodies. Others do not use the language of property, but are similarly insistent on the rights of free individuals to decide for themselves whether to engage in commercial transactions for sex, reproduction, or organ sales. Drawing on analyses of rape, surrogacy, and markets in human organs, Our Bodies, Whose Property? challenges notions of freedom based on ownership of our bodies and argues against the normalization of markets in bodily services and parts. Anne Phillips explores the risks associated with metaphors of property and the reasons why the commodification of the body remains problematic. What, she asks, is wrong with thinking of oneself as the owner of one's body? What is wrong with making our bodies available for rent or sale? What, if anything, is the difference between markets in sex, reproduction, or human body parts, and the other markets we commonly applaud? Phillips contends that body markets occupy the outer edges of a continuum that is, in some way, a feature of all labor markets. But she also emphasizes that we all have bodies, and considers the implications of this otherwise banal fact for equality. Bodies remind us of shared vulnerability, alerting us to the common experience of living as embodied beings in the same world. Examining the complex issue of body exceptionalism, Our Bodies, Whose Property? demonstrates that treating the body as property makes human equality harder to comprehend"—Provided by publisher.

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CHAPTER ONE

What's So Special about the Body?

No one thinks it a good idea to treat people as if they were objects. We do not defend this even when we distrust notions of personal autonomy, or tolerate blatantly hierarchical relationships, for on any understanding of what it is to be human, people are not things. We talk of objects as inanimate or immovable, and the power we most commonly attribute to them is that of being able to block activity. We may, of course, love our things. As Henry James warns in *The Spoils of Poynton*, we may come to feel more attached to the objects with which we surround ourselves than the people among whom we live. But objects remain objects, to be used, looked at, rearranged, traded, and perhaps ultimately thrown away.

Complaints about being treated as a thing have featured extensively in feminist writings, particularly as regards prostitution, pornography, and marriage, and in the analysis of advertising, the beauty industry, and film. The most persistent complaint is that women are treated as objects for someone else's (man's) satisfaction, or that women are "stabilised as objects," to adopt Simone de Beauvoir's evocative phrase. There is often an associated argument to the effect that women then come to see themselves in the same light, that they accept the designation as object and participate in thinking of themselves in this way. In this argument, it is not just being treated as an object, passed on like a commodity, or regarded as someone's property that is the problem. It is that this can encourage you to think of yourself in a thing-like way.

Being an object, a commodity, and an item of property are not the same thing, and there will be some teasing apart of these different notions in the course of this book. There is a close enough connection, however, to alert us to an immediate puzzle. While no one wants to be regarded as an object, many like to think of themselves as "self-owners," like to see themselves, that is, in a relationship of ownership to their bodies and selves. For the devotee of self-ownership, the rights we enjoy over our bodies closely parallel the rights the archetypical owner of property has over things. The right to bodily integrity, for example, can be refigured as the right to determine who has access to the body, in ways that mimic the rights a landowner has to exclude trespassers from his property. The freedom to sell one's labour (or, to use Karl Marx's more precise terminology, one's labour-power) can be treated as a version of the freedom any property owner might claim to decide for herself when and to whom to sell. For a small but growing minority, the actual body can also be regarded as an object available for trade: either the entire body, mortgaged off in anticipation of one's future demise, or those bits of the body (spare eggs, spare kidneys) we can currently manage without. In one representative comment, "because you own yourself and your labour, you must have the right to use your body and labour in any way you see fit consistent with the rights of others. So, if you want to sell your sexual services, you have a right to do so. If you want to sell your organs, you should be free to do so. If you want to take recreational drugs, it's your mind and body to do with as you see fit." In this discourse, claiming property rights in the self is not represented as capitulation to a thing-like status. To the contrary, it is presented as protection: I am a free agent—hence...
the very opposite of a thing—to the extent to which I can claim ownership over myself.

We might dismiss this as a linguistic tic of right-wing philosophers, those so enraptured by the institutions of private property that they can only express their dreams of freedom and autonomy in its terms. There is, to my mind, something to this. But from John Locke onwards, claims to self-ownership have played their part in the elaboration of radical as well as conservative traditions; indeed, the quote above sums up a self-described left position, not one associated with the right. This is not an issue that pits egalitarians against free-market libertarians, or those concerned to establish humane terms of social coexistence against tough-minded seekers after profit. In one feminist defence of the language, Rosalind Petchesky notes the importance attached to self-propriety in eighteenth- and nineteenth-century slave writings, and the significance of those moments when the “objects of property” asserted themselves as the subjects of property too. If we think of self-ownership—in Ngaire Naftin’s words—as “an assertion of self-possession and self-control, of a fundamental right to exclude others from one’s very being,” we can readily understand its appeal to the enslaved, subordinated, or oppressed. The capacity to resist intrusions on one’s body (including through torture, rape, and forced marriage) is now enshrined as a central principle in conventions of human rights. This capacity can be, and sometimes is, formulated in ownership terms.

Does this matter? Any time we employ the possessive adjective, we are engaging casually with ownership language, but this is not to say we really think of our bodies or selves as property. The teenager who employs the rhetoric of ownership to defend her body piercing projects—“it’s my body and I’ll do what I like with it!”—does not mean she owns her body in the sense of having the right to cut it into portions and sell it to the highest bidder. The woman who says “it’s my body” when asserting her right to determine for herself whether to have an abortion does not necessarily mean (though she may also think this) that she has the right to sell her sexual services as a prostitute or her reproductive services as a surrogate mother. We sometimes use the language without at all intending a property claim, or might genuinely mean to claim ownership, but without intending particularly extensive rights over use. J. W. Harris describes a musical jingle aimed at young children that tells them to “remember your body is your own private property, your body’s nobody’s body but your own.” Clearly, this is not intended to convey to children that they have the absolute right to do as they wish with their “property.” The object is to warn them against inappropriate touching, and no one is suggesting they should feel free to decide for themselves which sexual favours to accord to which adult. Private property is invoked here to express the right to keep others off, not the right to invite them in.

In examples like this, we may think the choice of ownership language unhelpful, even incoherent, but might also consider this a somewhat pedantic point. Does it really matter if people employ the language of possessions to assert their rights to bodily integrity, or model their freedom on principles of private property? The visiting Martian who failed to appreciate the importance of property relations in our societies might regard this as a puzzling way to articulate notions of rights or autonomy or freedom. But given that property does play such a powerful role, should the widespread use of its language trouble us?

There is a long tradition of thinking that these ways of conceptualising the body and self do matter, some of it derived from Kantian prohibitions on treating others as mere means to ends, some from Marxist critiques of wage labour and the commodity
relation, and some, more recently, from feminism. Kant was explicit about the prohibition on self-ownership: "Man cannot dispose over himself because he is not a thing; he is not his own property; to say that he is would be self-contradictory; for in so far as he is a person he is a Subject in which the ownership of things can be vested, and if he were his own property, he would be a thing over which he could have ownership." Marx critiqued more commonly stress fetishism and alienation. It is not so much that owning oneself is a logical contradiction, but that thinking of oneself in this way expresses the dominance of capitalist relations, which having turned every conceivable object for human use into a tradable commodity now works to transform the very way we relate to ourselves. Writing in the 1920s, Georg Lukács saw the representation of people as owners of themselves as a final stage in self-alienation, the point where the commodity relation "stamps its imprint upon the whole consciousness of man: his qualities and abilities are no longer an organic part of his personality, they are things which he can 'own' or 'dispose of' like the various objects of the external world."

More recently, Carole Pateman has drawn on Marx's analysis of wage labour to identify the "fiction" of property in the person, the way this conceals the subordination present in all labour contracts, but most starkly so when these directly engage the body. Talk of "owning" one's body, body parts, or bodily capacities invokes what she terms the "masculine conception of the individual as owner, and the conception of freedom as the capacity to do what you will with your own." Jennifer Nedel-sky argues that thinking in terms of property encourages us to think of rights as held against others, and autonomy as achieved by building walls, and suggests that repeated use of property language can make the actual commodification of bodies more likely. As applied specifically to women, she sees the language of property as strengthening what is already a tendency for women to regard their bodies as objects to be adjusted, slimmed down, and variously improved, in ways that encourage their self-alienation. Margaret Radin argues that "systematically conceiving of personal attributes as fungible objects is threatening to personhood because it detaches from the person that which is integral to the person." Like Nedelsky, she warns that "such a conception makes actual loss of the attribute easier to countenance."

Objectification, Commodification, and Self-Ownership

I start with some preliminary definitions. I take objectification to mean treating a person, or aspect of a person, as if it were a thing. To employ more Kantian terminology, it involves treating human beings who are ends-in-themselves as if they were mere means. In slavery, sex trafficking, and wife selling, the person becomes literally an object, though even this remains a matter of degree, for people are mostly too recalcitrant to be consistently treated as things. Outside those extremes, the objectification is pretty much always metaphorical. Martha Nussbaum has suggested seven notions involved in treating a person as a thing: instrumentality (treating someone as a tool for your own purposes); the denial of autonomy (treating someone as lacking autonomy and self-determination); inerntness (treating someone as lacking agency or even activity); fungibility (treating a person as interchangeable with other people or things); violability (treating someone as lacking boundary integrity, such that it becomes legitimate to break up or into); ownership (treating someone as a possession, as something that can be bought or sold); and the


<denial of subjectivity (treating someone as something whose experience and feelings need not be taken into account).

Nussbaum's list broadly captures what we object to when we accuse someone of treating us like a thing, but we never find all the components together, and it is unlikely that any one of these could ever be experienced in full. I stress this because people sometimes try to resist accusations of objectification by pointing to some way in which the humanity of the person is still recognised even when elements of objectification are in play. It is hard, however, to conceive of human beings as totally interchangeable, totally inert, or totally lacking in autonomy. If we take objectification too literally and interpret it in too strict a way, we will too easily comfort ourselves with the belief that no one is ever objectified. The slave owner who notices that a slave has a fine singing voice, the client who is intimidated by the prostitute he has hired or, alternatively, who always asks for the same woman, are all recognising the existence of separate human beings who exist for themselves and not just as objects to serve the needs of others. Does this mean there is no objectification going on? Beauty contests typically include interviews with contestants in which they are allowed to demonstrate that they are more than just a body, but are also interested in music or dancing or world peace. Does this mean there is no objectification going on? When we are dealing with people and their bodies, it is difficult not to notice, in some way, that we are dealing with people, not things. It is only in rare conditions—most notably war and even then not always—that people manage consistently to sustain an attitude of total dehumanisation. If we set the bar too low, such that the slightest recognition of another's humanity is evidence that they are not being treated as objects, we end up accommodating too much.

I follow Margaret Radin in employing the term commodification to mean both the literal buying and selling of goods and services and a discourse of commodification that "conceives of human attributes (properties of persons) as fungible owned objects (the property of persons)." Radin takes the notion of fungibility from the definition of commodity employed in the US Uniform Commercial Code, where it is understood as the capacity to substitute one unit for another without any change in the value. The simplest illustration would be bank notes, which can be lent out and returned without anyone much caring whether the same note comes back, so long as it has the same denomination. Again, it would be a mistake to interpret this idea of fungibility too narrowly. Books can be commodities, and their substitutability lies in the fact that we are willing to exchange x units of books for y units of something else, or two blockbusters for one textbook, without feeling we have been shortchanged. But except in those apocryphal stories of people buying books by the metre in order to furnish their walls, we do not think just any book would do. The fact that we can conceive of swapping something does not mean it has no distinct or cherished characteristics of its own. By extension, it would not be an adequate response to accusations of commodification to note, in relation, say, to prostitution or commercial surrogacy, that clients often have strong preferences for particular types of women or strong attachments to particular individuals. Nor would it be an adequate response to criticisms of markets in body parts to claim that both buyer and seller exhibit some minimal awareness of the other's welfare needs.

Despite obvious overlaps, commodification is not the same as objectification. Something can be an object without being a commodity (the book is not a commodity when it is borrowed from a library); and people can be treated in an object-like
fashion (as when women are ranked on the basis of their body shape or the clothes they wear) without being either available for sale or conceived of as anyone's property. We mostly talk of commodification and objectification when we think the language of commodity or object is being inappropriately applied; indeed, Stephen Wilkinson regards this as built into the meanings. "Just as it's not possible to objectify something which really is an object, it's not possible to commodify something which is really a commodity." Both terms, in other words, carry a normative charge. This is why some say we should abandon the language altogether, for we do not describe processes we approve of as either objectification or commodification, and it might then be said we short-circuit the requirement for argument simply by our choice of term. I take this as a useful reminder that we need the argument as well. The point I would stress is that because commodification is a process rather than an endpoint, it too is unlikely ever to be complete. Noting the incompleteness is not an adequate answer to the charge.

Self-ownership eludes tight definition, and if the implied analogy is with owning something like a book or car, seems to fall apart as soon as you look at it. If it refers to some inner self that owns the bits and pieces that make up the body and its capacities, it invokes an implausible mind/body distinction and begs the question of what is left of the self once these other bits and pieces are taken away. If it refers instead to a reflexive self that owns itself, why even talk of ownership? The relationship to commodification is ambiguous, for while it looks as if self-ownership is the precondition for commodification (how do body parts or bodily services get into a market unless the person whose body it is has ownership rights?), it is also—as noted in the introduction—represented as blocking commodification. This is what Peter Halewood describes as the "curious duality of meaning" in self-ownership, the ways in which it asserts our control rights over ourselves, while simultaneously making it easier for us to relinquish them.

Feminism and the Body

My views on what it means to think of the body as property, and whether we can justify treating it as different from other "things," have been shaped by feminist theory, which has a long history of challenging objectification and mind/body dualism, and an almost equally lengthy engagement with the issue of prostitution. This has not, in the event, proved entirely helpful, for feminism points in almost opposite directions on these issues. Much of the existing trade in bodily services or parts centres on women's bodies (exclusively so as regards surrogacy and the market in human eggs, and predominantly so as regards prostitution), and some of the most powerful critics of both the metaphors of property and practices of commodification have been inspired by feminist concerns. But feminist themes have also been prominent within "new commodification" theory, for the exclusion of certain activities from the market can be read as denying women fair payment for their work and confirming deeply conservative notions of them as tainted by too close an engagement with money and markets. Katherine Sibaugh argues that "at a practical level, women should at least be wary of anti-commodification arguments, because these arguments arise when women receive money for something, not when women are paying money for something." Many warn against representing women's identities as peculiarly bound up in their sexual or reproductive capacities, noting that this feeds into stereotypical images of women as saintly mothers. Claims
about the specialness of women's relationship to their bodies are regarded as far too essentialising to count as justifications for treating the body as different.\textsuperscript{21} While making the body special is, on some accounts, precisely what feminism does, this can also be read as sustaining images of men as defined through mind and women through hormones and bodies.

There has been particularly marked disagreement over prostitution and commercial surrogacy, where treating the body as special is seen as getting in the way of fair payment and equal protection for those who work in the sex trade or as surrogate mothers. Feminists disagree profoundly over the nature and significance of prostitution.\textsuperscript{22} Some regard it as the quintessential expression of patriarchal power, legitimating not only the violence and abuse of prostitution itself but also the more generalised sexual abuse that permeates our societies. Others stress the continuities between sex work—their preferred term—\textsuperscript{23} and other forms of body work, and argue that the stigma attached to prostitution makes it harder for sex workers to conduct their trade openly, organise trade unions, or seek the protection of the police against violence and abuse. The sale of intimate bodily services, it is said, is not so qualitatively distinct from the sale of other intimate services (Martha Nussbaum
cites the philosophy professor, who takes money for her intimate search for understanding of the world and herself\textsuperscript{24}), or so different from the ways in which all of us must use our bodies to make a living. Similar points have been made about commercial surrogacy. Carmel Shalev, later one of the architects of Israel's surrogacy laws, represents payment for surrogacy as a potentially revolutionary "wage for reproductive services" that draws attention to how much hard work is involved in pregnancy and childbirth.\textsuperscript{25}

Feminism is not a unitary politics, and disagreement on such issues is not especially surprising. More important is the deeper analytical tension that underpins much of the disagreement, because while feminism provides compelling arguments against the mind/body dualism that informs many versions of body ownership, it also—by virtue of much the same arguments—deprives us of easy recourse to "the body" as dividing line. From most feminist perspectives, the body matters. Simone de Beauvoir's \textit{Second Sex} is saturated with women's bodies; indeed, in my own first reading, as a pre-feminist schoolgirl, I was far more interested in what I could learn about menstruation, sex, and marriage than her thesis about woman as Other. And while the bodies through which we live our lives are endlessly deployed to mark gender hierarchies, with men and women alike suffering from the disciplining of their bodies to achieve masculinity or femininity, feminism does not, on the whole, seek freedom in bodily transcendence. We live our lives and experience our subjectivity through our bodies, but the solution is not to pretend the body away. Feminists more commonly want to reclaim its significance, challenging those who privilege mind over body, or seek to efface the particularities of the body in the pursuit of more general abstracts. It is widely argued, for example, that it matters whether the abstract individual who is the object of so much conventional legal and political analysis is (bodily) female or male,\textsuperscript{27} and feminists typically challenge dichotomies between mind and body, reason and emotion, often identifying a strong gender subtext in the ways these have been opposed.\textsuperscript{28}

In its emphasis on lived bodily experience, feminism therefore provides a basis for criticising the mind/body dualisms that often underpin endorsements of self-ownership or arguments for a market in body parts, dualisms that treat the body as no different in kind from any "other" material resource, or regard it "as a form of external housing for the immaterial mind."\textsuperscript{29} But if it is part of the objection to property discourse that it obscures
the inseparability of body from self, this very argument also depriv es us of easy distinctions between activities that involve the body and those that do not. The very pervasiveness of the body, even in activities we might otherwise deem cerebral, makes it harder to draw a line.

Feminist insistence on the embodied self thus provides ammunition for both sides of the argument about markets in bodily services and parts. Ronald Dworkin once wrote of drawing “a prophylactic line” around the body that would ensure that none of the egalitarian arguments for the redistribution of social resources could be taken as affecting our rights to our own bodies: bodies, in other words, should be recognised as different. I too see grounds for distinguishing between bodies and “other” social resources, and hope to make a sufficiently compelling case for this in the course of the book. But so far as work at least is concerned, that prophylactic line is hard to draw. Martha Nussbaum notes that “all of us, with the exception of the independently wealthy and the unemployed, take money for the use of our body.” We cannot plausibly claim that some activities are lodged in the body while others float freely as activities only of the mind, or, at least, cannot plausibly claim this if we also want to insist on the self as embodied. This is the important truth in the defence of sex work. We cannot do any kind of work without dragging the body along, and a prohibition on the sale of any services that involve the body would make no sense at all.

We might distinguish, as Carole Pateman does, between activities to which the body is incidental and those for which it is the whole point. Prostitution would then appear on one side of the line and working in an office on another. But that seems incomplete, because we are happy enough for people to make a living through many activities to which the body is the point: dancing, for example, or professional football. Reservations about the sale of bodily services also cannot be based on a prohibition on touch, for this would rule out as inappropriate the physiotherapist, while ruling in as entirely unproblematic the surrogate mother, whose body need never be touched by the commissioning couple. A more plausible candidate, perhaps, is some notion of depth: the idea that intrusions deep into our bodies are more troubling to our sense of our selves than those that merely touch the surface. This fits with the unease most people feel at the prospect of live kidney sales as compared with their relative insouciance on sales of human hair. But the depth notion, too, is unsatisfactory, with its suggestion of a core, essential, “deep” self, surrounded by a more contingent periphery. The sale of any service requires the deployment of deep internal organs (we cannot do anything without our heart and lungs). If we think, moreover, of which aspects of our bodies we regard as most closely bound up with our identities, we are more likely to specify faces (surface) than kidneys (deep inside). It is not so easy to point to what it is about the body that makes it special or provides the necessary touchstone for separating out legitimate from illegitimate trade.

What’s Wrong with Property?

The other problem area is property, now made especially problematic by the tendency to tell “good” stories of property alongside the “bad.” Property as the unconstrained power to do as one wishes with one’s own is mostly repudiated in today’s literature, and theorists distinguish variously between weak and strong property rights, control rights and income rights, property as self-mastery and property as despotic dominion. Mostly, these distinctions serve to alert us to the kinder face
of ownership. Locke is sometimes invoked as inspiration for a more troublingly privatized understanding of property and Hegel as inspiration for an agency-based understanding, where property links us to others and enables us to express ourselves in the world.\textsuperscript{35} It is widely noted that property is not a thing but a relationship between people; furthermore, that it is a bundle of relationships, a bundle of rights, powers, and claims, not all of which need be present at the same time. In this disaggregated understanding of property, usually attributed to the work of Hohfeld and Honoré,\textsuperscript{36} we can make a property claim about our right to manage, use, or keep others out of our property, without thereby also claiming a right to the income from the property, or the right to destroy it, or the right to sell. Our claims, moreover, always link us to others, for we cannot legitimately claim a property right in something without putting others under a corresponding liability or obligation.

Instead of all the focus being on property as exclusive and exclusionary power, property rights have therefore come to be understood as fashioned through legal and social relationships that regulate your claims on me as well as my claims on you. We sometimes think of the history of property as proceeding in a unilinear fashion from property rights circumscribed by obligations, more typical of the feudal period, to the brutal assertions of private property associated with capitalism. This movement is typified in the land clearances in the Scottish Highlands in the eighteenth and nineteenth centuries, when people whose families had lived on the land for centuries were simply evicted. But the pattern has been more complex than this, with movements towards greater as well as lesser social obligation. Although there have undoubtedly been moments in history when people have asserted despotic dominion, it is hard today to think of any arena where the ownership of something conveys unlimited rights to do as you wish with your own. Property is circumscribed in a whole variety of ways, including through employment legislation, planning regulations, and taxation. Property owners are not necessarily at liberty even to determine for themselves who inherits their property, but may be required (in French and Spanish law, for example) to make provision for particular members of their family.

We might conclude from this—some do—that the presumed dangers in applying the language of property to persons or bodies are vastly overstated. We might say—some do—that property serves the weak as much as the powerful, and that claiming property in the body is the most effective way to secure the rights of those more marginal. People point to cases like \textit{Moore v. the Regents of the University of California} (1988), where a highly profitable cell line was established from the unusual components of a patient's blood cells, while the patient himself was left in ignorance of what was being done.\textsuperscript{37} Moore was treated for hairy-cell leukaemia at the medical centre of UCLA in the late 1970s and was asked to return on various occasions for tests involving the extraction of body substances such as blood, skin, and bone marrow aspirate. Unknown to him, his doctor and associated researchers were establishing a cell line from these; the university applied for and was granted a patent; and the researchers negotiated a lucrative contract with a major biotechnology firm. When Moore challenged this, partly on the grounds that he continued to "own" his cells after their removal from his body, he lost the case. California's Supreme Court mostly ducked the issue of whether one could own one's body tissues, reaching its decision largely on the grounds that allowing such ownership would seriously impede scientific research, but, in effect, his right to property in the body was repudiated, while the others' rights to property were affirmed. One judge
described Moore's claim as a request that the court "regard the human vessel—the single most venerated and protected subject in any civilized society—as equal with the basest commercial commodity." Moore lost to the might of the biotechnology industry and the supposed necessities of scientific research. Adding insult to injury, he was also criticised for treating his body as a commodity. One might think—some do—that in a case like this, it would have been more just to recognise his cells as his.

Or to take a middle position, one might agree that property in the body is a dangerous notion, but distinguish this from more innocent ideas of property in the person. Donna Dickenson endorses property in the person while challenging property in the body and argues that recognising the first provides us with the necessary tools to resist the second. "People own their actions; they do not own their bodies." It was this, she argues, that John Locke had in mind when he wrote of every man having "a property in his own person." We can usefully talk of owning our labour, and what we produce with it can then, in Lockean fashion, be understood as ours, but since Dickenson adheres to a "bundle of rights" understanding of property, this need not imply anything like the unconstrained right to sell. The ova extracted from women's bodies for the purposes of stem cell research or in vitro fertilisation should indeed, in her argument, be understood as their property, though not because they are part of the women's bodies but because they are produced by women's reproductive labour. The appropriate property rights attached to them would not, moreover, include the right to turn them into commodities and sell them on the open market, though they might well include the right to determine their subsequent use. In the case of surrogate pregnancy, the reproductive labour would again confer property rights, but not "full-blooded property rights over the child." It would require, rather, that "we recognise a limited set of property and contract rights such as protections against contracting couples who default if the 'surrogate' bears a disabled child." Dickenson is particularly exercised by what she sees as the failure to appreciate the labour women perform and the risks to which they expose themselves, and she makes compelling points about the way "the lady vanishes" in controversies about stem cell research that focus almost exclusively on the ethical status of the embryos created but barely address the risks to the women who produce the eggs. Recognising women as having property in their person, hence (limited) property rights in what they produce with their labour, would, in Dickenson's view, help change this.

I am not convinced by these more optimistic moves. My first reservation is that even the restricted claim to property in the person introduces an analytic distinction between capacities and self. This can seduce us, as Carole Pateman puts it, into "the political fiction . . . that capacities can be treated as separable from the person." No one, of course, really thinks this (I don't for a moment charge Dickenson with this view), but once we describe ourselves as owning our labour, we are well on the way to an understanding that makes it analogous to a thing. Consider something Martha Nussbaum argues in her analysis of prostitution, that "the prostitute still has her sexuality; she can use it on her own apart from the relationship with the client, just as the domestic servant may cook for her family and clean her own house." Nussbaum is saying here that the capacities are attached to us and that making them available to others, on occasion and for money, cannot then take them away. In one reading of this, she is echoing Pateman's point about capacities not being treated as if they are separable from the person. But if we reframe this in the language of ownership, the analogy that
springs more immediately to mind is the taxi driver, who "still has" his cab and "can use it on his own" outside his taxi-driving work. When we refer to capacities as even analytically separate from persons—as the language of property almost requires us to do—we are drawn into analogies with things. To my mind, this seriously obscures what is going on in any kind of body work.

In talking of owning our labour or capacities, we suggest that contracting out their use is similar in kind to contracting out the use of a car: why else employ the notion of property? Intentionally or not, we represent work as the leasing out of capacities that just happen to be attached to a person. We focus attention on the beginning and end of the process: on the beginning, when the deal is struck, and we decide whether the terms are fair; on the end, when the payment is made, and the body and its capacities are returned to our exclusive use. The fact that "we" are present throughout their deployment (or, as one of my students once put it, that we supply a chauffeur along with the car) is either ignored or treated as unimportant. Yet the real drama of most work situations begins after the contract has been signed, as employers seek to exert their authority over those whose services they have engaged, and employees have to accept, negotiate, or resist demands whose full content may only become apparent at that stage. When labour is treated as property, this normalises what remains a power relation. The relation will be more benign in some contexts than others: we are not all at the mercy of employers cranking up the pace of work and expecting more this year than they expected the last. Yet a benign exercise of power remains an exercise of power, however normalised and obscured by a language of property and exchange. When employees internalise that language, moreover, and come to think of their labour as if it were indeed a separate entity, they live their working lives in what is plausibly described as a state of alienation. As Margaret Radin puts it, "they dissociate their daily life from their own self-conception."

We cannot readily avoid this, for failing a Rousseauian idyll of self-employed farmers, most of us have to work for others at some point in our lives. The problem is that representing our labour in property terms makes the vulnerability less apparent. The metaphors of property encourage fantasies of the person as separable from her capacities and the self as separable from her body. In obscuring, and thereby softening, the nature of the relationship, the language reduces our vigilance when new demands are put upon us, limits our capacity for resistance, and may help convince us that nothing more can be done. This is certainly not Dickenson's intention—her own concerns about alienation and subordination closely parallel my own—but even on a fluid and more generous understanding of property, I find it perverse to look to property in the person as protection.

My second reservation about the more optimistic property tale relates to questions of reciprocity. When we frame bodily rights as property rights, we transform something that potentially connects us into something that keeps us apart. Bodies alert us to reciprocity and what we have in common, because all bodies need nourishment, all bodies feel pain, and all bodies are potentially vulnerable. In Inventing Human Rights, Lynn Hunt argues that the capacity to think in terms of universal human rights was associated, at least for theorists of the European Enlightenment, with the recognition that we can all feel pain. Human rights, she suggests, became thinkable through a new preoccupation with bodily integrity and the development of an empathetic selfhood that alerted people to the universality of pain. We came to think of very different others as nonetheless akin to us in their capacity for physical and emotional suffering, and ideas about bodily integrity were, she argues, a crucial part
of this. Contrasting the mostly unquestioned use of torture in sixteenth- and seventeenth-century Europe with the increasing condemnation of both torture and inhumane punishment from the 1760s onwards, Hunt argues that this developed out a growing empathy with even justly accused criminals and a new concern for the human body. "Bodies gained a more positive value as they became more separate, more self-possessed, and more individualized over the course of the eighteenth century, while violations of them increasingly aroused negative reactions."50

"Torture ended because the traditional framework of pain and personhood fell apart, to be replaced, bit by bit, by a new framework, in which individuals owned their bodies, had rights to their separateness and to bodily inviolability, and recognized in other people the same passions, sentiments, and sympathies as in themselves."51

I part company with Hunt in her claim about the importance attached to bodily integrity depending on notions of self-possession or self-ownership, but think she rightly stresses the connection between the importance I attach to my bodily integrity and the recognition that this also matters to you. There is an almost unavoidable reciprocity in the emphasis on the body, for all living beings have bodies, and what I experience through mine cannot be so totally distinct from what you experience through yours. I say "almost," and indeed recognition of that reciprocity has been much resisted, including to our own day. Hunt herself documents the very belated extension of human rights to those marked by their inferior sex or race, and Judith Butler's work on which lives are "grievable" testifies to our continuing capacity to erect hierarchies of pain, in which the grief suffered by distant or threatening strangers matters far less—perhaps not at all—than the grief of those closer to home.52 Joanna Bourke's account of the stories people told themselves, well

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property is a risky business, for we do not control the social meanings attached to the terms we employ, and it is all too likely that a restricted endorsement of property rights will be read in a more expansive vein. We can tell good stories about property, as Rosalind Petchesky does when she reclaimes a “maternal, caretaking concept of ownership,” or Stephen Munzer, when he associates property with the principles of preference satisfaction, justice and equality, and desert, and argues that no one of the three takes precedence. These notions of what property is, or could become, may be entirely defensible, but popular understandings of property claims are still mostly mired in the world of absolute dominion, and there is a certain wishful thinking in imagining that this can be changed.

And not just popular understandings, for those developments in the legal understanding of property also went largely unnoticed in G. A. Cohen’s long engagement with Robert Nozick over ideas of self-ownership. The issue there revolved around the relationship between the rights of the individual and noncontractual obligations to a wider community, the key question being how states could be justified in calling on their citizens for money or services—in essence, taxing us—if we “own” ourselves. In Cohen’s definition, “to own oneself is to enjoy with respect to oneself all those rights which a slaveowner has over a complete chattel slave,” and “the polemically crucial right of self-ownership is the right not to (be forced to) supply product or service to anyone.” People may, on this account, agree to redistributive taxation because they can see some benefits, and social contract theorists have commonly argued that free individuals will contract to give up significant aspects of their property rights so as to gain political and economic security. But if you believe, as Cohen did, that people also have noncontractual obligations to one another, duties to help those less fortunate that are not grounded in enlightened self-interest, then the principle of self-ownership is incompatible with principles of justice. With hindsight, the whole debate seems premised on what legal theorists now regard as an outmoded understanding of ownership as the absolute right to control. That outmoded understanding—property rights as akin to the rights a slave owner has over a slave—is more alive and kicking than defenders of the “good” property story would like to believe.

J. W. Harris regards claims to property in the body as “unnecessary, usually harmless, but always potentially [proving] too much.” I think the benefits are few and the risks greater than this suggests, and that we would do better to keep bodily rights and property rights in their separate boxes and not muddle the relationship between the two. The reasons for this are only partly grounded in the fear that thinking of our relationship to our bodies and selves in property terms will assist and normalise their commodification. Even where there is no danger of this, the adoption of property models is problematic. I turn, in the next chapter, to illustrate this through the example of rape.


