

Public Ethics Radio

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Episode 12, Anne Phillips on Ownership and the Body

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MATT PETERSON: This is Public Ethics Radio. I'm Matt Peterson. This podcast features conversation between our host, Christian Barry, and scholars and thinkers who engage with ethical issues that arise in public life.

Do we own our own bodies? Can we buy or sell body parts? What about bodily services?

Consider the phenomenon of pregnancy outsourcing. Just like more familiar forms of outsourcing, this is when an individual or couple arranges for a surrogate in another country. One reason might be that surrogacy is illegal in a given country. In Israel, for instance, surrogacy is generally legal, but it is prohibited for gay couples. So a gay Israeli couple must go elsewhere to arrange for a legal surrogate.

In India, it's not only legal to arrange for another person to bear your child, it's legal to pay her to do so. In other words, commercial surrogacy is legal there. Since India has a huge population of poor women, along with well-trained, English-speaking doctors, the country has become a popular destination for cheap commercial surrogacy.

The total cost of surrogacy in India is somewhere around \$12,000, of which 5,000 to 7,000 goes to the surrogate mother herself. In the United States, the cost is around \$70,000. Similarly, in the United Kingdom, one can legally arrange for a not-for-profit surrogacy, but should the surrogate mother change her mind at the last minute, any contracts saying otherwise cannot be enforced. Not so in India.

The idea of paying poor women at a sharply discounted rate to become surrogates clearly raises concerns about exploitation. But aside from this, it may seem that such practices treat people's bodies like just another commodity, portions of which can be bought and sold on international markets. The question is, do we own our bodies, and does this ownership confer the same kind of property rights it does for normal property?

Clearly there's a lot to discuss.

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Today on Public Ethics Radio, Christian Barry talks to Professor Anne Phillips. Phillips is Professor of Political and Gender Theory at the London School of Economics.

CHRISTIAN BARRY: Today we're joined on Public Ethics Radio by Professor Anne Phillips, who is a professor of political theory and gender theory at the London School of Economics. Anne Phillips, thanks for joining us.

ANNE PHILLIPS: It's a pleasure.

CHRISTIAN BARRY: Anne, we often talk about our own bodies in a way that is, at least on a superficial level, similar to the way that we talk about other things that belong to us. So we think that we have a right to do certain things to our bodies that other people don't, just as we have a right to do things to our car that other people don't. Does it make sense to conceive of our bodies as a kind of property and rights over our bodies as comparable to rights in property?

ANNE PHILLIPS: Well, it's not that it doesn't make sense, but it seems to me that it's a problematic thing to do. I think that sort of talking about your body, or your sense of your relationship to your body, as if it's comparable to your relationship to your house or to your car, it seems to me does a kind of serious disservice to the ways in which we would want to think about persons. I mean, Margaret Radin has a nice way of putting this, which is to say, it's a kind of, it's a way of talking about things that are properties of persons as if they're personal property, and that's the kind of, the—that's the move we shouldn't make, or should try not to make.

So I think, we use notions like—we say "It's my body," meaning "It's not your body." Or we say "It's my life" meaning "It's not your life." And it's a way in which, in kind of commonsense language, we're able to, you know, assert some kind of claim over who has the right to do things with this body. But I think, when we move that a stage further, and actually take that kind of metaphorical language seriously, to the point where we start thinking about our bodies as things that somehow we have an ownership relationship to, it seems to me that that's a problem.

CHRISTIAN BARRY: So one of the reasons why the question of the relationship of people to their bodies has become increasingly important is that *bodies* have become increasingly important. Tissue, for instance, is extremely—of great interest to biotech firms that are trying to develop stem cell lines. Of course, bodies for a long time have been valuable, both in the form of prostitution and in other forms of use of bodies. So if we do give up on this very literal understanding of having property rights over our body,

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what are we left with, or what is really at stake in thinking about these things?

ANNE PHILLIPS: I think that's one of the difficult issues, because there is an argument which is... you know, it's got a lot of plausibility to it, which is saying, if you want to challenge the commodification of the body, that is, if you want to challenge the ways in which bodies, body parts, bodily services, get to be treated as things that can be bought, sold, contracted over and so on. There's an argument that says the way to challenge that kind of commodification, which is clearly a major potential with what's happening in modern biotechnology and so on, if we want to challenge that commodification, what we need is for people to be able to claim some kind of property rights over their own bodies.

So the argument there is in a sense, the danger that we have to protect ourselves from is commodification, and property rights of a certain kind might be some kind of protection from that. When people argue this, I mean mostly what they're saying is, if you think about property in a more complex way than what it means to own a house, or to own a car. If we own a car or we own a house, we have, you know, pretty extensive rights over it. I can destroy the car, it's my car. I can give it to you. I can sell it to you. It gives me a lot of power and authority. The argument in relation to bodies has been that asserting a property right over your body wouldn't necessarily mean asserting your right to sell it to the highest bidder—

CHRISTIAN BARRY: Which you can't do with hand guns, for example.

ANNE PHILLIPS: Yes. There are lots of property where you have restrictions like that. Property does come with lots of restrictions. The argument might be, well, asserting a property right would be saying "You cannot take my body tissues and use them for whatever purposes you choose. I have the right and the authority to determine what uses are made of them, what kind of research they're used for, what kind of possible commercial uses they're put to." That's one kind of argument. I mean, I find even that argument troubling. But I think it's a serious argument that you can see what people are doing there.

CHRISTIAN BARRY: And so, what do you see the risks of thinking along those lines? To think of property rights as always diverse and as really a collection of different types of privileges and duties and immunities and claims that we have with respect to some things rather than others, in thinking of the body along these lines?

ANNE PHILLIPS: Well, I think that partly it's to do with worries about the kind of mind-body dualism that I think sometimes creeps in there. That you start thinking about

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your body, or bits of your body, as these things that you have some kind of ownership rights over. There's a way in which—it introduces a way of thinking about people, as if there's the person, the self, which has attached to it somehow these bits of bodies that can be disposed of in various kinds of ways. I think that's problematic.

But I think my general concern is a concern about, I mean it does go back to commodification, it's a concern about the way in which we live in societies where the general trajectory is towards more and more things becoming commodities. And the more that that enters into the ways in which we think about ourselves and our relationships to other people, the more problematic that is.

There's also been an argument, which I think has a lot of mileage in it, which is to suggest that there's something very masculine (by which I don't mean it's the kind of thing men do and women don't, but masculinist in a more metaphorical sense)—there's something very masculine about thinking about your relationship to your body in a kind of property-type relationship. The notion of establishing, in a sense, your rights, your control, your mastery over your body by referring to it as if it is in some sense your property. That's also something we should be careful of, that we should watch out for.

CHRISTIAN BARRY: Maybe we could turn a little more substantively to some of the issues that might be at stake, and what your views would be. So there's a lot of dispute about, for example, whether there should be markets in organs, or for example, whether surrogacy should be permitted. What sort of general framework should we adopt in thinking about these issues? Of course, there may be all sorts of good pragmatic policy reasons why we would forbid some activity or not—if it's going to lend itself all too much to exploitation and so on and so forth—but more generally what are the types of constraints that you had imagined, or the approach that you think that we might want to take in thinking about the limits to what we can do with our own and other's bodies?

ANNE PHILLIPS: Probably there are different kinds of arguments that you'd want to make in relation to how you think about what you might describe as bodily services. So, surrogate motherhood, for example, would be a reproductive service. The question then is to what extent that can be regarded as something that is at one level a commodity, a piece of property that someone can buy, sell contract, and so on.

So there's a set of arguments about bodily services, and then a related set of arguments—but I suspect they're going to be different—about bodily organs, parts of the body that can be permanently detached from a body. Spare kidneys would be the obvious one that people are most concerned about.

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I think with bodily services, there you're particularly facing the importance of thinking about the ways in which exist within their bodies. If you think about surrogacy, one of the things people have been most concerned about is, if you have contracts for surrogacy, which then become enforceable, so that a woman who has signed a deal at the beginning of her pregnancy, in which she has agreed not only to the pregnancy, but she has agreed to relinquish the baby at the end of the pregnancy—should that contract be enforceable, if in the course of a nine month pregnancy—which is a kind of—

CHRISTIAN BARRY: A very substantial commitment.

ANNE PHILLIPS: —a substantial experience, I mean it's a very substantial experience. The idea that one would be bound by the commitment at the beginning of that, in the way in which you would rightly be bound to hand over your car if you've agreed to sell it to me at a particular price, it's quite appropriate that you're not allowed to change your mind because you realize you could get a better price from somebody else. But in the case of surrogacy, treating surrogacy in the same kind of way, really does seem to fail to recognize the significance of the embodied experience of pregnancy.

Now, when I say that, I don't mean—and this is something that's much debated in the literature—I don't mean—in my criticism of enforceable contracts, I don't mean that there's something about the experience of pregnancy which somehow makes women so much at the mercy of their hormones of emotions that they cannot make rational decisions. That's not what I'm saying. But certainly that the nature of the experience is such that it isn't surprising if sometimes women change their minds in the course of that experience. And the idea that it would be treated like an ordinary contract, then seems to me deeply problematic.

CHRISTIAN BARRY: So turning to—we had talked a little bit about concerns about the body as usable, in effect, as part of trade and services. With respect to things like the use of human tissues and body parts, there are two different sorts of ethical concerns that are often raised. One is that there is something in principle wrong about, not necessarily giving a kidney, not necessary giving up a body part—because often it's argued that this is a wonderful, beneficent act—but the idea that you can trade in these services for cash in exchange.

I think that some people probably don't even think that there's something ethically objectionable about trade for other types of things. Right, so I if I agree to give you my kidney, because I know that you're suffering from renal failure, but I also know that I

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might need some things down the line, maybe that's somewhat less of an objectionable thing to someone than the idea that I'm selling my body part for money. And this seems to be an in principle objection to it.

The other types of concerns more have to do with what markets like that can do—that they lead to exploitation, that often people are entering into contracts that they can't understand, that leave them extremely vulnerable, precisely because the enforceability issue you mentioned becomes more of a problem. Do you think of both of these concerns as decisive arguments against, or do you believe in either of both of them? Or what would you say?

ANNE PHILLIPS: I think that in fact, in terms of the organs question, I'm inclined to think that it's the exploitation aspect of it that's dominant. So in a sense... I'm not entirely clear what I think about this. I think it's quite complicated. But clearly the sale of human organs is the sale of organs from poor, needy people to wealthy, also needy people—I mean they clearly need organs because their health is at risk—

CHRISTIAN BARRY: Sometimes they're not even that wealthy.

ANNE PHILLIPS: Well, yes, depending on what the pricing regime is, they may not be that wealthy. But it's an exploitative situation, and it's particularly exploitative as we get increasingly global markets, in which it's poor people in poor countries producing organs for wealthier people in wealthier countries. So all of that side of it I think people rightly find is deeply distasteful.

But clearly there's something quite complicated about it, because, as you say, we regard the donation of human organs—kidneys are probably the easiest examples to use because any healthy person has two kidneys and only needs one. Unless you're very unlucky, you can survive the transplant of your spare, healthy kidney. We tend to think that when relatives (I don't think very often friends do it, but certainly relatives do it), we tend to think that's a very generous act. So why exactly is it so different?

I mean there is an argument—so here again I'm making an argument, I'm putting forward an argument which I see has a certain plausibility, and I'm not sure what I think about it, right? There is an argument which says that the problem is exploitation. If you could set up a system in which the organization which purchased human kidneys, say, was something like the UK's National Health Service, which then having bought the kidneys made them available to people at no cost and on the basis of need, so that the distribution of those kidneys was done in such a way where money did not buy your

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kidney, it was the fact that you had kind of an intense medical need that purchased your kidney.

And—the additional part of this argument—and if the purchase of the kidneys were restricted within a particular kind of geographical zone, in other words, in order to try to avoid the problem about rich countries preying on poor countries. In the argument where—this has been made by John Harris and Charles Erin—their argument would be, you might restrict it within, for example the European Union, so that only people within the European Union would be able to sell their kidneys for redistribution within the European Union.

And what they're trying to do in that, clearly, is they're trying to kind of strip out the exploitation side of it. They're trying to take away the aspect we don't like about the current trade in human organs, that's about rich people in a sense taking advantage of the desperate need of poor people. Rich people jumping the queue for kidney transplants, and poor people putting their lives to some extent at risk, in order to get money that they need just for basic survival. So they're trying to strip out that aspect of it.

And then you have to think, okay, say they were right, and you'd have to set up a system that got rid of the exploitation side of it—what would we still object to in that? We don't object to the donation of organs, so we don't mind things leaving the body and being transplanted to somebody else. We've imagined a situation—almost certainly it can't be done—but imagine a situation in which we've managed to cut the exploitation out of it. Is there still something about paying somebody for undergoing what's quite an intrusive operation to have a kidney removed? Or do we say this something that should only be done on an altruistic basis? And I have to say, that point I'm not quite sure what I think. It seems to me that it may be it is the exploitation that's at the heart of people's worries about the trade in human organs, rather than the idea of some compensation, some recognition, some payment for something that's desperately needed by people who need kidney transplants. So I haven't quite worked out what I think about that.

CHRISTIAN BARRY: And do you think that these sorts of exploitation arguments are actually decisive arguments? Because of course one of the problems with arguments based on exploitation is that for it to be exploitation at all, it usually requires the consent of a sort of the exploitee, and usually these are agents, which, I think, we don't want to view as irrational, or as making choices in the absence of reasonable information insofar as anybody is, who themselves are facing extremely bad life prospects and view this as a way of improving their condition. Now, that's not to say there can be exploitation plus all sorts of other additional wrongdoing. So it may be exploitative in that you're taking

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advantage of someone's situation, but if you're also deceiving them in important ways, that's a further moral wrong independent of the exploitation. But a lot of people would view the Harris scheme that you mentioned as being actually a much less attractive one, in the sense that it would actually be cutting off from resources that they otherwise don't have access to. And in fact one could say, listen, this is really extraordinary, so the developing world is extremely badly off, not certainly only because, but at least partially because the developed world is usually looking out for its own interests and advantages. And then one of the few means they have by which of actually—very poor people—is actually cut off as a result of moral concern about exploitation. That's a hard, bitter pill to swallow.

ANNE PHILLIPS: Well, there are two aspects to what you're raising there. One's the consent, and one's the—I don't know how to describe it outside of exploitation. Say you take the example of child labor. Whenever regulations are introduced which limit or ban the use of child labor, this causes extreme hardship to families that have relied on the earnings of child members of the household. In fact, most of the agencies that are involved in trying to eliminate child labor through the world are aware of this, and try to go to great lengths to try devise transitional policies which will soften the impact on households that have depended on child labor.

CHRISTIAN BARRY: Conditional cash transfers for keeping children in school?

ANNE PHILLIPS: Yes, yes. Things like that. So that's a serious worry, but I think in the case of child labor, mostly we don't think the answer then is to say that we can't possibly ban child labor because people are desperate enough to require their children to work, therefore it would be unfair to deprive them of that alternative. I think there's—I think the implication there is the fact that banning something, banning a particular kind of sale—the traffic in human organs is banned throughout the world. It is illegal, though of course we know it goes on. But banning particular kinds of sales does of course mean you deprive households of one particular potential source of income. But I don't think that that's a decisive argument against introducing certain kinds of regulations, and I don't think it's been decisive in the case of child labor.

The other aspect of what you're talking about is the consent side. I suppose in the case of child labor, you may or may not think there's an issue of consent, or it may just be the adults are using their children. But say we're dealing with adults. I think consent is used to justify a lot of things that it shouldn't be used to justify, but of course consent is also important because it's important not to treat people as if they are so much the helpless victims of exploitation and depression that they're unable to make any kinds of choices

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for themselves. But I think if you run the argument about consent, and freedom to contract, freedom of choice, freedom to do as you will with what, after all, is your body – if you run that kind of argument, then it seems to me you end up in a position where you're pretty much unable to intervene against any of the kind of brutalities that you might want to intervene in, in the world. At some point you have to say consent is not enough of a justification for certain sorts of things.

CHRISTIAN BARRY: Good. So one thing that was interesting in your discussion of child labor was that it seemed to be that the argument for banning is a lot stronger when there's compensation for the costs that would otherwise be borne by your prohibition. That's not something that people tend to talk about with respect to trade of organs. It would be an interesting addition to the debate that it may be permissible to ban and compensate—

ANNE PHILLIPS: Yes, it's a difficult one to do because it's illegal. It's not like child labor, currently legal, becomes illegal, and then you might have a transitional payment scheme. But if you've got something which is currently illegal, then it doesn't come into the picture. So I think that's a kind of practical answer to your question. There are deeper issues there, but at a practical level, that's the answer.

CHRISTIAN BARRY: You're listening to Public Ethics Radio. We're going to take a brief break, and we'll be back.

MATT PETERSON: This is Public Ethics Radio.

CHRISTIAN BARRY: Welcome back to Public Ethics Radio. We're discussing issues relating to property and the body with Professor Anne Phillips. Earlier on, you mentioned that there's a sense in which conceiving of the body as property, as many people would have us do, is masculinist in some fashion. I wondered if you might just expand a little bit more on some of the gender issues related to different ways of conceiving of the body and our relation to it.

ANNE PHILLIPS: Yes. It seems to me it's a plausible argument that when the idea of people having ownership rights over their bodies, which I guess, certainly in the European tradition, tends to be kind attached to John Locke as kind of one of the people who kind of started this idea going. At that point, women were not conceived as persons, in the same way as men were conceived as persons. So that all of the arguments about to what extent you could talk about having property rights in your body were being debated in a world in which it didn't really occur to people that these also at some point be

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applied to women. So that all of the discussions about, you know, rights, equality, and so on, that kind of preoccupied people up until round about sometime in the kind of early 19th century, people started noticing that maybe women might also become subjects within these discourses.

So it seems to me that, it's entirely plausible that you have a kind of way of thinking about what it is to be a person, what it is to have control over yourself, what it is to have rights, which gets modeled on a kind of property language, which began in a framework that was conceived of as applying basically to man and didn't then, well, only later people had to face the possibility that this was also about—did women also kind of have this relationship to rights, mastery, control and so on? And I think at that point there's, you know, there's a kind of plausible argument about this really not fitting women's relationship, either to their bodies or others.

There's one quite interesting argument that Margaret Davies and Ngaire Naffine run about this, in which they argue that the notion of self-ownership—the idea of thinking of yourself as an owner of yourself—simply cannot cope with the facts of pregnancy. Because you have to either think of the fetus as simply a part of the woman's body, therefore something she owns in the way in which she owns her hands and her toes, which I think most people would feel doesn't kind of, quite fit with our understanding of what the fetus is. Or, I think you have to think of the fetus as a separate person, who is inhabiting the woman's womb, which I think also doesn't fit with most people's conception of what, you know, what's actually going on in pregnancy.

CHRISTIAN BARRY: At least one significant line of feminist thought has been to in a way appropriate some of this language of ownership, and to use it as a manner of empowering. So, with respect to sex work, and other types of services—to recognize it as something which you actually have ownership of, and that being an empowering thing, and to think otherwise, is a way of questioning whether women sort of have agency or they need to be protected from their own choices. So do you think that is a wrong turn, and in a way sort of trying to appropriate a masculinist language that in the long run will probably not be very good for women?

ANNE PHILLIPS: Yeah, mostly I do think it's wrong turn. I mean, I think it's one of the major continuing, sort of divides or debates within contemporary feminism, is to what extent one, to what extent you conceive the project of feminism, as in a sense, applying to women, the kinds of rights and equalities that have been claimed by men. I mean, what sometimes we talk of as the “inclusion strategy,” the idea of, well, women should also be included within this language, within this discourse, within these claims. And within that

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framework, yes, of course, women should be claiming the kinds of rights, controls, mastery that men have previously claimed. Women should be being paid for work that previously has been done for free, women should be recognized as agents in the same kind of way.

There's a lot of power behind that kind of argument, but I think it's also been very extensively criticized, or, there's a lot of dissatisfaction with that among many other feminist writers and philosophers, who would argue that the kinds of concepts of empowerment, or rights, or control, that were framed in a world when people still thought that these would only apply to men, themselves contain within them certain kinds of limitations that really need to be addressed.

So my general position is to start from one of skepticism about to what extent there's already a very gendered story written in to the kinds of ideas about agency, control, rights, property, that we have inherited, and that one should think very critically about to what extent one just takes these and applies them also to women. That's not to say that I can't be convinced that there are some concepts, or some ways in which that is the appropriate way. But it is, my default position would be a skepticism about that kind of inclusion strategy.

Whereas, for example, if you take agency, of course women are agents as are men. But I think that the critique of particular understandings of autonomy, for example, the kind of, you know, what feminists have described as the Marlboro Man image of autonomy—the kind of, man riding off into the kind of distance on his horse with complete control and complete mastery, and in total isolation from everyone else, I think feminists have quite appropriately criticized that image of autonomy. But in doing that, they haven't said women don't need autonomy, or agency and autonomy aren't important for women, but that we need to reconceptualize those. So that's more the kind of line that I would want to pursue in thinking about these issues. Not that agency doesn't matter, but let's think a bit more imaginatively about how we understand agency rather than just assume we can, in a sense, take it off the supermarket shelf as the concept that was laid there in a previous context.

CHRISTIAN BARRY: Earlier, when we were talking about both the issue of services that involve essentially the body—surrogacy being one, prostitution another, but also with respect to trade in body parts, tissues, organs, and so on and so forth—one thing that almost always is the case with these markets is that a government, or a set of governments taking a stand against them, and prohibiting them, is not going to make the practices disappear. They probably will continue. And often those who actually are

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involved in them are going to be worse off than they and others would have been had it been legalized. Nevertheless, is there something important about there being some sort of official—and looking simply at the consequences, we may even look at that as being more problematic. Similar types of arguments come up with respect to questions like abortion, and driving it underground, where people say, “Yes, this would be worse, but still there is something to be said to the state taking a stand against these sorts of practices.” What kind of approach do you take that general type of issue?

ANNE PHILLIPS: I think probably that’s somewhere where you do need to have a contextual approach, in the sense that it’s almost impossible to come up with general principles that are applicable in every kind of situation. So if you take, I mean if you take the example of prostitution, for example. A lot of people who feel strongly that prostitution is exploitative of women, and who feel that it involves a particular kind of sale of a bodily service that is degrading to women, nonetheless are very much opposed to the idea of criminalizing prostitution. Because in reality, they see it as worsening the possibilities and the lives for women who may already be in a very vulnerable position. So, the particular kinds of policy conclusions that you might reach in relation to what’s appropriate for states to do or not to do, I think do have to be contextual.

And I kind of worry when I say things like that, in a sense, the kind of clarity of the theoretical argument dissolves, and you come to kind of practical situations, and it turns out that everyone supports the same policy, even though philosophically they seem to be miles apart, but they end up sort of defending the same kinds of policies. Or, very often, this is another thing that quite often worries me—that the policies that I find convincing turn out to be surprisingly close to the ones that my own country adopts. So, I think Britain has a better position on surrogate motherhood, for example, than most of the states of America. And then I think, hang on, is this just familiarity working here, rather than some carefully worked out theoretical position.

You know, so there are lots of worries about the point at which you kind of try to work out some kind of particular take on what states should or shouldn’t do, to what extent they should get in the process of banning, to what extent they should get in the process of regulating, to what extent they should get in the process of enabling. There are lots of kind of complicated questions about how you address those kinds of issues. But basically, I think, that has to be understood as contextual. I just don’t see how you can produce general principles from which you can just read off what is appropriate to be done in, you know, every particular situation.

CHRISTIAN BARRY: Anne Phillips, thanks for joining us on Public Ethics Radio.

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ANNE PHILLIPS: It was a pleasure. Thank you.

MATT PETERSON: Thanks for listening to Public Ethics Radio. The show is an independent production, supported by the Carnegie Council for Ethics in International Affairs, the Centre for Applied Philosophy and Public Ethics, an Australian Research Council Special Research Centre, the Australian National University, and Yale University. We'll be back soon with another conversation about Public Ethics. In the meantime, you can find out more about us and our guests on the web at publicethicsradio.org.