The Idea of Public Property*

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Political theory lacks a compelling account of public property. Addressing this gap, I present a “deep public ownership” model, according to which the body politic ultimately owns all the resources within its jurisdiction. I argue that this model is compatible with liberal intuitions regarding private property. I then contend that the model expands the scope of government’s duty to uphold the equality of all citizens, by challenging private property constraints on antidiscriminatory government policies. I anticipate the worry that the model supports excessive government intrusion into private affairs. I close by discussing abuse of public property by elected leaders.

Public property is ubiquitous in public life, and yet we often fail to register its presence. This is true for our mundane activities in the social world: I may not really notice that the shortcut I use on the way home passes through public property, until the situation changes and a sign appears saying “this is private property.” You may similarly fail to reflect on the fact that the park where you take your daily lunch break has been public property, until you meet construction workers who tell you that the park has now been handed off to private developers. But just as we may fail to recognize the presence of public property that is “right in front of us” in the mundane aspects of social life, we may often overlook the crucial role that public

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property plays at the very heart of political life. And in fact, we are bound to overlook this crucial role if we follow contemporary political theory, which has been remarkably silent about the idea of public property. My aim in this article is to take first steps toward remedying this state of affairs.

A few examples will help to illustrate the silence I have in mind. The text often considered the “canonical” contemporary treatment of ownership—Tony Honore’s detailed account of the different components of property—does not contain a single mention of the idea of public property.¹ The terms “public property” and “state property” do not make a single appearance in John Rawls’s monumental A Theory of Justice.² When one considers many other influential writers on distributive justice (e.g., Ronald Dworkin, Amartya Sen, G. A. Cohen, Jeremy Waldron, Richard Arneson, or John Roemer), one similarly fails to find the idea of public property making any explicit contribution to key arguments, if this idea features at all.³ Public property is similarly absent in an extensive Nomos volume dedicated entirely to property.⁴ In a “property and ownership” entry for the Stanford Encyclopedia of Philosophy, Waldron notes that “modern philosophical discussions focus mostly on the issue of the justification of private property rights (as opposed to common or collective property).”⁵ The “mostly” is arguably an understatement.⁶


2. John Rawls, A Theory of Justice, rev. ed. (Cambridge, MA: Harvard University Press, 1999), henceforth cited as TJ. Nor do these concepts play any significant part in Rawlsian discussions of “property-owning democracy.” See, e.g., Martin O’Neill and Thad Williamson, ed., Property-Owning Democracy: Rawls and Beyond (Malden, MA: Blackwell, 2012). Rawls did famously see “the distribution of natural abilities in some respects as a collective asset” (TJ, 156), but this much-discussed remark is best understood as denying that individuals “automatically” deserve the fruits of their natural abilities, rather than as a positive argument about public property.

3. Even Roemer, for example, emphasizes that his vision of “market socialism” relies on forms of ownership that are neither private nor public. See John Roemer, A Future for Socialism (Cambridge, MA: Harvard University Press, 1994).


6 It is worth adding that existing treatments of collective ownership tend to focus on the merits of competing collective claims to natural resources, chiefly the claims of separate nations versus the claims of humanity writ large; see, e.g., Mathias Risse, On Global Jus-
This reticence of political theory regarding public property is concerning. If nothing else, this is because taking public property seriously is necessary in order to make sense of certain popular complaints against political leaders that we instinctively recognize as deserving moral attention. Popular protests against political leaders might involve myriad grievances—that the leaders are enacting or retaining unjust policies in general, that they are incompetent, or that they are catering to sectarian interests at the broader citizenry’s expense. But there are at least some cases where popular protests involve a more specific complaint, which we immediately recognize as morally powerful: that the leaders are stealing what belongs to the people. This theft, in turn, can take many forms (disappearing tax revenues, proceeds from privatization of public infrastructure siphoned off to foreign bank accounts, nepotistic state contracts that enrich favored families). But without the idea of public property, we would have difficulty explaining why all of these variants are indeed forms of larceny.7

This observation motivates my search for a compelling account of public property. I begin with framing remarks meant partly to identify criteria for such an account (Sec. I). I then use these criteria to examine two positions (Sec. II). The first sees public property as the aggregation of prepolitical individual holdings. The second understands public property simply as whatever the law takes to be public property. I try to show that neither position can offer a persuasive account of public property. The shortcomings I identify in both views point toward a heterodox alternative that I start exploring in Section III. According to this alternative, the body politic is the ultimate owner of all resources found within its jurisdiction.8 I suggest that this deep public ownership model provides an appeal-

7. Insofar as this kind of larceny has received attention from theorists, this has been primarily in the context of global reform, especially reforms meant to end the complicity of affluent democracies in foreign corruption. Yet even these discussions do not provide a fundamental normative account of public property, focusing on legal claims, or on the connection between corruption, oppression, and poverty. See esp. Thomas Pogge, World Poverty and Human Rights (Malden, MA: Polity, 2002); and Leif Wenar, Blood Oil (Oxford: Oxford University Press, 2016). See also Shmuel Nili, “Liberal Integrity and Foreign Entanglement,” American Political Science Review 110 (2016): 148–59; and “Rigivist Cosmopolitanism,” Politics, Philosophy and Economics 12 (2013): 260–87.

8. This model is heterodox, for one thing, in going beyond the familiar notion that property rights require political institutions for their specification and enforcement; see, e.g., Anna Stilz, Liberal Loyalty (Princeton, NJ: Princeton University Press, 2009); Lea Ypi,
ing account of public property that is compatible with liberal intuitions about the significance of private property. In Section IV, I argue that the model expands the scope of the familiar government duty to uphold the equality of all citizens, by challenging private property constraints on anti-discriminatory government policies. In Section V, I anticipate the resulting worry that the deep public ownership model supports excessive public intervention in the private realm. Finally, Section VI examines how the model bears on morally complex cases, featuring abuse of public property by elected leaders.

I. SETTING THE STAGE

It is best to start with some definitions and assumptions. First, let us say that an agent enjoys the full bundle of property rights over an object when the following normative conditions obtain: the agent (1) has rights to control the object’s use, (2) has rights to compensation if another agent uses the object without permission, (3) is entitled to transfer—or refuse to transfer—its control and/or compensation rights to other agents, and (4) is entitled to have its rights regarding control, compensation, and transfer enforced.9 I assume that we can treat the collectively sovereign members of a political community—taken together as “the body politic,” “the public,” or “the sovereign people”—as a collective agent that can enjoy property rights in the sense just defined.10

This understanding of “the sovereign people,” in turn, tracks stable territorial borders, rather than any ethnic, linguistic, or cultural charac-

9. For the moment, I leave open whether the entitlement to have rights enforced is an entitlement of the agent itself to enforce its own rights, an entitlement to have other agents enforce these rights, or both. I also want to make room for the possibility that a sufficiently nuanced conception of public property will show that even the “fullest bundle” of private property rights is never quite as full as is commonly assumed.

10. I help myself to this assumption in order to put aside complex debates surrounding collective agency. Following Christian List and Philip Pettit’s Group Agency (Oxford: Oxford University Press, 2011), I tend to view collective agency as supervening upon individual agency in a way that requires neither bold metaphysical claims nor a view of group agency as a mere shorthand for an aggregation of individual agents. Yet I will not attempt to defend this view here, and I believe that one can accept the claims I will make independently of whether one accepts such a view.
teristics. For my purposes, all of the individuals who permanently reside within each of the world’s stable territorial jurisdictions comprise—at least on first approximation—different sovereign peoples. Accordingly, each such jurisdiction contains only one people. The stable borders of Canada, for example, may encompass multiple ethnic, cultural, and linguistic groups. But under my definition, all citizens of Canada, no matter which such particular group they may belong to, together form one sovereign people—a single “public” that collectively owns public property in Canada.

My inquiry into public property, in turn, assumes that public property exists, and ought to exist. I accordingly search for a morally plausible view of public property, rather than asking whether there should be any such property; if a given view will turn out to conflict with the existence of public property, I will assume that this conflict militates against the view, rather than against the idea of public ownership.

I further assume that a compelling account of public property should satisfy four requirements. The first and perhaps most basic requirement

11. Although I will not attempt here any detailed defense of this definition, it may be helpful to keep in the background three points that bear on it. First, in contrast to some democratic theorists, I do not think that this territorial definition of “the sovereign people” is undermined by the so-called “democratic boundary problem”; see Shmuel Nili, “Democratic Theory, the Boundary Problem, and Global Reform,” *Review of Politics* 79 (2017): 99–123. Second, I invoke “approximation” partly in order to render my definition of the sovereign people compatible with the attractive thought that individuals who have been raised under the territorial jurisdiction of a given people have weighty—and typically decisive—moral claims to legal membership in the people as equal citizens, regardless of their place of birth. Finally, a more general attraction of this definition is its natural alignment with an influential view in the territorial rights literature. According to this view, stable territorial borders accrue normative significance over time, as citizens encompassed within them work together to enact a political conception of justice to regulate their common affairs, notwithstanding ethnic and cultural differences among them. The moral expectation is that such cooperation will yield important civic bonds, which will eventually supersede the history of violence that may have played a role in bringing those different members of the people together; see, e.g., Anna Stilz, “Nations, States, and Territory,” *Ethics* 121 (2011): 572–601, building partly on Jeremy Waldron, “Superseding Historical Injustice,” *Ethics* 103 (1992): 4–28. That said, I suspect that any account of territorial rights which accepts the “supersedence” thesis can align with my arguments here.

12. Note that this definition does not commit one to any specific view as to whether it is morally appropriate for any particular group to secede and form an independent sovereign people with its own jurisdiction. Nor, for that matter, does this definition commit one to any particular view as to whether—at least as a matter of very “ideal” theory—each independent sovereign people has important moral reasons to join other sovereign peoples to enact a single global political community. If this were to happen, then humanity would be the “public” in my account of public ownership. For discussion of some of the metatheoretical issues at stake here, see Shmuel Nili, “Who’s Afraid of a World State?,” *Critical Review of International Social and Political Philosophy* 16 (2013): 1–23; and “The Moving Global Everest: A New Challenge to Global Ideal Theory as a Necessary Compass,” *European Journal of Political Theory* 17 (2018): 87–108.
goes back to the point I emphasized above: a compelling account of public property must be able to capture the moral complaint against de facto rulers stealing from the people. The second requirement I shall term the *collectivist requirement*. A compelling account of public property must align with the intuition that the status of public property cannot change simply as a result of the uncoordinated activities of isolated individuals acting as private persons. As a private person, you cannot, for example, sell the rights to some percentage of your state’s tax revenue or other public property.

Third, a compelling account of public property must also satisfy the *private property requirement*: it must show how we can make significant room for the idea of public property without entirely overrunning private property. Any tenable view of public ownership should recognize that private property rights serve morally crucial functions.\(^\text{13}\)

Fourth, it is important for an account of public property to illuminate political issues that extend beyond property alone. Even if, upon reflection, we think that public property deserves independent attention, we clearly also want our conception of public property to fit with, and inform, broader moral intuitions concerning public affairs.

Before I begin to develop this broad account, I should offer a final framing remark about an aim that I am not pursuing here. As my list of assumptions should make clear, I am not seeking to convert the most famous public property skeptics—namely, libertarians—into public property supporters. Since I share the concerns of the long line of theorists who have criticized both libertarianism’s repercussions and its foundations,\(^\text{14}\) my principal goal is to show how nonlibertarians should think of public property. In fact, I believe that it is especially important for nonlibertarians to theorize public property, because the most influential liberal model of this property is based (as I will argue in a moment) on a premise that few nonlibertarians accept—thus making the need for an alternative model all the more acute.\(^\text{15}\)


\(^{15}\) It is worth adding that the alternative I will propose differs from libertarianism not only in substance but also in method. Libertarians often seem to think that any account of
However, I shall suggest that our precise reasons for rejecting libertarianism also matter. In particular, these reasons matter when we consider objectionable forms of public intervention in private affairs: in order to see how nonlibertarians can coherently avoid such intervention, it is important to be specific about which libertarian claims nonlibertarians have to contest. By pursuing such specificity, I hope to develop here an account of public property that achieves a delicate balance: extending the scope of “the public” far beyond libertarian confines, while avoiding those forms of public intrusion into private life that nonlibertarians too should oppose.

II. THE CHALLENGES OF ACCOUNTING FOR PUBLIC PROPERTY

How, then, should we conceive of public property? We can delve into this question by considering what has arguably been the most prominent liberal answer: treating public property owned by the body politic as nothing but the amalgamation of individual holdings. This view derives public property that belongs to the body politic (to “the people” as a whole) from property belonging to each individual citizen (“the people” as a plurality): there exists no public property apart from the aggregation of individual resources. Let us call this the private aggregation model.

The private aggregation model represents a useful point of departure for our inquiry, insofar as it captures moral intuitions that are central to the self-understanding of many contemporary societies. To give a key example, the thought that public property is entirely derivative from individual property fits well with the prevalent intuition that individuals have (at the very least) a presumptive moral claim to their entire pretax income. The private aggregation model can capture the intuition that individuals are entitled to this income and the corresponding claim that justification is required for the political community to take any of it “away” (think of the widespread reference to “the taxpayer’s money”). Hence, we

property rights can only appeal to moral arguments that derive from some agent’s ownership over something. In my view, this thought is mistaken. There is nothing inherently problematic about an account of property rights that appeals to moral intuitions not themselves grounded in claims of ownership. A compelling account of property need not constantly refer to some single foundation, from which everything else follows deductively. Instead, such an account can—and should—show us how multiple intuitions we have, with their multiple sources, can be brought together in reflective equilibrium to form an attractive whole. This methodological difference will feature at several points below (e.g., when discussing intuitions regarding the significance of personal autonomy, stable expectations, and privacy).

can say that the private aggregation model satisfies the individualist requirement: it leaves considerable room for individual property.\footnote{And we can say this independently of whether a moral entitlement to pretax income is ultimately defensible—something that (along with many contemporary theorists) I will dispute shortly.}

This model, however, also suffers from two crucial weaknesses. Consider, first, how the model fares with regard to the collectivist requirement. I have said that any tenable account of public property must show why the status of public property cannot change as the result of uncoordinated individual actions. But it is far from obvious that the private aggregation model can show this. After all, if public property is nothing but the aggregation of individual holdings, then it is not clear why individuals cannot unilaterally withdraw from public political institutions, taking their private property with them.\footnote{Anna Stilz raises this problem with Lockean theories in her “Why Do States Have Territorial Rights?,” \textit{International Theory} 1 (2009): 185–213.}

Trying to fend off this kind of scenario, a proponent of the model might argue that collective political institutions are needed precisely in order to reliably and impartially enforce individual property rights:\footnote{For such an antilibertarian reading of the Lockean idea that individuals should not be judges in their own causes, see, e.g, Michael Zuckert, \textit{Launching Liberalism: On Lockean Political Philosophy} (Kansas: University Press of Kansas, 2002).} given the various risks involved in individuals trying to enforce their property rights unilaterally, it would be profoundly wrongheaded for individuals to unilaterally secede from political institutions. But if the enforcement of individual property provides the raison d’être of political institutions, then it is crucial to know whether individuals can be taken to consent in a morally meaningful way to political regulation of their property. And as theorists from Filmer, Hume, and Hegel all the way to Simmons have noted,\footnote{See, e.g., A. John Simmons, \textit{Moral Principles and Political Obligations} (Princeton, NJ: Princeton University Press, 1979).} the vast majority of the members of any society at any point in time have never given actual and explicit consent to live under its institutions. Moreover, it is highly disputable that we can find any alternative form of individual consent that will perform the moral magic of binding individual owners to collective institutions.\footnote{In large-scale impersonal contexts, at least, it seems sensible to say, as Nozick famously does, that “tacit consent isn’t worth the paper it’s not written on.” Robert Nozick, \textit{Anarchy, State, and Utopia} (New York: Basic, 1974), 287.}

This libertarian result points to the second key difficulty with the private aggregation model. In its standard form, at least, this model pivots on the notion of prepolitical property. More precisely, the thought is supposed to be that, already prior to political institutions, individuals enjoy determinate property rights in objects external to their body: public property consists of the agglomeration of prepolitical individual holdings. This
is not a thought that antilibertarians, however, are likely to accept. Many of libertarianism’s most influential opponents, after all, have long denied that individuals have determinate prepolitical property rights in anything external to their body. Different antilibertarians have offered different reasons for why precisely such rights are a “myth.” I shall say more about these reasons later on. At this stage, however, I am simply going to assume that individuals have no prepolitical property rights over external objects. More specifically, I am going to assume that individual property rights in objects external to the body are a political creation: these rights are established by the body politic in order to advance independent social ends.

Although many liberal egalitarians treat this view as simply conventional wisdom, I believe that it can ground an unconventional—and distinctly attractive—account of public property. We can start to make our way toward this account by examining how the idea that the body politic creates private property rights affects our understanding of the core issue of taxation. If the body politic is the creator—not merely the enforcer—of individual property rights, then it follows that individuals do not have an “automatic” moral entitlement to any part of their pretax income. Therefore, when the law tells you that you are subject to a 30 percent income tax, it does not “take” any percentage of “your” money. Rather, the law means simply that you get to keep 70 percent of the income.

Now, one may think that this point can itself ground public property. After all, just as the laws might designate 70 percent of the income as your property, so the laws may designate the remaining 30 percent as public property. In other words, if property rights are a legal creation, then perhaps we can simply say that public property is whatever the law defines as publicly owned. This suggestion, however, encounters an immediate obstacle. If public property is whatever the laws define as publicly owned, then even de facto rulers who engage in the most blatant corruption cannot be accused of stealing public property, as long as they succeed in giving their graft a veneer of law. Suppose that, in a country with a long history of repressive regimes, the current autocrat forces the passage of a law which declares that every year 10 percent of the state’s income tax revenues will be transferred to his personal bank account. We would obviously want to condemn such a law not merely as unjust but also, more specifically, as blatant theft, by this autocrat, of public property. But if public property simply is what the law defines as publicly owned, and if the law defines only 90 percent of tax revenue as public property, then the autocrat’s taking of the other 10 percent cannot count as theft from the people. But

this is surely the wrong conclusion. Therefore, if we want a compelling account of the people’s property, we cannot settle for simply letting the law define what will count as such property.

III. THE DEEP PUBLIC OWNERSHIP MODEL

We may be able to do better in our quest for an account of the people’s property, however, by shifting our gaze from the laws of the state as such and instead focusing more directly on the people. In particular, let us focus directly on the people as sovereign—as the collective agent to whom the state’s laws ultimately ought to be traceable. Few ideas are as fundamental to modern political thought as the notion that the state and its laws must ultimately represent rather than replace the sovereignty of the people. This is the notion underlying our reference to state employees not as servants of “the state” but as public servants: state officials, as Rousseau put it, can only be “officers” acting in the name of the sovereign people, rather than themselves sovereign.

These ideas, however familiar, are useful here, because they point toward a powerful model for thinking about the people’s property. This model sees the property rights of the sovereign people as preceding, rather than stemming from, specific laws. To get an initial sense of what this means, take again the example of the law that taxes you at 30 percent. In certain circumstances, at least, we should be able to say not merely that “the law” has designated 70 percent of the income as your property. We should also be able to say that this law ultimately reflects the will of the sovereign people. You have property rights over 70 percent of “your” income because the sovereign body politic has decided to allocate these rights to you.

On this “deep public ownership” model, the sovereign authority of the people is intertwined with the people’s property rights: the moral power of the sovereign body politic to create private property rights over

23. More specifically, the combination of an utterly flawed procedure and a morally implausible outcome is clearly sufficient to designate the autocrat’s conduct as theft. I take up more difficult cases, where this combination is absent, in the final section.


25. There are some hints of this model in Wenar’s Blood Oil (passim), though Wenar’s legal argument focuses on natural resources. As notes 6 and 7 indicate, I am in pursuit here of moral rather than legal foundations, and my aims extend beyond natural resources.

certain objects itself involves a claim to be the ultimate owner of these very objects. In claiming the authority to decide which portion of “their” income individual citizens will get to keep, for instance, the sovereign body politic is claiming deep ownership over their entire income. And what is true with regard to income tax is true for a whole host of other objects in which property rights can be created. In claiming the moral power to create property rights in object (or set of objects) X—and specifically in claiming the moral power to create rights of control, use, and transfer over X—the body politic is itself claiming more fundamental control over X. The body politic, in other words, is claiming the moral power to decide what shall be done with X. And because this moral power, in turn, is the “central core of the notion of a property right,”27 we can understand the body politic’s more fundamental control over X as itself embodying a claim of fundamental ownership over X. Thus, the deep public ownership model concludes that the sovereign people is the fundamental owner of all of the resources encompassed within its jurisdiction.28

This fundamental ownership will sometimes have a direct manifestation in public life, but it is often easy to overlook. This is partly because some of its direct manifestations, while dramatic, are rare. The practice of eminent domain—of public authorities taking private holdings for public use—is a clear example. There are also contexts where direct manifestations of the public’s proprietary claims are easy to overlook because their impact on private property holders is minimal. The copyright regulation associated with the Library of Congress in the United States is a useful example. This regulation, known as “mandatory deposit,” instructs each “owner of copyright or the exclusive right of distribution” who wishes to distribute copyrighted work in the United States to “deposit in the Copyright Office for the use of the Library of Congress two complete copies.”29 Yet while mandatory deposit applies to millions of intellectual works, it has only a marginal impact on private economic transactions in such works.30

27. Nozick, Anarchy, State, and Utopia, 171. I am assuming that one can agree with Nozick on this particular point without accepting any of Nozick’s substantive views.


29. See “Mandatory Deposit” at https://www.copyright.gov/help/faq/mandatory_deposit.html. The library then decides whether to keep these copies to make them available for the public, trade them with other libraries for other material that will be available to the public, or donate the items.

30. One may also add here those instances of direct public ownership that, as I noted in the introduction, are so mundane and obvious to us that they become “transparent.” Public ownership of street pavements is a pertinent example, offered in G. A. Cohen’s “Capitalism, Freedom and the Proletariat,” in The Idea of Freedom, ed. Alan Ryan (Oxford: Oxford University Press, 1979), 163–82, 174.
Equipped with this initial picture of the deep public ownership model, we can consider it in light of the requirements presented at the outset. We can start with the requirement of capturing allegations of theft by de facto rulers. It should be obvious that the deep public ownership model satisfies this requirement. Thus, for instance, to take the scenario discussed above, the model can easily explain why an autocrat who officially designates a portion of state resources as his personal property is stealing from the people. On this model, the people own state resources not because of a specific law that an autocrat may or may not pass, but simply because the people—rather than the autocrat—are sovereign.

The deep public ownership model is also able to satisfy the collectivist requirement. The thought that we should treat private holdings as derived from public ones, rather than the other way around, clearly coheres with our understanding of public property as fundamentally collective; this thought is far removed from any scenario where public property is “unilaterally privatized” through individual secession of the kind that afflicts the private aggregation model.

Furthermore, the deep ownership model sharpens our understanding of existing practices regarding public property, in a way that helps us see better the collective claims embodied in such property. Take again the example of eminent domain. It is not clear how the private aggregation model, for instance, can make any sense of this practice. In contrast, the deep public ownership model can easily do this. Rather than seeing eminent domain as a power of the body politic to take prepolitical property for public use, the model leads us to understand eminent domain as a reflection of deep public ownership. This ownership comes to the fore when crucial public needs lead the body politic to reclaim the property that it has assigned to certain individuals.

However, things may appear more difficult when we turn to the individual property requirement. Deep public ownership may not seem to align with entrenched intuitions—especially among liberals—regarding the significance of private property. Indeed, some might worry that, even more generally, the notion of deep public ownership is simply too alien to core liberal commitments.

One response to this concern is the following. The idea of deep public ownership is perfectly compatible with the liberal thought that individuals ought to be able to enjoy, vis-à-vis one another, all the immunities and prerogatives associated with private ownership. But these immunities and prerogatives are not derived from any prepolitical property. While individuals certainly exercise private property rights, they do so in Rousseauian fashion, as “‘trustees’ of goods owned by the public.”

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To insist on this point, in turn, is not to say that the public—acting through government institutions—might leave individuals with no private property. To be sure, the deep public ownership model rejects appeals to prepolitical property as a fundamental constraint against public taking of all privately held resources. But to think that no other such liberal constraint can be found is to fall, unnecessarily, into the libertarian trap. For while the deep public ownership model rejects the libertarian idea of prepolitical property, it incorporates a basic concern with personal autonomy that all liberals (arguably by definition) share. All liberals—including the most trenchant antilibertarians—agree that protecting citizens’ ability to plan and pursue their own personal projects ought to be (at the very least) one of government’s key priorities. Personal property, in turn, is clearly essential for this purpose. Without the stable expectations that personal property allows us to develop regarding the resources at our disposal, we cannot have the basic security needed in order to form and execute any personal project that extends over time—that is, almost any project worthy of the name. Thus, while the deep public ownership model accords the body politic far more latitude than libertarians in defining the terms and scope of individual property rights, the model also aligns with the firm liberal conviction that personal property, as Rawls writes, is “necessary for citizens’ independence and integrity” (TJ, xv).

Moreover, because it can accommodate the familiar liberal concern with individuals’ stable expectations, the deep public ownership model is also able to accommodate concerns about the pace with which the body politic may change society’s distribution of resources. The deep public ownership model does allow the body politic to radically transform a society’s distributive arrangements, even if this means, for example, massively increasing some citizens’ tax burden. But the idea of stable expectations still constrains the pace of such profound shifts. It would not be wrong of the body politic to shift the highest income tax bracket from, say, 37 percent (the top federal income tax bracket in the United States for 2018) to, say, 91 percent (the top federal income tax bracket in the

32. At this point, I am not questioning whether the acts of government can really be said to represent the acts of “the public.” I am simply assuming an institutional environment in which the public—the people as a collective agent—exercises ultimate control over government officials and authorizes these officials’ actions. Hence, we can view the acts of government as, ultimately, the acts of the people (as argued, e.g., in Philip Pettit, On the People’s Terms [Cambridge: Cambridge University Press, 2012]). I postpone to Sec. VI complex cases where such a view is difficult to sustain.


United States in 1955\textsuperscript{35}). What would be wrong is for the body politic to pursue such a dramatic shift overnight. This is because the need for stable expectations around which individuals can structure their life plans requires a property system in which, as Rawls also says, “taxes and restrictions are all in principle foreseeable.”\textsuperscript{36}

IV. DEEP PUBLIC OWNERSHIP AND SOCIAL EQUALITY: EXTENDING THE SCOPE OF GOVERNMENT DUTY

I like the Civil Rights Act in the sense that it ended discrimination in all public domains, and I’m all in favor of that . . . [yet] I don’t like the idea of telling private business owners—I abhor racism . . . but, at the same time, I do believe in private ownership. (US Senator Rand Paul\textsuperscript{37})

If my arguments up to this point have been cogent, then we should regard the deep public ownership model as an attractive way of thinking about public property. My aim in this section is to boost the attraction further, by elaborating intuitive connections between the model and relations of social equality. In particular, I want to show that the model captures important moral judgments about a liberal government’s duties with regard to racial discrimination—a phenomenon that is incompatible with any plausible interpretation of social equality.

The judgments in which I am interested here are conditional, in the following sense. I do not intend to establish that the deep public ownership framework can itself ground an argument as to why a liberal government has a moral duty to combat certain forms of discrimination—and, more generally, to treat its citizens as equals. My suggestion, rather, is that if we assume such a duty, then the deep public ownership model can help us, by showing just how far a government has to go in order to satisfy this duty.\textsuperscript{38}


38. This claim parallels a contention made by Rawlsian theorists—that even if the philosophical machinery that Rawls constructs presupposes a “deeper concept” of equality, this machinery can still provide a useful service, by rendering the demands of equality more determinate. See, e.g., Joshua Cohen, “Democratic Equality,” \textit{Ethics} 99 (1989): 727–51; and Paul Weithman, \textit{Why Political Liberalism} (Oxford: Oxford University Press, 2010), 352, responding to Ronald Dworkin’s \textit{Taking Rights Seriously} (Cambridge, MA: Harvard University Press, 1978), chap. 6. I am aware that some readers may expect the deep public ownership model to perform a grander service: to explain on its own why a commitment to equality is somehow morally essential. But, to reiterate what I said in note 15, I do not think that it is in any way problematic for the deep public ownership model to be more modest. Because a conception of public property provides only one part of a broader reflective equi-
One way to see this point is to examine the constraints that private property rights often seem to impose on antidiscriminatory government action. The issue of private housing discrimination is a particularly important example. While landlords who refuse to sell or lease their properties to members of other races are clearly engaging in morally repugnant conduct, the fact that this conduct has to do with their private property may seem to place severe moral limits on a government’s ability to interfere. These constraints are weakened considerably, however, if we adopt the deep public ownership model. Suppose, for instance, that a racist real estate developer contests an official fine by saying, “I own this property, and so I get to decide who to allow into it.” The deep public ownership model answers, “You only get to own this property under the provisions set by the body politic, and if the body politic decides that racial exclusion is unacceptable, then your exercise of your property rights has to align with this decision.”

One immediate implication of this point is that the deep public ownership model can support important real-world laws targeting private-sector discrimination. Take, for example, the US Fair Housing Act. This act makes it illegal to refuse to sell or rent a residence to any person because of race, color, religion, sex, familial status, or national origin. It similarly outlaws discrimination in the terms, conditions, or privileges of sale or rental of a residence due to such attributes. It appropriately gives no consideration to private property claims as a constraint against government “intervention” in the decisions of private actors. As a result, landlords who are accused of violating this act cannot simply appeal to their rights of private ownership as a defense, whatever other appeals they might make. When the Trump Management Corporation, for example, was sued by the US Justice Department in the 1970s, as a result of evidence of heavy bias against minorities in its New York rental policies, its head, Donald Trump, pursued multiple responses. These included labeling the charges “ridiculous,” suing the Justice Department for $100 million in damages, and announcing that the settlement he had eventually reached with the Department did not “constitute an admission of guilt.”

librium, it is entirely appropriate for the deep public ownership model to emphasize (among other things) that the body politic creates property rights, while also pointing to external moral ideas—most importantly, to an antecedent commitment to equality—as a guide for how the body politic should actually go about its task of setting up a property regime. I am grateful to an anonymous reviewer, as well as to an associate editor for Ethics, for highlighting the significance of this point.

no point—neither before nor after Trump Management was charged with violating the terms of its settlement—did the law allow Trump to respond to the charges by appealing to private property rights. The deep public ownership model provides an immediate explanation of why it was appropriate for the law to prevent private landlords such as Trump from having this option.

Yet the deep public ownership model can go further. For one thing, the model can show not only why a government is morally permitted to sanction private landlords engaged in discrimination; if we accept a moral requirement for government to take certain actions with regard to public-sector discrimination, then the model also suggests that some of these government actions are morally required with regard to discrimination in the private sector. Take the Fair Housing Act once again. If we assume that governments ought to avoid discrimination in publicly owned housing, then the deep public ownership suggests that governments generally ought to avoid racial discrimination in the private housing market as well. After all, both cases ultimately feature public property, even if in the private case the relevant public property can be seen, along the Rousseauian lines noted above, as managed by private trustees. Therefore, given the assumption that a liberal government ought to refrain from racial discrimination in its direct management of public property, it also ought to combat racial discrimination evident in major private actors’ market decisions regarding property that they hold, but that ultimately belongs to the public.

Moreover, the refusal of the deep public ownership model to draw a fundamental distinction between private and public property has important ramifications for combating private discrimination even when the relevance of property issues is more indirect. We can see this point by considering the example of racial discrimination in private education. Historically, public property was used to support such discrimination directly—for instance, through tax exemptions given to racially discriminatory private schools. The deep public ownership model can obviously show why a government that is committed to treating all of its citizens as equals must not pursue such public measures. But the model carries further, less obvious implications for public action targeting discrimination in private education.

A specific case will again help to make these distinctive implications concrete. Bob Jones University (BJU), a private Christian school in South Carolina, did not admit black students until 1971. From 1971 until 1975, BJU admitted black students only if they were married; after 1975, the university admitted unmarried black applicants but denied admission to

42. I discuss a possible exception to this duty in the next section.
applicants who engaged in, or even supported, interracial marriage or dat-
ing. The university also imposed a disciplinary rule that prohibited, on
pain of expulsion, interracial dating or even support for interracial dating.
During the 1970s, the Internal Revenue Service (IRS) tried several times to
revoke BJU’s tax-exempt status, claiming that the federal government’s anti-
discriminatory policies justified treating BJU differently from nondiscrimi-
natory private schools that receive this status. After a protracted legal process,
in 1983 the Supreme Court finally upheld this IRS measure in *Bob Jones
University vs. United States*, basing its decision primarily on “government’s
fundamental, overriding interest in eradicating racial discrimination in
education.”43

Now, assuming a government commitment to combating racial dis-
crimination, the model condemns the direct use of public tax revenue to
facilitate discrimination of the kind practiced by BJU. Yet the model fur-
ther suggests that revoking tax exemptions was only one among several
financial sanctions that the federal government could have justifiably im-
posed in response to BJU’s discriminatory practices, which endured long
after its tax-exempt status was revoked.44 The reason is straightforward.
Like most (if not all) other private universities, BJU’s basic functioning
depends on its exercise of private property rights, without which it could
not, for example, sustain its physical infrastructure or pay its employees.
But, on the deep public ownership model, these private property rights
have been allocated to the university through the decision of public au-
thorities representing the people as the property’s ultimate owner. And
this public decision is not qualitatively different from a public decision
to grant tax exemptions to the university. Therefore, there was no prin-
cipl ed moral basis for limiting the government’s pursuit of its “funda-
mental, overriding interest in eradicating racial discrimination in educa-
tion” to BJU’s tax exemptions. Assuming that the step of revoking these
exemptions was morally warranted, then further penalties could have
been similarly warranted—even if these penalties would have gone be-
yond the removal of direct public support and targeted BJU’s use of its
private property.

V. THE SCOPE OF THE PRIVATE
A. The Problem of Public Intrusion

The deep public ownership model, I have just argued, undermines the
constraints that private property rights often seem to place in the way of

.findlaw.com/us-supreme-court/461/574.html.

44. See “Bob Jones Univ. Apologizes for Racist Policies,” *Associated Press*, November 21,
racist-policies/.
public measures tackling private-sector discrimination. But while many are bound to think that this is an important virtue of the model, others might suspect that danger lurks behind this attractive result. In particular, some may worry that the deep public ownership model opens the door to excessive public reach into private lives. It may be intuitive to subject major private actors such as the Trump Corporation to legal sanctions when they engage in racial discrimination. But what, then, is supposed to stop the law from sanctioning truly microlevel private conduct? Surely, it would be wrong of the law to sanction individuals who make racist choices about who to invite to a dinner party at their home. But, assuming we want to invoke a fundamental moral constraint against such policies—a constraint that goes beyond contingent feasibility and cost-effectiveness considerations—must we not fall back on private property?

I believe that the answer is “no.” Just as it is mistaken to think that we need the libertarian picture of property rights in order to take private property seriously, so it is mistaken to think that we always need the idea of private property in order to take seriously fundamental constraints shielding certain forms of private conduct from the reach of the law. We can see this point by examining another private housing issue, drawn once again from the actual provisions of the US Fair Housing Act. Suppose that a homeowner is letting out a few rooms in his own place of residence. He refuses to accept any person of color as a tenant. Should such a homeowner be subject to legal sanctions? This is a harder case than that of real estate empires such as the aforementioned Trump Corporation. Nonetheless, I believe that, although there might be a fundamental moral constraint against the law sanctioning such a racist homeowner, the relevant constraint is best understood as stemming from rights of privacy rather than property. If there are principled grounds in favor of the law allowing a person to engage in racial discrimination in his intimate space, the reason has to do with intimate interactions in the relevant space, rather than with the racist’s ownership of this space.


46. In saying this, I do not mean to suggest that the idea of a right to privacy (or its precise relationship to rights such as freedom of association) is straightforward. I only mean to endorse a simple thought—namely, that “everyone needs some choice about how close or how distant they want to be from different others.” See Andrei Marmor, “What Is the Right to Privacy,” *Philosophy and Public Affairs* 43 (2015): 3–26, 11.

47. This observation, in turn, can be reinforced if we consider a slightly modified case, where the same person comes to own another housing unit that is far from his own residence. Suppose that this owner turns down people of color as tenants for the additional unit. It seems clear that the moral argument in favor of the law sanctioning his racism is much stronger here, yet this difference cannot be due to property—rather, it is due to a privacy constraint which operates in one instance and not in the other.
The preceding paragraphs should make clear why the deep public ownership model does not commit us to excessive public encroachment into microlevel private affairs. But while this point is crucial, a further point should also be borne in mind. There are specific cases where the model does indeed push for legal scrutiny of what is typically seen as purely private, microlevel conduct. But in those rare instances we should consider very carefully whether the relevant conduct does not have an essential public dimension. If so, then formal public scrutiny of this conduct may in fact be morally appropriate even if it goes beyond existing law in making private conduct a public affair.

Consider, by way of illustration, US law concerning politicians’ tax returns. American politicians currently face no legal obligation to make their tax returns public.48 The deep public ownership model, however, suggests that politicians should be legally obligated to publicize their tax returns. This is because the public has a compelling interest in knowing whether individuals who seek public office have been reliable trustees of public property. Where they have not—where the relevant individuals have sought every trick in the tax code to advance their personal position at the public’s expense—the public has a moral right to know, and to be able to employ this knowledge in decisions about whether these individuals should hold public office. There is no good reason, in turn, why this moral right should not be translated into a legal right—and certainly no reason that can be traced to any immunities associated with politicians’ private property.

B. Deep Public Ownership and the Body

Up to this point, my presentation of the deep public ownership model has focused on resources that are external to the human body. But some may suspect that once we turn to the body, the worry about excessive public intrusion into private affairs reemerges. On the one hand, if the body is to be treated as a social resource just like external objects, then a person’s body parts, just like her individual income, can legitimately be redistributed. The model, in other words, would not impose a categorical prohibition even on policies such as forced organ transfers from healthy to sick individuals—an extremely alarming conclusion for many. On the other hand, the most natural and familiar way to categorically prohibit such policies is to hold that individuals have robust and exclusive prepolitical rights of control over their body. But (the worry goes) once we grant these rights of control, we open the door to further prepolitical rights, includ-

ing prepolitical property rights that threaten the very core of the deep public ownership model.49

The most natural response to this objection is to contest the slippery slope to which it points. Contrary to the objection, it is perfectly coherent to endorse individuals’ prepolitical rights of control over their body—and thus to oppose counterintuitive policies such as legally mandated organ transfers—while also denying that these bodily rights yield any prepolitical extensions that contradict the core premises of the deep public ownership model.

We can evince this point by considering a familiar libertarian claim that the objection echoes. Libertarians often equate policies such as redistributive labor taxation with various forms of slavery and forced labor. This equation, in turn, rests on the thought that rights to control one’s body are intertwined with the right to income from one’s labor. On this view, there is no way to endorse rights of bodily control without also endorsing a right to the income associated with one’s labor, and there is no way to collectivize this income (as the deep public ownership model does) without also collectivizing the body.50

This libertarian view, however, is false. For one thing, we can and should see the right to control one’s body as independent of a right to income from one’s labor. The libertarian insistence that “taxation of earnings from labor is on a par with forced labor” ignores the fact that forced labor, by definition, deprives a person of the freedom to choose if, when, and how to work.51 But taxation of earnings from labor simply does not threaten any of these freedoms.52

A similar point obtains with regard to the relationship between prepolitical rights of control over one’s body and prepolitical rights of control over external objects. Libertarians claim that these two are also intimately linked—that there is no way to admit the former without also

49. I am grateful to an anonymous reviewer for pressing me on this score.
52. As pointed out, e.g., by Robert Taylor, “Self-Ownership and the Limits of Libertarianism,” Social Philosophy and Policy 31 (2005): 465–82, 477. Fried similarly notes: “Nozick and others on the right have argued . . . that taxation amounts to a form of slavery . . . [but] the Nozickean argument seizes on one formal likeness between taxation and slavery, disregarding all the differences in the degree and kind of constraints imposed by the two that do not merely weaken the analogy but may defeat it entirely” (“Left Libertarianism,” 80). As for left-libertarianism, “most versions of left-libertarianism start with the assumption that the same concept of self-ownership that explains why slavery and forced eyeball transplants are bad also explains, at first cut, why redistributive taxation may be bad. There are so many obvious, morally salient, differences between these three phenomena that it is unclear why anyone with egalitarian/social welfarist instincts would sign on to a program that treats them as homologous” (91–92).
endorsing the latter. But antilibertarians have long disputed this claim, most importantly by disputing the link that “labor mixing” is supposed to establish (according to libertarians) between bodily rights and property rights over external objects. The notion that persons can unilaterally acquire property in the external world by “mixing their labor” with un-owned objects has been attacked, among other things, as “mysterious,” logically incoherent, and in some cases profoundly counterintuitive. But if the labor-mixing argument fails, as so many critics have sought to show, then it is far from clear why conceding robust prepolitical rights of control over one’s body in any way commits us to also concede robust prepolitical rights of control over external objects. We thus find once again that—contrary to the objection—there is nothing odd about appealing to rights of bodily control in order to oppose redistributive measures such as forced organ transfers, while also rejecting any libertarian extension of these rights. We can therefore grant the existence of robust prepolitical bodily rights (at least \textit{arguendo}), and see these rights as bulwarks against counterintuitive policies targeting the body, without thereby destabilizing the model’s core ideas.

54. Following Jeremy Waldron, \textit{The Right to Private Property} (Oxford: Oxford University Press, 1988), 180–87, Wenar, for example, observes that “there is no ‘substance’ that is both mixable with external objects and the object of personal rights . . . labor is an activity, not a substance; indeed ‘mixing one’s labor’ may be incoherent in logical form, as it is the same form as ‘mixing one’s mixing.’” Leif Wenar, “Original Acquisition of Private Property,” \textit{Mind} 107 (1998): 799–819, 808. In the same essay, Wenar also concentrates the most powerful objections to libertarian appeals to desert and value creation as grounding strong prepolitical property rights in external objects.
55. That this last point has been recognized by Nozick himself makes the prominence of labor-mixing arguments among libertarians particularly puzzling (see Nozick’s famous example of tomato juice “mixed” with the ocean in \textit{Anarchy, State, and Utopia}, 174–75).
57. I should note that this is not the only possible response to the objection. One may choose to challenge, rather than accept as axiomatic, our instinctive alarm at public policies that see the body as a legitimate object of redistributive efforts; for such a challenge, see Cécile Fabre, \textit{Whose Body Is It Anyway: Justice and the Integrity of the Person} (Oxford: Clarendon, 2006). If we proceed down this path, we may discover that some redistributive policies targeting the body are not, in fact, so obviously morally implausible (think, e.g., of public use of cadaverous body organs, which arguably aligns with any plausible interpretation of the core libertarian idea that each of us has only one life to lead). My point here is only that we do not have to take this more radical path in order to give the deep public ownership model a coherent form.
VI. IN LIEU OF A CONCLUSION: ELECTED LEADERS, THE PEOPLE, AND PUBLIC PROPERTY

Equipped with these observations, let us circle back to the relationship between “the people” and the individuals who exercise effective political power. This article has so far featured two variants of this relationship. In Sections I and II, I highlighted cases where individuals who wield de facto political power cannot claim any kind of popular authorization for how they treat public property. In contrast, in Sections III, IV, and V, my discussion presupposed that such individuals are being true to their Rousseauian role, acting as “officers” in the name of the sovereign people.

However, one can identify an important set of cases that lies between these two categories. In these instances, there is a distinct intuition that actors wielding effective political power are guilty of some sort of wrongful conduct with regard to the people’s property, but because these actors’ relationship to the sovereign people is ambiguous, it is not obvious precisely how their conduct should be conceptualized, or how it should be addressed. In this final section, I want to consider what the deep public ownership model can—and cannot—say about such cases, especially insofar as they concern elected leaders.

Imagine, to take a first example, a military general who leads a successful (and rightful) war of independence, after which he is venerated by all of his compatriots. Keen to capitalize on his unique social standing, the general refuses to run for the presidency of the newly founded country, despite his compatriots’ pleas, unless the new country’s constitution contains a clause defining 10 percent of the annual budget as the president’s personal annual salary. Following extensive debate in constitutional assemblies, in which the public widely affirms its adoration of the hero of independence, the relevant clause is included in the constitution. The general consequently agrees to run, and he wins the election with an overwhelming majority; he now earns one cent out of every ten that go into the national budget. How should we think about such a case?

In my view, the deep public ownership model should lead us to deny that the general’s actions constitute theft from the people, at least if we are assuming that once he made his demands, the general did not coerce any member of the people to support them, and that the people’s control over public property was not impaired in any other way. If so, then the general’s new salary as president, however extravagant, is a direct result of the people’s exercise of its powers of ownership, rather than of any theft from the people. The general, to be sure, is morally blameworthy, but not for stealing. Rather, the general is morally blameworthy owing to his con-

58. Let us assume that the general demands an extravagant presidential salary in the new constitution only because he knows that he would be elected president if he chooses to run.
ously perpetuating, and benefitting from, a morally dangerous personality cult that is inimical to a society of equals.59 So the wrong-making features here have to do with our broader convictions regarding social equality, rather than with the people’s property as such.

While this example is fanciful, it may have something to tell us about real-life cases of wrongful treatment of public property by democratically elected representatives. Consider, for instance, a Colombia-style case, where the official salary rate for a member of the national legislature is twenty times higher than the country’s average wage.60 Suppose that this rate has been approved through the standard procedures of the country’s democratic system. Suppose further that ordinary citizens have long had access to information about this salary rate and yet have been uninterested in sanctioning the elected representatives who made this rate into law. If all this is true, then the legislators’ conduct with regard to their salaries, though objectionable, does not, I believe, constitute theft from the people.

However, suppose that the people eventually “wake up”—as seems to be the case in Colombia at the time of writing, with millions of citizens signing a public petition demanding (among other “anticorruption” reforms) that legislators’ salaries be cut in half.61 The more Congress members try to resist such popular demands—the more loopholes and technicalities they pursue to stall discussion of reform,62 and the more they pressure other branches of government not to tamper with their privileges63—the harder it becomes for them to claim that their salary has

59. Of course, we may also accuse all citizens who supported the general’s demands of a morally reprehensible servility. See, e.g., Thomas Hill, “Servility and Self-Respect,” Monist 57 (1973): 87–104.

60. This was the case in Colombia several years ago. See, e.g., “Colombian Lawmakers Earn 20 Times More Than Average Citizen,” Colombia Reports, September 20, 2011, https://colombiareports.com/lawmakers-earn-20-times-more-than-average-colombians/. Note that while there is empirical evidence favoring generous pay for low-level government officials as a means of disincentivizing corrupt behavior, there is little empirical support for the thought that extremely generous pay for higher-level officials (whether elected or appointed) yields less corrupt government. See, e.g., Carl Dahlström, Victor Lapuente, and Jan Teorell, “The Merit of Meritocratization: Politics, Bureaucracy, and the Institutional Deterrents of Corruption,” Political Research Quarterly 65 (2012): 656–68.

61. For the campaign and petition, signed by more than 4.3 million citizens (almost 9 percent of Colombia’s population), see www.vencealcorrupto.com/ (Spanish).

62. For example, appealing to the need “not to disturb” upcoming elections. See “Senate Postpones Anticorruption Consultation Until after the Elections,” Semana, April 17, 2018, www.semana.com/nacion/articulo/senado-aplaza-consulta-anticorrupcion-hasta-despues-de-las-elecciones/564032 (Spanish).

63. Such pressure is easier to exert, naturally, if other branches have even more to lose from government reforms. This certainly seems to be the case in Colombia, where one former Chief Justice is currently in prison, three current Supreme Court justices are being investigated for corruption, and the former “anticorruption chief” was himself recently
been “authorized,” however indirectly, by the people. Consequently, the charge that they are stealing the people’s property becomes increasingly compelling.

With these examples in mind, I want to turn to one last case, which might be the most complex. Consider a country where the overwhelming majority of elected politicians, in the executive as well as in the legislature, have been implicated in illegal abuse of public property. To make things more concrete, imagine that there is serious evidence that the lion’s share of the country’s top elected representatives have been systematically soliciting massive bribes surrounding large government contracts. Whether to bring all of these elected representatives to trial is a difficult moral question, since such a step is very likely to trigger deep political and economic uncertainty. With the bulk of the country’s political class in prison, who would be left to govern? The instability that is bound to result from such a political vacuum might very well have profound social and economic repercussions, which every sensible moral analysis has to take into account. These repercussions, in turn, would be especially acute in countries undergoing severe economic crises that require considerable political experience to manage.

I should stress that this complex scenario is far from a hypothetical construct. Rather, it is an ongoing, crucial problem faced by various developing countries, Brazil being only one key example. Now, I obviously cannot offer here a complete, all-things-considered moral judgment as to how such an intricate problem should be addressed. But I do want to

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65. I try to make more progress on problems of this kind in Shmuel Nili, The People’s Duty (Cambridge: Cambridge University Press, forthcoming), partly by building on the ideas outlined here.
note a distinctive proposal that follows naturally from the deep public ownership model, that is worthy of debate, and yet that is unlikely to even get a hearing on the alternative models of public property considered earlier.

The proposal I have in mind is to let the people decide: to involve the people directly, through a referendum, in decisions as to how to respond to pervasive abuse of public property, given extreme conditions of the sort just highlighted. This proposal, I believe, cannot get off the ground on the private aggregation model of public property. After all, on the private aggregation model, a referendum—which would never feature unanimity—would violate the right of each individual citizen to “secede” from the collective arrangement and to seek personal compensation from the offending officials for their theft of one’s “individual portion” of public property.66

What about the purely legalist outlook, which sees public property as whatever the law declares to be public property? The problem here is that when corrupt government members band together—as they often do—to pass an amnesty law protecting them from prosecution, there can no longer be any reason to charge them with theft of public resources: their self-amnesty “erases” their theft.67 And so any proposed referendum on how to handle this theft would become moot.

The fact that these models do not even allow us to entertain the referendum proposal is a cause for regret. Such a proposal is worth considering for at least three reasons. First, when a given agent’s property is routinely abused, and when there are unusual risks involved in prosecuting the perpetrators, it seems sensible to design our response—at least to some extent—on the basis of the direct wishes of the property’s owner.68 Second, if we take the people’s property seriously, then we should also (arguably) accept risks that the people as owners are willing to take when responding to pervasive abuse of their property. If the people vote in a referendum to immediately pursue the full extent of the law against all of the politicians who have abused public property (rather than, say, to enact temporary forms of executive immunity), then this vote has considerable moral weight even if it may be imprudent. Although such a vote

66. To reinforce the oddness of this conclusion, suppose that someone stole Lady Liberty. Would it make philosophical sense to say that compensation or restitution is due, in principle, directly to each current individual citizen of the United States? It would surely be more plausible to say that compensation or restitution is due to the American people, as the collective agent to whom the statue was given by the French.

67. For self-amnesty efforts in the Brazilian case, see, e.g., Watts, “Brazil’s Corruption Inquiry.”

68. The caveat “to an extent” is meant partly to acknowledge the fact that in normal circumstances we may have good moral reasons to prosecute perpetrators of serious crimes entirely independently of the wishes of the victims of the alleged crime. Yet it is essential to remember that we are in the realm of abnormal circumstances here.
would involve serious risks to political and economic stability—and indeed, to the economic value of public property itself—the people would be acting within their rights as owners if they were to decide to assume these risks.69

Finally, it is important to bear in mind that in the delicate circumstances of pervasive corruption, someone has to decide whether and how fears about political and economic stability should lead us to deviate from applying the normal workings of the law to suspect politicians. The example of Brazil’s ongoing corruption scandal, implicating “almost everyone who has had any power over the past 10 to 20 years,”70 is again a case in point. According to some Brazilian media, legal authorities, alert to the worst recession in the country’s history and to the consequent need for experience at the helm, have been selective with regard to which politicians they are charging with corruption, with regard to the timing of pressing charges, and with regard to their determination to impose immediate sanctions.71 Yet it is surely morally better for the people to decide in a transparent process whether any such deviation is warranted than it is for law officers to informally arrogate to themselves the right to make this momentous decision in an opaque manner and without any kind of formal mandate from the people.

Of course, these considerations may not, by themselves, settle the question of whether a referendum of this sort should in fact be held, let alone do these considerations settle what policy options such a referendum should feature if held. But the main point here is a more general one. The point is that once we note such proposals, we can evince the rich potential of the deep public ownership model. This model, as I illustrated early in this article, reinforces our confidence in some of our core moral values. Moreover, as I have sought to show in the case of antidiscrimination policy, the model resolves apparent conflicts among our values, allowing us to reach intuitively attractive results. But, just as crucially, the deep public ownership model also helps us think creatively about real-world policy issues where we are genuinely unsure as to what our moral values require.

69. A similar antipaternalist spirit can explain, I believe, why any authoritarian regime, no matter how benign, can be accused of violating the people’s right to make their own decisions about public property. This is true even if the regime’s transgressions with regard to public property may not necessarily involve theft from the people.

70. Watts, “Brazil’s Corruption Inquiry.”

71. In 2016, for example, Renan Calheiros, then head of the Brazilian Senate, refused to obey an order from a Supreme Court justice to step down while being investigated. The full Court, however, did not punish him. Instead, the Court announced that Calheiros must give up his place in the succession line to the presidency. See AP, “Brazil’s Top Court Overturns Ban on Senate Head Renan Calheiros,” December 8, 2016, https://www.theguardian.com/world/2016/dec/08/brazils-top-court-overturns-ban-on-senate-head-renan-calheiros. This lenience might well have stemmed from Calheiros’s central role in pushing for economic changes to combat the ballooning government deficit.