

Common Ownership as a Basis for Human Rights: Political Not Metaphysical

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1. Human rights are rights that are invariant with respect to conventions, institutions, culture, or religion.¹ One concern about such rights is the problem of parochialism, the question of whether human rights can plausibly be of global reach and thus justify actions even against societies in whose culture those rights are not supported. Responses to this problem have to explain why the language of rights (rather than, say, that of goals) is appropriate here, and offer a substantive account of what duties (if any) accompany these rights. I seek to meet these challenges by transferring central elements of the approach to domestic justice in Rawls' *Political Liberalism* to the global level. Crucial will be the idea that humanity collectively owns the earth, and that it is implicit in the global political and economic order that individuals are seen as co-owners, in a manner similar to how it is implicit in constitutional democracies that individuals are considered free and equal citizens. Human rights guarantee that the imposition of the global order, and its presence on commonly owned territory, is acceptable to co-owners, in a manner parallel to how

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principles of domestic justice make political associations of a different sort (states) acceptable to such citizens.

Lest inquiries about the original ownership of the earth seem peculiar, recall that much modern political thought was preoccupied with this question, in the context of providing justifications for European expansionism at a time when tight religious unity no longer provided such justification. Grotius' *De Jure Belli ac Pacis*, for instance, is an account of what properly belongs to individuals and peoples and what they may do to claim or protect it, where one of the starting points (one that would not depend on details of religious outlooks available to the audience relevant to Grotius) is the idea that the earth in some sense belongs to humankind collectively. A resurrection of such inquiry, suitably updated, in connection with urgent issues of our time is only fitting in light of the sheer importance of the space in which we live for all human purposes, especially if it can be conducted in ways that do not depend on details of comprehensive moral views available to what nowadays is the relevant audience (i.e., everybody).

On my view, human rights are held by individuals in virtue of their being members of the global political and economic order. Such rights therefore, in virtue of being grounded on features of an empirically contingent but relatively abiding world order, are distinct both from pre-institutional moral rights and from rights that hold within that association with which we are most familiar, the state. This does not mean that such rights cannot be largely co-extensional with a set of independently derived moral rights, any more than it means that rights so derived cannot also be held within states. Instead, conceptualizing human rights in this way means deriving them from features of an association that has developed over time and is aptly called the global order. This

endeavor offers answers to questions such as the (non-parochial) grounds on which such rights are held, and why humankind has a collective responsibility to realize them. If other accounts offer similar advantages, they will conflict with mine only if they lead to a different, presumably larger, set of rights. Otherwise, the more plausible approaches to the foundations of human rights there are, the more secure their intellectual standing.² My concern, at any rate, is *constructive* rather than *critical*. I will not say much by way of relating my approach to alternatives, nor will I explore many conceptual issues arising on the side.

I take three points for granted. First, I assume there is a “global political and economic order.” This order is the system of states that covers most of the land of the earth as well as the network of organizations that provides for “global governance.” The existence of enough structure to make that term applicable (and an accompanying capacity for coordinated action) is a minimal condition for the existence of rights held within that order. Our current global society arose from developments that began through the emergence of nation states and the spread of European rule since the 15th century, and the subsequent formation of new states through independence and decolonization. At the political level, the state system is governed by a set of rules, the most significant of which are codified by the UN Charter. At the economic level, the Bretton Woods institutions (IMF, World Bank, later the GATT/WTO) provide a cooperative network intended to prevent wars and foster worldwide economic improvement. These institutions, jointly

² Are human rights natural rights on this view? One might think that, given the approach chosen here, the answer should be ‘no.’ Yet associational rights of the sort I think human rights are can still be *derived* from pre-associational rights, if they can be taken to have particular implications in the presence of institutions. This will be the approach pursued here. Human rights pertain to individuals as members of the global order, but they are derived from ownership rights, which in turn are natural rights.

with the more powerful states acting alone or in concert, shape the economic order. More could be said, but what matters is that most of the land mass is occupied by states, and that global organizations allow for coordinated action in a way not previously possible.³

Presumably more controversial is my assumption that it makes sense to speak of rights individuals hold qua members of that global order. I assume that a certain form of skepticism about human rights (articulated, e.g., by O'Neill (2005)) fails, namely, that "human rights" could not *possibly* be rights in a logically proper sense since they are not tied closely enough to ways of securing them. Yet this tie between rights and ways of securing what one has a right to applies to the entity within which we are most used to rights, the state. Within the global order we must think of rights differently since their political context is one in which not only enforcement and policy tools differ from those in states, but in which it will often be required to set aside the enforcement of rights. Put simply, this close connection between rights and the availability of remedies holds in virtue of the nature of states, rather than the nature of rights.

A third controversial point I take for granted is captured well in Pogge (2002):

Human rights violations, to count as such, must be in some sense official (...) Human rights can be violated by governments, certainly, and by government agencies and officials, by the general staff of an army at war, and probably also by the leaders of a guerilla movement or of a large corporation – but not by a petty criminal or by a violent husband. (...) [H]uman-rights postulates are addressed, in the first instance at least, to those who occupy positions of authority within a society (or other comparable social system). (p 57f)

Think of the population of the world as contained in a set, and of what I described as the global order as captured by relations among members of that set. All citizens of a given

³ My view of the global order does *not* come with a commitment to a "Westphalian" state system that conceives of states as only minimally (if at all) subject to external authority. The sense of state territoriality presupposed here only ascribes to states basic control of access to the territory. For discussion of the state and its changing role in the global order, see Risse (2006).

state stand in one such relation to each other; all persons whose countries are in the WTO in another, etc. In light of these three points, my goal is to account for human rights as rights individuals hold qua members of this set with those structures imposed on, rights that are invariant with respect to conventions, institutions, culture, or religion and that impose demands on sources of authority in this system.

I begin by discussing core elements of *Political Liberalism* (Rawls (1993), PL). Next I introduce the idea of a conception of human rights and characterize various such conceptions. We will see that Rawls' conception in the *Law of Peoples* (Rawls (1999a), LP) makes it hard to say why there would be a duty to stop human rights violations. I then state my own proposal. In ways that resemble how PL proceeds domestically, I take the global order as given and explore in what sense it is committed to ideas of ownership. Reflection on ownership leads to the idea that all human beings have a symmetrical claim of ownership to the earth. The philosophically preferred way of interpreting this idea is a view I call "common ownership." From there we arrive at the view of human rights sketched earlier. While this account will hardly rouse passions, it may aid efforts "to command reasoned support and to establish a secure intellectual standing" for human rights (Sen (2004), p 317). My account owes enough to Rawlsian methods to warrant the title, an allusion to the essay "Justice as Fairness: Political not Metaphysical." Yet my emphasis on ownership would presumably not be amenable to Rawls.

2. What matters about PL here is not the liberal principles themselves, but central to how my approach tackles the problem of parochialism is both Rawls' method of arriving at them and the distinction between comprehensive moral views and political views of

justice. PL takes a constitutional democracy as given and develops ideas implicit in it, rather than argue in support of it. Williams (2005) makes the point succinctly. Moral theories, says Williams, need to adopt a view of persons that may be factual or normative. Suppose it is factual. A liberal theory may, empirically, see persons as autonomous choosers of sorts. The problem is that defenders of other doctrines, especially religious fundamentalists, take persons to be something rather different, such as creatures of divine grace whose fates are ill-understood as resulting from autonomous choice, and that it is impossible to settle this dispute. Suppose, then, that view is normative. That is, people are to be treated *as* persons with certain capacities for purposes of the theory, but that view is not defended by appeal to empirical facts. Then we “need to identify a place in the world, a practice, which will give the set of concepts a grounding in reality. This is what Rawls does when he identifies something like this [a liberal conception of personhood, MR] as the discourse of modern democratic states” (Williams (2005), p 21).

This “grounding in reality” is the starting point from which to argue for the theory at hand.⁴ A theory is persuasive only to those in the grip of certain background conditions. Rawls’ view of personhood is supposed to be plausible to those accustomed to democratic practices, to citizens who see themselves and each other as free and equal (in specific senses, PL p 19). Appealing to Wittgenstein, Williams points out that a theory cannot contain reflection on how it is grounded in practices because such an understanding is itself part of the practices.

Implicit in practices of a constitutional democracy is especially the existence of policy and enforcement instruments associated with *states*. What characterizes states (as

⁴ See Rawls (1993), p 19f for a statement of how he provides such a grounding.

argued, e.g., by Blake (2001), Nagel (2005), and Risse (2006)), is the exercise of coercion. This fact is expressed when Rawls casts the project of PL in terms of asking “when may citizens by their vote properly exercise their coercive political power over one another when fundamental questions are at stake” (Rawls (1993), p 217)?⁵

Principles governing state coerciveness must be justified by reference to a political conception of justice, rather than to comprehensive moral doctrines that include conceptions “of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associated relationships, and much else that is to inform our conduct, and in the limit to our life as a whole” (Rawls (1993), p 13). A political conception has three features. First, its subject is the basic structure of society (p 11). Second, it is “freestanding and expounded apart from, or without reference to” (p 12) comprehensive doctrines; it “tries to elaborate a reasonable conception for the basic structure alone and involves, so far as possible, no wider commitment to any other doctrine” (p 13). A freestanding conception is developed *from within* a constitutional democracy, and is freestanding only in contrast to comprehensive views. Third, the content of such a conception “is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society” (p 13). What motivates the view that principles of justice must take such a form is not so much the “fact of pluralism” (PL, p 4) as such (which could be consistent with deriving principles of justice from some combination of such views), but the fact that such principles must be justified to individuals *as citizens*, hence as participants in a fair system of cooperation.

⁵ On coercion, see Rawls (1993), p 137, Rawls (1999a), p 26 (note 22), p 133, and Rawls (2001), pp 4, 20, 40, 90f, 182, 190. For views of Rawls supportive of this perspective, see Blake (2001) and Wenar (2004).

3. I will later transfer the method and the distinctions with which Rawls operates to the global level, to develop a non-parochial view of human rights. To this end, I introduce four elements of a conception of human rights:⁶ First, a list of these rights; second, an account of the basis on which individuals have them (an account of what features turn individuals into rights holders); third, an account of why that list has that particular composition, that is, a principle that generates that list; and fourth, an account of who has to do what to realize these rights, that is, an account of the corresponding obligations.

Conceptions of human rights will often take as their starting point a stance on the first, second, or third component and add the other components in a plausible manner, which may be trivial (if the basis on which humans rights are held readily determines what these rights are, say), or may require argumentative work.⁷ These components are logically tied, whereas the fourth raises rather different questions. As the concern about parochialism has to be addressed through the first three components, I omit further discussion of the fourth. With which component one chooses to begin, and how this choice shapes one's account, depends on what one can defensibly claim about human rights. I call conceptions that start with a list of rights as *list-driven*, those that start with some specification of the basis on which they are held *basis-driven*, and those that so use

⁶ I take the *concept* of human rights to refer to those rights that we have and that are invariant with respect to conventions, institutions, culture, or religion. Different concepts of human rights could be used, such as "human rights are those rights we have simply in virtue of being human," or "human rights are those rights that every state must recognize its citizens have." Again, I make no claim to the unique plausibility of this account of human rights, so there is no need to argue that one such concept is preferable to the others.

⁷ "Will often:" Nothing turns on this classification being shown to be exhaustive, or on the claim that any conceivable view on human rights can be accommodated. This account deviates from Cohen's (2004) conception of human rights. Cohen lists three conditions, which include my first and third, but in lieu of the second and fourth, Cohen has a general condition about the role of human rights in the global order.

some principle generating a list as *principle-driven*. Let us look at some conceptions to illuminate this classification.

Beitz (2004) distinguishes “orthodox” from “practical” conceptions of human rights. Orthodox conceptions are basis-driven conceptions. To explain the orthodox account, Beitz quotes Simmons’ (2001a) account of human rights as

rights possessed by all human beings (at all times and at all places) simply in virtue of their humanity...[They] will have the properties of universality, independence (from social or legal recognition), naturalness, inalienability, non-forfeatability, and imprescriptibility. Only so understood will an account of human rights capture the central of rights than can always be claimed by any human being. (Beitz (2004), quoted from Simmons (2001a), p 185)

What renders conceptions *orthodox* is “the idea that human rights have an existence in the moral order that is independent of their expression in international doctrine” (Beitz (2004), p 196). Examples are accounts using a Kantian conception of personhood, a logic of moral agency, claims of self-ownership or need and views that base human rights on religion. Being basis-driven, orthodox accounts begin with the second component (that basis), which leads to the third (a principle generating the list), which in turn leads to the first (that list). The fourth component (whose duties?) must be settled independently.

Such a conception will be adopted if one can defend a view of what it is about humanity that makes human beings rights-holders and develop this into an overall plausible conception. The first and third component will then have a logically secondary status. That is not to say that the first component always uniquely fixes the list of rights. In cases of disagreement about what is entailed by shared humanity, political practice or a view about the function of human rights in global society may help generate the list. But it can only be in a *supplementary* manner that considerations other than those drawing on the basis on which human rights are ascribed affect that list.

Rather than appealing to “common humanity” (or other ways of having an existence in a moral order) one can think of basis-driven accounts in at least two other ways. One may start with the conviction that certain things must never be done to human beings, without offering reasons for it. One will take such a stance if one thinks such convictions are more secure than anything that might explicate them. Or one can develop basis-driven accounts in terms of a political structure, starting with a view on either membership in any defensible domestic order, as Scanlon (1979) does, or on membership in the global order, as I will do.⁸ So basis-driven conceptions differ enormously. Some such bases would be comprehensive moral views as defined above, others would be political or *un-foundational* (to use a term employed by Cohen (2004)) in a manner that, if referring to the global order, would have to be explicated more, a point we revisit below. Still, all these conceptions start with some such basis.

On a “practical” conception, “the functional role of human rights in international discourse and practice is regarded as definitive of the idea of a human right, and the content of international doctrine is worked out by considering how the doctrine would best be interpreted in light of this role” (Beitz (2004), p 197). We obtain a conception of human rights by starting with the third component (an account of why the list of human rights is what it is), in this case, by assessing what ought to be the *function* of human rights in the global order. Thereby we generate a list, thus adding the first component. This is a principle-driven conception. Beitz interprets Rawls (1999a) along such lines, the relevant function being the preservation of a world where liberal and decent peoples can

⁸ Beitz (2001), (2003), (2004), does so too, but his seems best understood as a list-driven conception, because he takes current human rights practice as authoritative, and then searches for philosophical underpinnings for it (which differentiates his account from Rorty’s). It is only as part of that enterprise that considerations of membership in the global order enter, rather than as a basis in the sense intended here.

prosper (Beitz (2004), p 202). Such an approach is consistent with a range of ways of providing the basis on which rights are ascribed. Cultures may have different ways of doing so, which also is a view Beitz ascribes to Rawls. A principle-driven conception will be chosen if claims about what generates the list of rights (such as their purpose in the global order) can be made with more certainty than claims about possible bases.⁹

To move on to list-driven accounts, consider Rorty's (1993) "sentimentalist" conception. Rorty dismisses reflections of the basis on which rights are ascribed, arguing "that the question whether human beings really have [human rights, MR] is not worth raising" (p 116). He seems to take a similar stance with regard to the third component, saying only that the emergence of a human rights culture owes "everything to hearing sad and sentimental stories" (p 118). The list of rights has emerged through a process of broadening compassion. He thinks that "progress of sentiments" (to use Hume's term that Rorty adopts) has been enormous in the last 200 years, and has led to a list of human rights that he submits we should take for what it is. Rorty instead focuses on the fourth point (whose duties?) through an appeal to the need for education for people to see the similarities between themselves and others, and thus to adopt the realization of human rights as their concern. He considers the second and third component dispensable because neither contributes to explaining why we endorse human rights.

⁹ One might wonder whether "principles" could not be "bases" as well, and if so, how this would affect the distinction between principle-driven and basis-driven accounts. The point of the distinction, as I introduced it above, is that principles are understood to be principles that generate the list of human rights, where the common scenario will be that these principles capture a certain function. Bases specify features of individuals in virtue of which human rights are held. In any basis-driven account, that basis will also ipso facto give rise to a principle that generates the list, but there can be principle-driven accounts that do not make use of any basis at all (e.g., Rorty's account, discussed in the next paragraph), or that consider the principle, rather than any basis, as authoritative for what human rights are (e.g., Beitz's account).

4. Since I will use PL to develop a conception of human rights, I should explain why I am not adopting one Rawls himself offers in LP. Readers only interested in the constructive project of this study may without loss proceed to the last paragraph of this section. LP introduces a conception of human rights that aims to be non-parochial, but has some difficulty explaining why the language of rights and duties is appropriate to Rawls' view. Once we see this, we can draw methodological inspiration from PL to develop an improved account. Rawls introduces a *principle-driven* conception, starting with a view of what generates human rights. Among them

are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of freedom of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly). Human rights as thus understood cannot be rejected as peculiarly liberal or special to the Western tradition. They are not politically parochial. (Rawls (1999a), p 65)

“What have come to be called human rights,” Rawls adds, “are recognized as necessary conditions of any system of social cooperation. When they are regularly violated, we have command by force, a slave system, and no cooperation of any kind” (p 68). Human rights are “universal” (p 80): every government is accountable in their terms and liable to intervention in cases of violations.

Is there a duty to interfere, possibly militarily, with regard to states that fail to maintain minimal conditions of cooperation, and then simply *because* they do so? The closest Rawls comes to addressing that issue is by stating that sometimes intervention is “called for” and “acceptable” (pp 93f, fn 6). According to Beitz, Rawls thinks the purpose of human rights is to make the world safe for liberal and decent societies, which, as far as their foreign policy is concerned, is a reason drawing on enlightened self-

interest. Yet Rawls insists on a *duty* of assistance to burdened societies (p 106). While he fails to explain why there should be such a duty, he refers to Sen, who sees human rights as central to development (Rawls (1999a), section 15; see Sen (1999)). From there, it is plausible to conclude that endorsing a duty of assistance means endorsing a duty of intervention “[i]f the offenses against human rights are egregious and the society does not respond to the imposition of sanctions” (p 94, note 6).

But why would there be such a *duty*? While Rawls offers a non-parochial account of human rights, it remains unclear whether the language of rights and duties (rather than that of foreign-policy goals) is properly used. This difficulty arises because Rawls offers a *principle-driven* conception. A view on what generates a list of rights does not by itself explain why obligations arise for their realization. Additional resources are needed to explain why talk about rights and duties is appropriate. Perhaps Rawls would appeal to a *natural duty of justice*.¹⁰ But actual interventions push the limits of such duties far, and such an appeal does little to deliver the conclusion that a country should dispatch its soldiers to intervene in problems it may have done nothing to cause. Such an appeal could not convince skeptics who deny that, even if one assumes such a duty, it would amount to measures that could actually cost lives or otherwise involve heavy sacrifices. Or perhaps one may appeal to similarities between the sort of association that ties people together within states and those that tie people together across states and argue that, if the

¹⁰ For natural duties, see Rawls (1999b, section 19 and 51, and Waldron (1993). Kelly (2004) starts with the assumption that “some concern for the basic needs of persons generally, regardless of national affiliation, is a requirement of morality for persons who are engaged socially or politically with one another” (p 179), a requirement she takes to imply “shouldering the costs of interventions across borders” (p 177). This too is plausibly interpreted as an appeal to a natural duty of justice, and the same skeptical questions arise about this move as arise about Rawls. Kelly disagrees with the reading of Rawls according to which the realization of human rights is meant to make the world safe for liberal and decent societies. If she is correct, this sort of skeptical question will still motivate the inquiry that starts in the next section.

former is strong enough to generate duties of the sort captured by the Rawlsian principles of justice, the latter should be strong enough to generate some list of human rights. But the same problem would reappear: this move could not convince skeptics who deny that, even if one endorses this idea, it could mandate measures that may cost lives.

I doubt that any of this can be done satisfactorily, but I do not want to rule out that this principle-driven conception could be made to work in such a way that Rawls' talk about rights and duties makes sense. (Recall that my main concern is constructive, not critical.) Yet rather than pursuing that line, let us move towards a very different way of accounting for human rights by asking: Why does Rawls adopt a principle-driven conception, and could he also adopt a *basis-driven* conception, and one that would make it easier to support talk about rights and duties? PL specifies a view of personhood implicit in the culture of constitutional democracies. Devising principles of justice then amounts to assessing what the basic structure must be like to be imposed on persons of that kind. LP does not take a global order as given and uses ideas implicit in it to assess what principles should govern it. Instead, Rawls explores questions of global justice only to the extent that they arise about the foreign policy of liberal states (Rawls (1999a), p 10). Global justice is seen in a partial perspective. It is in this way that Rawls embraces a principle-driven conception. Such partiality can deliver foreign-policy prescriptions, but then creates a situation where it is unclear why liberal societies ought to jeopardize the lives of their own *merely* because human rights are violated elsewhere.

The idea that the global order itself requires justification is not central in LP. Yet despite differences between the sort of coercion exercised within states and that exercised by the sheer existence of a system of states, the global order is coercive, if only in the

minimal sense that (a) borders are enforced with the threat and application of force, and (b) average life prospects vary among states to such an extent that it may be eminently sensible for individuals in poor countries to try to emigrate, and that it will arguably be unreasonable at least for the poorest of the poor not to emigrate, had they the *realistic* opportunity to do so.¹¹ In light of these facts, the global order itself does require justification. This is reason enough to explore whether a view of the person is implicit in the global order in a way similar to how the idea of free and equal citizens is implicit in the idea of a constitutional democracy, and whether we can develop a *basis-driven* conception of human rights that helps justify the coerciveness of the global order to its members in much the same way in which principles of justice justified the coerciveness of the basic structure to free and equal citizens (and that could aptly be considered freestanding in a way that solves the problem of parochialism). Also, such a conception would hopefully provide reasons for the existence of a duty to interfere on behalf of distant strangers, a duty that, again, might cost lives. Such an approach would transfer the approach in PL to the global scenario, something Rawls himself (I think) does not do.

5. I will argue that human rights are rights individuals hold because they are co-owners of the earth but live under a regime that might threaten that status. To prepare the ground, I argue first that there is a sense in which it is implicit in the global order that individuals are seen as co-owners of the earth in a way similar to how individuals are seen as free and equal citizens in constitutional democracies. On the way towards that claim, I need to

¹¹ One might resist the view that it is because of these conditions that the global order requires justification. Yet I am about to argue that we should see the earth as collective property of humanity, which by itself generates the need to justify restrictions on movement.

explore the original ownership status of the earth. That exploration continues in the next section, and then we will turn to human rights.

Characteristic of the global order is that groups make claims to space at the cost of excluding others. With most of the land of the earth divided up, “control of territory is the essence of a state” (Malanczuk (1997), p 75). Ruggie (1998), for one, thinks territoriality, although it defined states in modernity, has given way to a postmodern conception of the state characterized by declining territoriality. Indeed, seeing the global order primarily as a system of territorial states ignores many important recent developments. But while states no longer control much of what occurs on their territory, enough control of access to territory persists for our purposes, and this is unlikely to change any time soon. States may themselves adopt vastly different systems of ownership, explicating what forms of control, benefits from ownership, transfers, or possibilities of exclusion owners may have, as well as different ideas about who can own what and how.¹² Also, some states have insecure property rights, are unable to enforce what rights there are, or control access to their territory. And there may be indigenous people who reject notions of ownership altogether. Nevertheless, the global order *is* a system of territorial states, and while this has not always been so and may change eventually (if, e.g., Wendt (2003) is right that a world state is inevitable), it is the most fundamental fact about the political conditions under which we now live on this planet.

The global order, then, is an association within which it is common practice (which may assume different legal, political or social forms) that organized groups occupy spaces and preclude others from entering. In this minimal sense of maintaining

¹² For the concept of property, see Honore (1961), Reeve (1986), or Harris (1996) and reference therein.

exclusionary practices, a *commitment to property* is implicit in the global order. Since within organized groups individuals either are themselves property holder or not, it is implicit in the global order that individuals are seen as *either* property holders themselves *or* otherwise at least as parts of groups that can hold property, in each case mediated through community practices. There are many more interesting things to say of the global order. It is its platitudinous triviality that makes the idea that a commitment to such exclusionary property practices is implicit in the global order a good starting point for grounding human rights.¹³

These practices lead us to ask about the original ownership status of the earth itself; after all, the earth is the space in which the global order persists. To ask about its “original” ownership status (or the status of its “original” resources) does not mean to ask about any status prior to other events, but whether it makes sense to say that resources that exist independently of any human impact themselves are in some recognizable sense owned, in a sense that would be morally prior to claims individuals or groups conventionally do or legitimately could make to resources. Religions often have views on this matter, but raising this question is straightforward outside of religious contexts too. What we need to inquire about is not merely two-dimensional surfaces (as, say, Grotius or Locke understandably did in an age when wealth in land was more central to the

¹³ (1) I do not merely talk about legal practices *officially sanctioned* by international law. The fact that international law is primarily concerned with states, rather than individuals, and thus does not itself actually *endorse* individuals as property holder is irrelevant. What matters is what sort of practices of control over resources human beings have adopted in their relations with each other, and thus what happens *within* the global order. (2) I suppress the distinction between property and jurisdiction. Paying attention to it would merely make the formulations clumsier. What matters is that jurisdiction and sovereignty are forms of collective control at the exclusion of others; within each of the units thus demarcated, the property regime is subject to that unit’s regulation (where conceivably that regulation itself is subject to constraints – and where in turn this formulation should be understood broadly enough so as to be able to accommodate even a Lockean view as defended by Simmons (2001b), where sovereignty derives from individual ownership).

economy, and questions about access to territory as well as the seas more unsettled, than today), but three-dimensional space. We must inquire about materials that exist independently of human contributions (air, soil, raw materials such as minerals, coal, water, as well as land), but also about how biophysical factors such as climate endow regions with value for humans. Originally owned is three-dimensional space of differential usefulness for human purposes.

When investigating original ownership, we will be guided by two crucial intuitions. Original resources, first, are needed for any human activities to unfold; and second, they have indeed come into existence without human interference.¹⁴ Call *Egalitarian Ownership* the view that the earth originally belongs to humankind collectively, in the sense that all humans, no matter when and where they are born, must have *some* sort of symmetrical claim to them. In light of those two points, this is the most plausible view of the earth's original ownership. One may object that, while it makes sense to ask about original ownership, originally, resources are unowned, and their appropriation not subject to moral considerations. Yet if it is granted that questions about pre-legal rights of individuals over resources are meaningful, the claim that resources are originally unowned does not answer them; one would then have to ask these questions in terms of original acquisition of what has no property status, rather than in terms of privatization of what is collectively owned. Either way, it will be hard to eliminate the intuition that all of humanity has a symmetrical claim to resources.

¹⁴ It is of course the point that the existence of the resources of the earth is nobody's accomplishment and that therefore there should be no asymmetry in between any two individuals as far as the original ownership of the earth is concerned that is crucial here. The point that the resources of the earth are needed by all is added because it is for this reason that we are interested in the question of original ownership to begin with. I have discussed the original ownership status of the earth elsewhere (Risse (2004), (2005), Blake and Risse (forthcoming)), so I will overlook many issues covered there.

Egalitarian Ownership must be understood as detached from the complex set of rights and duties civil law delineates under the heading of property law (Honore (1961)). At this level of abstraction from conventions and codes that themselves have to be assessed in relation to views on original ownership all Egalitarian Ownership states is that all humans have a symmetrical claim to original resources. At the next stage, more specific *conceptions* of Egalitarian Ownership must be assessed (see below), where plausible contenders must explicate that idea of symmetrical claims. Only if in light of the philosophically preferred conception of Egalitarian Ownership states or other exclusionary political structures can be justified in which something like a civil law is available can we discuss property under the more constraining conditions of political associations. One may say that the term “ownership” is misleading here, but I use it since there is this connection to the familiar, thicker notions of ownership in civil law; and we are, after all, concerned with what sorts of claims individuals have to resources.

So Egalitarian Ownership captures the earth’s original ownership status.¹⁵ Above I argued that within the global order individuals are seen as either property holders or otherwise as members of groups that hold property. Human beings relate to each other in such exclusionary ways as far as their control over the world’s resources is concerned, where the specific shape of these practices either grants individuals themselves a high degree of control over resources or else vest it with groups at the exclusion of outsiders.

¹⁵ A question arises at this stage about animals. What I have said to motivate Egalitarian Ownership applies to animals as well as to human beings. The question is whether the restriction to human beings requires an additional assumption about what kinds of beings qualify as co-owners of the earth that could also be used to derive human rights in ways other than through this ownership-approach. I do not think any additional assumption is needed. For the purposes of the approach developed here, one might include animals among the co-owners of the earth. However, this does not entail that one will have to give animals the same “human rights” because those rights, as I argue later, emerge in response to the imposition of a system of states, and animals are affected by those in rather different ways. So at that later stage, then, what can be said of humans can no longer be said of animals just as well.

We took that observation as a starting point for an investigation into the original ownership status of the earth. Applying Egalitarian Ownership to that observation, we can now use it for an *internal critique* of the ownership practices present in the global order. Since any two individuals occupy a symmetrical status with regard to original resources, Egalitarian Ownership formulates a standing demand on all groups that occupy parts of the earth to do so in a manner that respects this symmetrical status of individuals with regard to resources.

That Egalitarian Ownership operates in this way should be intelligible and acceptable even within cultures where individuals themselves are not seen as property owners, if the claim that all individuals have a symmetrical claim to what is originally owned is understood in sufficiently weak terms to keep it within plausible limits. As far as such cultures are concerned, the symmetry of claims to original resources merely applies as a standing demand to keep the property regime justifiable to those subject to it. Nothing about Egalitarian Ownership precludes such cultures from being acceptable to their members even if they do not treat individuals themselves as property holders. At the same time, the stance developed here makes room for the thought that even such cultures must indeed be acceptable to those who live in them especially because all individuals have symmetrical claims to original resources, no matter how precisely we understand such acceptability.

We have found that certain exclusionary practices are accepted within the global order, practices that show that within that order individuals are either seen as property owners themselves or as part of groups that hold property, depending on how the groups are arranged internally. We also found that Egalitarian Ownership is the most plausible

view on the original ownership of the earth. Tying these ideas, we conclude that there is a moral demand to protect the co-ownership status of individuals within the exclusionary practices that characterize the global order. This also delivers a sense in which it is implicit in the global order that individuals themselves are seen as property holders within the global order: they are de facto seen as property holders in that disjunctive sense just restated but have a normative status as co-owners that must be respected even where individuals are not themselves seen as property holders and can be used to criticize practices that disregard the moral status of individuals as co-owners.

One may wonder how similar this really is to the sense in which it is implicit in constitutional democracies that individuals are seen as free and equal citizens. By construction, the idea just stated is an idealization: empirically it may well not be true that individuals are properly respected as co-owners in any plausible sense. It is nevertheless an idealization that we ought to care about in light of the considerations supporting Egalitarian Ownership: original resources are needed by all but they are nobody's accomplishment. At the same time, this idea captures an idealization of a role that individuals in fact occupy because the global order is committed to the aforementioned exclusionary practices. The idealization thus emerges from and speaks to the practices.

Something much like this motivates the claim that it is implicit in the political culture of a constitutional democracy that individuals are seen as free and equal citizens.

As Rawls says,

the conception of the person is worked up from the way citizens are regarded in the public political culture of a democratic society, in its basic political texts (constitutions and declarations of human rights), and in the historical tradition of the interpretation of those texts. For these interpretations we look not only to courts, political parties, and statesmen, but also to writers on constitutional law

and jurisprudence, and to the more enduring writings of all kinds that bear on a society's political philosophy. (Rawls (1993), p 19f)

Individuals are not *in fact* persons with certain moral powers, and they are not *empirically* free and equal in Rawls' terminological senses (see also the earlier thought taken from Williams); instead, there are certain practices within a constitutional democracy that are accompanied by certain moral ideas of what is involved in citizenship. It is within those ideas that individuals are *seen as* persons with certain powers, but there is also a connection between these ideas and the practices that individuals engage in so that, again, it makes sense to say that the ideas emerge from and speak to those practices. In both cases at hand, then, can we look at certain practices that shape our lives and bring moral ideas to bear on them to create an idealization for roles that we indeed occupy within these practices.

The objector may respond that this quote shows that what can be said about individuals' co-ownership status is much less than what Rawls can say to substantiate the idea that individuals within liberal societies "are seen" as free and equal citizens, where references to many political practices and historical precedents can support that passive-voice optical metaphor. The moral ideals of citizenship that accompany the practices appear in court judgments and other documents, and there does not seem to be a counterpart to this sort of authority for the case of co-ownership. In the citizenship-case, that is, the idealization is much closer to the practices.

Yet it is unsurprising and unproblematic that there is less to say to substantiate the parallel idea that individuals are "seen" by the global order as co-owners. Global political culture is much thinner than that of a constitutional democracy, and in fact accounts of human rights cannot be non-parochial *unless* support for them draws on a *thin* set of

practices. Again, what I have enlisted is primarily the platitude that a system of states is a system of groups organized around exclusionary practices that make it acceptable for groups to occupy certain territories while excluding others.¹⁶ While indeed all this is much thinner than what we find in the domestic context (or while the idealization is not as close to the practices, to use that wording), there is a good reason why this would *and should* be so, and again, the idea that it is implicit in the global order that individuals are seen as co-owners is both an idealization that we should care about and that is importantly tied to practices of the global order. Below I discuss one more worry about the parallel that I am advocating, but for now let us move on.

6. In a next step, we must differentiate among different *conceptions* of Egalitarian Ownership. Such conceptions differ in terms of how they understand the symmetry of claims individuals have to original resources, and on this subject we need to say a bit more. There are, roughly, four types of ownership-status an entity may have: *no* ownership; *joint* ownership – ownership directed by collective preferences; *common* ownership – in which the entity belongs to several individuals, each equally entitled to using it within constraints; and *private* ownership. Common ownership is a right to use

¹⁶ “Primarily:” The global order is not merely de facto a system of territorial states; the claim about a commitment to property is also included in various major documents. For instance, both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights state in their respective Article 1 that there is a right to self-determination of peoples as well as the right for them to “freely dispose of their natural wealth and resources.” Similarly, Article 21 of the African Charter on Human and Peoples’ Rights states: “All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.” The principle of ownership by the people is also enshrined in many national constitutions. For example, Article 109 of the new Iraqi constitution proclaims that: “Oil and gas is the property of all Iraqi people in all the regions and provinces.” Examples are easily multiplied. See also e.g., General Assembly resolution 1803 (XVII) of 14 December 1962, “Permanent Sovereignty over Natural Resources”; and the “Declaration on the Right to Development” adopted by the United Nations in 1986.

something that does not come with the right to exclude other co-owners from also using it. If the Boston Common were held as *common* ownership when it was used for cattle, a constraint on each person's use could be to bring no more than a certain number of cattle, a condition motivated by respect for other co-owners and the concern to avoid the infamous Tragedy of the Commons. Yet if they held the Common in *joint* ownership, each individual use would be subject to a decision process to be concluded to the satisfaction of each co-owner. Joint ownership ascribes to each co-owner property rights as extensive as rights of private ownership, except that others hold the same rights: each co-owner must be satisfied on each form of use.

So there are various interpretations of Egalitarian Ownership: resources could be jointly owned, or commonly owned, or each person could have private ownership of an equal share of resources, or its value equivalent. On any of these interpretations, the ownership rights thereby established would be pre-institutional, and in that sense natural, rights. That is, these conceptions all carve out a space of natural rights that constrain property conventions that regulate what these natural rights leave open. How are we to decide which of these conceptions (each of which, once further detail is added, could be developed in different versions) is the preferred interpretation of Egalitarian Ownership? Political philosophers in the 17th century were involved in complex debates about how best to interpret God's gift of the earth to humankind, and a similar debate needs to be had now with regard to these different conceptions. However, in this case we have no authoritative revelation (such as the one reported in the Book of Genesis) to work with, but merely (a) the independent plausibility of these different conceptions (perhaps in light of how they cohere with other strongly held moral convictions), and (b) the extent to

which the conceptions can claim to be good developments of the two basis intuitions motivating Egalitarian Ownership (i.e., the intuitions that natural resources are valuable and needed for all human endeavors, but their existence is nobody's accomplishment).

I submit that common ownership is the most plausible conception. I cannot offer a complete argument for this proposal here. What I can offer is some more elaboration on what common ownership means, what it entails, and why it should be preferred to the other conceptions as an interpretation of Egalitarian Ownership. (Risse (2005) and Blake and Risse (forthcoming) offer supportive arguments, by showing why the other possible conceptions are independently problematic.) After the 17th century, when this topic was central to political thought, too little has been written on collective ownership of the earth for me to be able to resort to a well-established literature. But the main point of this study is to establish a connection between human rights and collective ownership rights of sorts, and thereby to offer an account of human rights based on features of an empirically contingent but relatively abiding world order. If this standpoint is accepted generally, such acceptance would then also create space for debate about the details of the components of this account.

The core idea of common ownership is that all co-owners ought to have an equal opportunity to satisfy their needs to the extent that this turns on obtaining collectively owned resources. This formulation turns on three elements: first, it emphasizes in equality of status; second, it points out that this equality of status concerns opportunities to satisfy needs; and third, it does so insofar as these needs can be satisfied with resources that are collectively owned. To put all this in terms of the Hohfeldian rights terminology, common ownership rights must minimally include liberty rights accompanied by what

Hart (1982) a “protective perimeter” of claim rights (p 171).¹⁷ To have a liberty right is to be free of any duty to the contrary, and obviously, common ownership rights must be at least rights of that sort; that is, each co-owner is under no duty to refrain from using any of the resources of the earth. Were the common ownership status reducible to such rights, we would have the sort of ownership rights that apply in a Hobbesian state of nature. That is, while no individual is under a duty to refrain from using resources in any way, no individual is under any duty not to interfere with such use, and no individual would be in any position to create claim rights against others by privatizing commonly owned resources at the exclusion of others. But the symmetry of claims postulated by Egalitarian Ownership demands more than mere liberty rights. After all, the intuitions supporting the latter are that external resources are nobody’s accomplishment whereas everybody needs them. In light of these two points, to count as an interpretation of Egalitarian Ownership, common ownership must guarantee some minimal access to resources, that is, impose duties on others to refrain from interference with certain forms of use an individual might apply to collectively owned resources.

Therefore we must add that protective perimeter of claim rights to the liberty rights, perimeters of a sort that for instance Grotius and Locke acknowledge: Grotius argued that an individual may take from nature what she needs for survival, and that that others are not allowed to interfere with this process, whereas Locke grants much further reaching pre-conventional property rights that arise through “mixing” one’s labor with

¹⁷ For discussion of the Hohfeld terminology, see for instance Jones (1994), chapter 1, Edmundson (2004), chapter 5, and Wenar (2005).

what is originally collectively owned.¹⁸ I submit that enough mileage can be obtained from the original intuitions supporting Egalitarian Ownership to require that common ownership rights (for common ownership to serve as an interpretation of Egalitarian Ownership) be conceived of in sufficientarian terms, in the sense that no co-owner should interfere with the actions of another to the extent that they serve to satisfy basic needs. I do not think these intuitions can be pressed beyond that. Equal Division and Joint Ownership both press these intuitions further, and thus too far: no requirements of actual equality in one's share in originally collectively owned resources, or participation in a collective decision-making process, emerge from the intuitions that original resources are needed by all but are nobody's accomplishment. Again, to the extent that common ownership does capture an equality of status, it is merely an equality of opportunity to satisfy one's basic needs to the extent that those turn on collectively owned stuff.

However, one more right must be added. Within a pre-institutional state of nature, where the level of technology and organization is minimal, these liberty rights plus a protective perimeter of claim rights would plausibly guarantee individuals an equal opportunity to satisfy their needs to the extent that this turns on obtaining collectively owned resources. However, we must also make sure that individuals' co-owner status still has some meaning once individuals have left this state of nature behind and started to live under more complex institutional arrangements, including complex property conventions. The development of such arrangements (in particular, of course, the state system) makes it a difficult task to say just what common ownership amounts to. After all, living in such arrangements means living in complex economies in which without these external

¹⁸ There is no need to elaborate on these historical figures, since they only serve illustrative purposes here. For elaboration, see Tuck (1999) and Buckle (1991).

resources nothing at all could be done, but in which most of what has economic value comes attached with special entitlements in a manner in which external resources do not. After all, at this stage of human history, we cannot think of our relationship to external resources as if there were just us and these resources, which causes difficulties for a proper understanding of what common ownership entails.

What must be added then to the liberties rights plus protective perimeter of claim rights that we have said so far constitute common ownership rights is the demand that property conventions be adopted in such a way that co-owners do indeed maintain an *equal* opportunity to satisfy their needs to the extent that this turns on obtaining collectively owned resources. If one wanted to put this into Hohfeldian terminology, one could say that individuals have an *immunity* from being placed under living arrangements that creates highly differential opportunities of that sort. This immunity amounts to a standing demand that individuals' moral status as equal co-owners be protected regardless of what particular property arrangements are adopted across the globe. Common ownership is a relatively weak notion of collective ownership. It implies that co-owners who unilaterally use resources do not owe compensation *merely* because others do not, or exploit certain resources others fail to find where they live. It does not imply that individuals receive an equal share of resources, and that others have a duty to help provide this share, nor does it imply that a collective decision making process is required to do anything with resources. Still, common ownership is a form of Egalitarian Ownership, and its collective aspect must be meaningful. It does require that use of collectively owned resources abide by constraints that ensure each co-owner's status is respected.

The goal of this study is to argue that an account of human rights emerges as a partial response to the question of how common ownership rights are to be respected in the presence of a state system, but another partial response turns on question of immigration. I will briefly address these questions here for illustrative purposes, because they make clear how the demand that individuals' co-ownership status be respected operates under complex political arrangements. Blake and Risse (forthcoming) and (forthcoming/2) have developed the idea that how much immigration a country should allow depends on the extent to which it is using the commonly owned resources under its control. If the per-capita use rate of these resources in a country is above average across countries, that country is under-using its resources, relative to other countries. They should permit more immigration. (For this approach to immigration it matters tremendously that we are not concerned with two-dimensional territory but three-dimensional space.) While this is a straightforward thought, it is surprisingly hard to develop, largely because one needs to sort out precisely what is commonly owned in complex economies and thus factors into assessing what equal co-ownership status amounts to, as opposed to coming with special entitlements. What matters for our purposes is how this idea can be used to help reconcile the common ownership status of the earth with the existence of states. One condition that must be satisfied for the existence of states to preserve among co-owners the equality of opportunity of gaining access to collectively owned resources is that no country is under-using its resources relative to the others. Unless no country is under-using its resource relative to others, this equality of opportunity, and hence some individuals' status as co-owners, is undermined.

The idea developed subsequently is that human rights are rights that states must respect, and for which responsibility collectively lies with the global order, because this is what it takes to make the imposition of the global order acceptable to co-owners. Much of that idea itself could in principle be developed in terms of Egalitarian Ownership alone, rather than in terms of any philosophically preferred conception of it. Yet common ownership as that philosophically preferred conception *will* matter when it comes to assessing how strong a notion of human right one can derive in this way. In that sense I am leaving a gap (by not repeating the argument in support of common ownership), which, however, is closed in other available work. Yet, as I said above, the main contribution of this study is to establish a connection between the idea that humanity owns the earth in common, and a conception of human rights that sees those rights as rights individuals hold as members of the global order. That idea would be worth exploring even if common ownership were not the preferred conception of Egalitarian Ownership, and in fact, disagreement about how to think about Egalitarian Ownership would become an important intramural debate once the importance of the collective-ownership standpoint, including its bearing on human rights, is fully appreciated.

7. Although humanity owns the earth collectively, and although the high seas and Antarctica are treated as a Global Common,¹⁹ the remainder of the land is covered by states. While self-determination of peoples is enshrined in constitutive documents of the

¹⁹ See Malanczuk (1997), pp 149f (for Antarctica), and pp 184 ff (for the high seas). Outer space is also treated in this way.

global political and economic order, collective ownership is not.²⁰ Respecting self-determination of peoples leads to a political system that is not obviously inconsistent with common ownership, but that needs to be reconciled with humanity's symmetrical claims to resources. States not only regulate use of resources under their control, but which state one is born in shapes one's prospects like no other.²¹ What must be ensured is that the moral status of the co-owners is not violated by the installation of such a system, and this is where human rights enter.

More specifically, the imposition of a system of states that divide up the world's resources needs to be reconciled with the original symmetry of claims to resources as spelled out by the common ownership rights introduced above, on two grounds. First, each state imposes a complex system of internal political and economic relationships that shapes the extent to and manner in which individuals can exercise their natural ownership rights within given states. Of course, in today's complex economies in which only a small percentage of a given population works directly on commonly owned resources, these natural rights only function as basic demands that each individual must be allowed to benefit from the economy that has been erected on collectively owned resources in some way. But that is beside the point for our purposes. Second, a system of states imposes a system of ownership where groups claim (group-specific) collective ownership for certain regions. Co-owners will be excluded from exercising ownership rights with regard to much of what is collectively owned. Put differently, the imposition of a state system,

²⁰ See. UN Charter, Chap. 1, Art. 1, Par. 2; International Covenant on Economic, Social and Cultural Rights, Part 1, Art. 1; International Covenant on Civil and Political Rights, Part 1, Art.1. See also Malanczuk (1997), p 326f.

²¹ "Like no other:" Milanovic (2005) shows that inequality among countries is much larger than inequality within states.

regardless of its moral virtues or prudential advantages, and of what life would be like in a “state of nature,” generates two problems for co-owners: it exposes them to the ex ante risks and ex post reality of finding themselves in conditions where their status as co-owners can be exercised at most in rudimentary ways if at all; and it allows them only limited exit options (if any) if they find themselves with an abusive government or in a state that fares worse than others. A state system, that is, potentially *violates* the rights of co-owners, by making individual use or preservation of collectively owned resources difficult if not impossible in given states while also impeding their ability to relocate.

This takes us to human rights. Following Cohen (2004), such rights “theorize membership;” they stipulate conditions of what minimally acceptable membership in communities means, conditions, I add, on which individuals can insist in virtue of being co-owners of the earth on which states have been erected. They can make these demands “in virtue of” being co-owners *not* because these demands should immediately be counted among the claim rights that make up the protective perimeter around the liberty rights at the core of individuals’ co-ownership status. Instead, they can make these demands because imposing a state system means imposing a system of tremendously powerful institutions that pose an enormous threat to the exercise of co-ownership rights.

Recall that these rights include in particular a core of liberty rights that make sure no individual has a duty to refrain from using collectively owned resources, as well as a protective perimeter of claim rights that makes sure others do not interfere with access to resources up to a certain point. (We do not need to appeal to the immunity I have argued needs to be added to these rights in order to make the present argument.) These are natural, pre-institutional rights. Once institutions, in particular powerful institutions such

as the state, are founded, guarantees must be given to co-owners that the power of the state and other political and economic institutions will not be used to violate their collective ownership rights. These guarantees are given by human rights, which themselves, on this view, are not conceived of as natural rights, but as institutional rights, more specifically, in a sense to be explained below, as rights individuals hold qua members of the global order and that must be respected by every association that is part of this order. Imposing states potentially affects the actual exercise of commonly shared property rights in the two particular ways sketched above. Human rights are demands to be put, following Pogge, “to those who occupy positions of authority within a society (or other comparable social system)” and that *neutralize* the specific sort of threat to common property rights inherent in the imposition of states and other political and economic institutions. Such institutions, after all, whatever else might be true of them, in order to be legitimate must be operating on behalf of the individuals who live in them, and minimally this means that they have to respect their pre-institutional, natural rights.²²

Earlier I said that what my argument would need is, first, that most of the globe’s land masses are occupied by a system of states, and second, that global organizations allow for coordinated action in a way in which it has never before been the case. The second point now enters as well. As we saw, states do not merely threaten individuals’ status as co-owners because domestic political and economic relationships might be oppressive. Restrictions on entrance into states that are better off also contribute to the

²² In a Hobbesian spirit one might say that individuals would agree to living in states even if states failed to offer the sort of guarantees given by human rights. For living without the protection of states would be worse than a state offering less protection than it is here suggested that it should. That may be true, but would be motivated on rational grounds and under duress. My argument takes individuals to be co-owners of the earth, and it is in this manner that an entitlement of the sort postulated here arises.

problem. The problem to which human rights are the solution is not posed merely by the existence of any one given state. The existence of a system of states *as a whole* potentially violates common ownership rights, either through the threat of an immediate violation or by restricting one's ability to relocate. Hence, responsibilities that arise here must be allocated at the level of the state system *per se*, as collective responsibilities, rather than exclusively with individual states and then only with regard to their members. The assumption of such responsibility is, so one could say, a price to pay for those who end up under favorable conditions in (and thus benefit from) a political system based on self-determination of peoples that nevertheless is erected in space commonly owned by all and that thus must include safeguards for those who otherwise may not benefit.²³

Such responsibility may amount to little without an entity within which human rights can be held *as* rights. At least, such an entity must be capable of implementing a minimal collective responsibility for enforcing those rights (an enforcement that, again, must be understood in terms of tools available to that sort of entity). But, by assumption, there is enough structure to allow for the sort of coordinated action needed to make sense of such talk. The global order creates the problem that human rights must solve, and it offers enough political structure for it to be meaningful to regard human rights as rights that individuals do indeed hold *qua* members of that order.²⁴

²³ I might make it sound as if human rights violations could only be violated by states. But recall that, above, I adopted Pogge's stance that "[h]uman rights violations, to count as such, as much be in some sense official," which is not restricted to violations by governments. My discussion focuses on governments, but is consistent with the possibility of non-state-actors being human-rights violators.

²⁴ One might ask whether a state can excuse itself from any responsibility of supporting the realization of human rights elsewhere if it opens its borders to most of those who are eager to come. Such a state, one may say, has undone its contribution to the problem to which a collective responsibility for human rights is supposed to be the answer. The response to this is affirmative, but in our world those countries that could do so without triggering a reaction that would undermine the feasibility of this step (attract more immigration than they would find acceptable) are those that, in terms of any plausible scheme of fairly

8. To the extent that the standpoint of human rights captures an idea of neutrality, it is neutrality reflected in the fact that a political arrangement is justified to individuals qua co-owners of the earth, a neutrality that is stressed by the fact that the relevant ownership is in the space that we all need to satisfy elementary needs and lead lives of any shape. We can now see how this is an un-foundational, freestanding view (and a basis-driven conception), in a way similar to how PL constructs such views for the domestic case. In the domestic case, un-foundational conceptions of justice are concerned with the basic structures, not based on comprehensive views, and address individuals as free and equal citizens. The ideas defining such citizenship, in turn, Rawls takes as implicit in the idea of a constitutional democracy. I have argued that, similarly, the view of human beings as property holders is implicit in the global order. It is from there that we have reached the notion of human rights as rights needed to justify the imposition of the global order to co-owners much as the principles of justice help justify constitutional democracies to free and equal citizens. Human rights emerge as part of a justification of the global order to co-owners of the earth, much as principles of domestic justice emerge by way of justifying the basic structure of liberal societies to citizens.

dividing up the collective responsibility for maintaining human rights, would not be assigned a high burden anyway. But, so this line of inquiry could continue, what about countries that could open their borders and not expect to find many people wishing to immigrate because they are hard to get to? In such cases it might not be true that any fair scheme of dividing up the responsibilities of maintaining human rights would only assign them a marginal role. (Iceland might be a case in point.) However, what drives such cases is an appeal to a practical obstacle to immigration. While Blake and Risse (forthcoming) reject the stance that questions of immigration themselves should be settled by appeal to individual preferences, regardless of whether they are actual or hypothetical, I think that, to the extent that preferences matter for questions on global justice, it should be hypothetical preferences of the sort that individuals would have were there no serious obstacles to immigration (as Cavallero (2006) argues)).

By construction, this view is not parochial. Regardless of whether every culture has notions of ownership resembling those of Western traditions, regardless even of whether dominant notions of ownership have spread only as part of Western expansionism, the global order, consisting as it does of a system of states and the accompanying exclusionary practices, covers the whole earth. The presence of exclusionary practices with regard to control of commonly owned resources is, again, the central feature defining global political culture. Without resorting to normative notions of common humanity or personhood, I merely enlist the view that it is implicit in the global order that individuals are seen as property owners. The philosophical commitments of this approach are minimal. My understanding of what after all are called “human” rights is somewhat revisionist by not tying them to properties of “humanity” per se, but to membership in the global order instead. But this, I think, is the price to pay for the minimal nature of the commitments involved, and at any rate, remember, my approach is non-dogmatic as far as the possibility of other approaches to human rights is concerned. I am not claiming that human rights could not possibly be accounted for in any other way.

On this view, however, it becomes plausible how talk about rights as well as duties is generated. On Rawls’ account it seemed dubious why distant strangers might have a right to ask governments elsewhere to send soldiers who might die fighting for them; but on this view, I submit, it becomes plausible how that could be so. My view does not presuppose that individuals “participate” in the global order. Even secluded tribes possess human rights. They are co-owners of the earth and are constrained by the imposition of the state system even if they do not actually feel the constraints. In the case

of such tribes there presumably are unusually strong reasons to set aside enforcement of human rights.²⁵

Still, one may wonder whether this appeal to ownership rights, parochial or not, is the right basis for human rights. After all, the concern for other human beings expressed in human rights is decidedly not a concern for property rights, and human rights activists are not motivated by worries *about ownership*. Yet it is crucial to disregard any quasi-bourgeois connotations about property. At stake is ownership of things that make human life possible, ownership of “our sole habitation (...) in which we live and move and have our being” (Passmore (1974), p 3), not of things that, say, very few people in Zola’s *Germinal* have but most do not. Although my approach is not explicitly needs-based, the notion of needs is therefore connected to it as a corollary. My account does not deliver a basis on which one could easily motivate individuals to work towards realizing human rights. I have set out to provide a non-parochial account of the basis on which we can see why there is an actual obligation for the global order as a whole to take on responsibility for the maintenance of minimal standards in political communities across the world. The motivation of individuals to become human rights activists, or to care about the realization of those rights in any way, does not have to emerge from these foundations but could well be kindled in other ways. Generally, moral education does not have to

²⁵ If by any chance humans are discovered on the back side of the moon, the considerations explored in this study would not apply to them. That, of course, does not mean one can do with them as one pleases. But they would not be members of the global order as I understand it here, and thus the considerations developed here would not bear on their moral status. Also, if human beings were to live without political associations that can reasonably be said to restrict their common ownership rights, this derivation of human rights would not apply either. This does not strike me as problematic, however, because a world in which (a) that would be the case and in which (b) we would still care about human rights would be so different from ours that it should not by itself deter us from thinking about human rights in the way suggested here.

proceed by teaching subtleties of moral theory, but moral theory might nevertheless help to secure the intellectual standing of ideas as philosophically perplexing as human rights.

9. I will conclude by addressing two points. First, I will revisit the manner in which I transferred the method of LP to the global level, to illuminate its structure further. In the final section, I will explore the length of the list of rights that can be obtained from this construction. Wenar (2006) offers an interpretation of Rawls in response to critics who think LP is incoherent with Rawls' earlier work. The key to rendering Rawls coherent is, according to Wenar, that in both the domestic and the global case he draws on ideas implicit in the respective public political culture, which is, for Wenar, "the only source of doctrine that can serve as a focal point for all individuals" (p 102). Rawls believes "that humans should be coerced only according to a self-image that is acceptable to them," which implies that "[s]ince 'global citizens' cannot be presumed to view themselves as free and equal individuals who should relate fairly to each other across national boundaries, we cannot legitimately build coercive social institutions that assume that they do" (p 103). Wenar uses this observation (rightly, I think) to explain why Rawls did not advocate global egalitarian ideals of a sort that Beitz (1979) and Pogge (1989) found natural as an extension of his domestic principles. Global public political culture is of a different (much thinner) nature than the public political culture of a constitutional democracy. Thus there is methodological unity to Rawls' work although the domestic and the global case are treated differently.

This reading neglects the extent to which Rawls meant LP to be a partial account of global justice (a partiality also emphasized by Freeman (2003), pp 44f). Although my

approach offers a version of what Wenar ascribes to Rawls (by way of making his views as coherent as possible), I doubt that Rawls *himself* intended to offer a view quite of that sort. Be that as it may, my approach follows the general method Wenar ascribes to Rawls, at least up to a point, namely, by deriving human rights from ideas implicit in the global order, which in turn makes it possible to address the problem of parochialism. Yet being focused on property considerations my approach also pursues a particular way of thinking about what is implicit in global public political culture that is decidedly un-Rawlsian.

But let us take another look at the parallel between the construction in PL and what I have offered for the global case. In PL, Rawls needs to explain why he introduces a conception of justice that is political or freestanding, rather than one that is derived from comprehensive views. As he says, “we can proceed in two ways:

One is to look at the various comprehensive doctrines actually found in society and specify an index of [primary, MR] goods so as to be near to those doctrines’ center of gravity, so to speak; that is, so as to find a kind of average of what those who affirmed those views would need by way of institutional claims and protections and all-purpose means. (...) This is not how justice as fairness proceeds; to do so would make it political in the wrong way. Rather, it elaborates a political conception as a freestanding view working from the fundamental idea of society as a fair system of cooperation and its companion ideas. The hope is that this idea, with its index of primary goods arrived at from within, can be the focus of a reasonable overlapping consensus. We leave aside comprehensive doctrines that now exist, or that have existed or that might exist. The thought is not that primary goods are fair to comprehensive conceptions of the good associated with such doctrines, by striking a fair balance among them, but rather fair to free and equal citizens as those persons who have those conceptions. (...) This leads to the idea of a political conception of justice as a freestanding view starting from the fundamental ideas of a democratic society and presupposing no particular wider doctrine. (Rawls (1993), pp 39f; cf. Rawls (2001), p 188f)

Why is the compromise sketched here “political in the wrong way?” This cannot be so because reasons internal to comprehensive views cannot be expected to be shared by those who do not share that comprehensive view; by construction, this fair balance

approach endorses only views for which there is a reason in each comprehensive view. Instead, the point is that, given a fair system of cooperation among free and equal citizens, matters pertaining to the basic structure should be regulated in terms of reasons internal to that system, and that thus speak to individuals qua citizens, not qua holders of comprehensive views. The sort of mutual accountability involved in Rawls' contractarian project implies that drawing on a comprehensive moral doctrine would be drawing on the wrong sort of view, regardless of whether we draw on only one such doctrine or a compromise among a number of them.

One may wonder, though, whether the problem of parochialism cannot be addressed globally by a fair balance approach *although* such an approach fails domestically. If the concern is parochialism, the minimal requirement seems to be only that some justification for human rights be obtainable from considerations available within the relevant cultures. On that view, however, my strategy has a looser connection to PL than I have claimed. While my approach would share with Rawls (as reconstructed by Wenar) the idea that legitimacy must be located in the public political culture of the entity in question (thus be grounded in reality as described by Williams), no counterpart would be needed globally for the distinction between political and comprehensive views. At that level, bluntly speaking, it could all be done in terms of comprehensive views.

Yet this objection underestimates the independent plausibility of Egalitarian Ownership. In the domestic case, comprehensive doctrines would not do for deriving principles of justice because justification needs to be given *to* free and equal citizens. A relation of mutual accountability holds among citizens, and what they are mutually accountable for is the principles regulating the basic structure of society. In the global

case, justification needs to be given *to* co-owners of the earth so that their status as such is respected by the erection of the global order in commonly owned space. The mutual accountability there is one among those co-owners, with regard to principles governing their use of the earth as a whole. As in the domestic case, individuals will support views that emerge from within their own comprehensive views, but the exercise of justification is one of offering reasons to co-owners. So we do get a distinction between freestanding and comprehensive views, which is important because that distinction is central to my solution of the problem of parochialism. Perhaps globally it *could* all be done in terms of comprehensive views alone, but that would be true domestically in the same way – and both times the significance of one standpoint would not be properly acknowledged.

Another way of questioning my application of PL is to dispute (again, but now differently) that it is implicit in the global order that individuals are seen as property-holders in a way similar to how it is implicit in the political culture of a democracy that individuals are seen as free and equal citizens. Such an objection may claim at this stage that there is a disanalogy between the two cases since the notion of an “internal critique” of exclusionary practices (needed to support the claim that it is implicit in the global order that specifically individuals are seen as co-owners) has no counterpart at the domestic level.

Recall, however, that Rawls acknowledges that democracies contain all sorts of *associations*.²⁶ There could exist (and historically there have existed) forms of democracy in which individuals are not regarded as free and equal, in which members of some associations are regarded as more entitled to power than others. (Think of democracies in

²⁶ See PL, pp 40-43; Rawls (1999b), section 79.

which voting power depends on wealth; I am here ignoring the fact that power is de facto unequally distributed even in democracies where individuals are officially regarded as free and equal, independently of any association they might belong to.) In cases like this, it takes (and historically has taken) an internal critique of that form of government to proceed to a political culture in which individuals are seen as free and equal. Such an internal critique (which is an effort to secure the philosophically preferred reading of the given practices in light of the relevant considerations) could point out that differences in voting power turn on criteria that are irrelevant in light of other commitments contained in the political culture. So there is room for a notion of an internal critique at the domestic level too. The reason why PL fails to resort to such a move is that there is no need to do so in the sort of regimes with which most of its readers are familiar, not that such a move could not be made at the domestic level.

This is not to deny that, as I have put it above, in developed liberal societies, formulations of the ideas of free and equal citizenship are “closer” to the practices in which citizenship de facto expresses itself, in the sense that there are, say, legal and political documents in which they are articulated, whereas there is no counterpart to that when it comes to reflecting on the relationship between the idea of Egalitarian Ownership (or common ownership) and exclusionary practices of ownership at the global level. But one should not overstate the case here, and one should not lose sight of differences that must persist between these two scenarios simply because of their respective natures.

10. So far I have merely provided the second component of a basis-driven conception of human rights (that basis itself). Recall that the first component is the list of rights, the

third a principle that generates it, and the fourth an account of the accompanying duties. Let me end with a sketch of how to go about adding the first and third component. The principle that emerges from the specified basis can readily be stated, but applying it is difficult: human rights are rights needed for the imposition of the state system not to violate individuals' moral status as co-owners. One way of capturing why it is hard to generate a list through this principle is that we are conducting a thought experiment where individuals with ownership rights to original resources are confronted with a state system, and where we are asking what kind of protection from this system they must have for their rights not be violated. Yet the global order itself has arisen through a process in which social, economic, legal and political relationships have become too complex for there to be straightforward intuitions about what rights in original resources would entail under such conditions.

This difficulty adds a degree of tentativeness to what one can say about what rights this principle generates. What I think can be said is that this approach generates a rather small set of rights. Only rights can be derived that are needed to neutralize the specific dangers imposed on the co-ownership status through the state system, and that status is defined by liberty rights and their protective perimeter of claim rights. What must be ensured is that the state system does not violate co-owners' rights, or renders them meaningless. (Here it matters that I endorse common ownership as the preferred conception of Egalitarian Ownership, rather than any of its competitors.) In words attributed to Dag Hammerskjöld, the third UN secretary-general, the UN "was not created to take humanity to heaven, but to save it from hell" (*Economist*, January 6, 2007, p 22). As unspecific as that it, it is also an apt characterization of human rights.

As far as the actual extension of this list is concerned, let us return to Rawls for what seems to be a viable proposal (although Rawls obviously reached it within the confines of a different conception):

First, there are human rights proper, illustrated by Article 3: “Everyone has a right to life, liberty, and security of person;” and by Article 5: “No one shall be subjected to torture or to cruel, degrading treatment or punishment.” Articles 3 to 18 may all be put under this heading of human rights proper, pending certain questions of interpretation. Second, there are human rights that are obvious implications of the first class of rights. The second class of rights covers the extreme cases described by the special convention on genocide (1948) and on apartheid (1973). (...) Of the other declarations, some seem more aptly described as stating liberal aspirations, such as Article 1 of the Universal Declaration of Human Rights of 1948: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Others appear to presuppose specific kinds of institutions, such as the right to social security, in Article 22, and the right to equal pay for equal work, in Article 23. (Rawls (1999a), p 80, fn. 23)²⁷

In light of the difficulty just formulated, it will be hard to demarcate rights entailed by our principle from those that are not. What seems safe to say is that this standpoint will not deliver rights such as the right to basic services, to work and to join trade unions, to equal pay for equal work, or to periodic holidays with pay, a right to education directed at personality development, or a right to enjoy the arts and to share in scientific advancements and its benefits. To use helpful formulations in Kelly (2004), this approach will not deliver rights associated with liberal democracy, with the secular state, or with the value of equality (which are all rights Kelly too would omit from an actual list of rights). Such rights cannot be viewed as rights needed to neutralize the state system’s ability to interfere with individuals’ co-ownership status; there is too little entitlement to that status to begin with.

²⁷ See the appendix for articles 6 – 18 of the Universal Declaration. Rawls (plausibly) interprets the right to life in Article 3 in terms of “the means of subsistence and security” (Rawls (1999a), p 65)). Shue (1980) and Kelly (2004) also endorse a short list of human rights.

Yet while my approach excludes such rights, one may wonder how it would even deliver the rights Rawls lists. States might protect ownership rights without granting individuals, say, equality before the law, and certainly without granting them the right to marry (Article 16). How could a derivation of human rights *from common ownership* deliver *such* rights? It could because if states do not refrain from interfering with individuals in such ways they will in fact reserve for themselves the sort of power with which they *could* violate common ownership rights although they happen not actually do so. Yet the kind of protection provided by human rights should be understood more robustly. The state must be *bound* to refrain from violating ownership rights.²⁸ Obviously, it lies in the nature of states that their power can be abused. The protection rights provide against this possibility is limited. Still, ensuring that individuals can robustly exercise their ownership rights in light of the dangers posed by the state system requires such constraints although no perfect protection can be achieved.

This discussion throws some light on what can be said about how the principle that derives from the co-ownership basis can generate a list of rights. To decide whether X should be a right on that list, one needs to explore whether a state could robustly protect common ownership rights without endorsing X. I submit that the rights Rawls mentions above would generate negative answers, whereas those mentioned as clearly not entailed would generate affirmative answers. Yet assessing whether a state that does not endorse X would also be prone to violating common ownership rights might involve a good deal of social-scientific investigation and historical judgments (since this involves assessing causal mechanisms). In the end, the verdict might well have to be tentative.

²⁸ The importance of the robustness of the protection of individuals against state power is emphasized by the Republican tradition in political thought; see Pettit (1997).

A right to democracy is a case in point. On a first cut, one might say that, clearly, a right to democracy should not be a human right on this account because non-democratic states may well protect the exercise of common ownership rights. But could they do so *robustly*? More specifically, what sort of constraints on the exercise of state power would have to be imposed for such protection to be robust? It seems that a right to having some form of reasonable and accountable political representation will emerge from inquiries into this question more straightforwardly than an actual right to democracy, but there is more to be said on this matter than I can provide here. Such a problem of demarcation is likely to arise on any basis-driven or principle-driven conception of human rights, but it affects this approach quite strongly, for reasons that we should now see clearly. Yet in light of the extent to which it is disputed whether there indeed is a human right to democracy, it might not be too surprising that it is the kind of right that emerges in a gray zone on this approach.

One might ask, finally, whether this approach amounts to “a kind of philosophical subversion of the political aims of the Declaration’s framers” (Beitz (2003), p 37)? This, to be sure, would not be a serious objection (since mine is not a list-driven account). But clearly, the Universal Declaration of Human Rights contains rights that cannot be generated by this approach. However (and this, I believe, is a virtue of my approach), on this approach human rights are held within a political structure that is capable of adopting political processes to endorse a longer list than actually required as rights whose realization is a collective responsibility. The Declaration has emerged from such a process. Such additional rights receive their legitimacy *through that process*. Some rights, then, are binding not because they can be derived from common ownership rights,

but because they are adopted in that way. (This, of course, would make it more difficult to apply them to countries that have not somehow endorsed such rights.) Other rights will be binding both because they have been adopted through such a process and because they can be derived through this approach, and in the case of yet others it is uncertain whether their bindingness merely stems from the process or can also be supported through a derivation from ownership rights.

Appendix: Articles 6 – 18 of the Universal Declaration of Human Rights

Article 6. Everyone has the right to recognition everywhere as a person before the law. *Article 7.* All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. *Article 8:* Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. *Article 9.* No one shall be subjected to arbitrary arrest, detention or exile. *Article 10.* Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. *Article 11.* (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed. *Article 12.* No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. *Article 13.* (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country. *Article 14.* (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. *Article 15.* (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. *Article 16.* (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and

is entitled to protection by society and the State. *Article 17*.(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property. *Article 18*. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

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