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### **What are Human Rights? Human Rights as Membership Rights in the Global Order**

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# What are Human Rights? Human Rights as Membership Rights in the Global Order

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1. Human rights language has become the most common language of emancipation. When organized power is criticized for harming those whom it ought to benefit, appeals to human rights tend to be used, rather than the language of Marxism, critical theory, modernization theory, dependency theory, or other decidedly moral languages, like the language of justice or a plain language of rights and duties as opposed to “human” rights. It is disputed whether this success is merely one of launching a new language (with accompanying possibilities for make-believe and deception), or whether discernible effects on people’s lives are tied to it.<sup>1</sup>

Human rights are rights that are invariant with respect to local conventions, institutions, culture, or religion. The focus of this language is on abuses committed by those in positions of authority: of two otherwise identical acts only one may be a human rights violation, depending on whether they can be interpreted as abusing authority.<sup>2</sup> To

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<sup>1</sup> Many thanks to audiences in Frankfurt and Bremen, where I presented this paper in January 2008. For some recent work on the impact of human rights (and the articulation of skepticism regarding their efficacy), see Hathaway (2002) and Hafner-Burton and Tsutsui (2007). See also Rabkin (2005), chapter 7.

<sup>2</sup> The point that human rights claims are made against people in positions of authority is captured well by Pogge (2002), who says that “[h]uman rights violations, to count as such, must be in some sense official (...) [H]uman rights thus protect persons only against violations from certain sources. 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) If stated like this, this point is controversial, and the reference to the violent husband points to one difficulty: what if violence against women is structural? In response, I think the idea that human rights violations are committed by people in positions of authority must be understood broadly enough to include whole gender groups under suitable circumstances. Pogge (2002) also acknowledges this sort of objection, saying that “human rights are, then, moral claims on the organization of one’s society” (p 64).

formulate demands in terms of human rights is to say that the issue at hand is not merely worth having, but that there is a stringent demand that the problem be solved. Using this language also appeals to empathy: that issue would be harmful to ourselves too if we were affected, and in some sense concerns us all. (I surmise the empathy-creating effect of “human” rights talk is to some degree responsible for its success.)

This sketch opens up a host of questions. Why would we hold such rights? Is there a set of features of human beings on which such rights are grounded? What ought to be the function of such rights in the global order, and to what extent does this help define what they are? Just what list of rights arises in this way? Who needs to do what to realize these rights? For the human rights movement it is the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in December 1948, as well as subsequent documents that have elaborated and expanded upon the original list, that have become meaning-fixing for what counts as human rights. However, the sheer reference to these documents and the process through which they have been attained does not suffice to answer these questions.

Cohen (2006) proposes that human rights have three features: they are universal and are owed by every political society to everybody; they are requirements of political morality whose force does not depend on their expression in enforceable law; and they are especially urgent requirements. Any more particular account of human rights, says Cohen, would have to meet these constraints, as well as two methodological assumptions: fidelity to the major human rights documents, so that a substantial range of these rights is accounted for; and open-endedness: we can argue in support of additional rights. Yet these criteria (which I agree do characterize the concept of human rights) are non-

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committal with regard to a range of questions about such rights. A fuller set of answers to such questions is provided by a *conception* of human rights (to be explained shortly). For instance, accepting these criteria does not imply that human rights must be understood as protecting essential features of personhood.<sup>3</sup> A different way of adding more detail to these criteria is to think of “human” rights as rights individuals hold qua members of the global and political order that ipso facto but contingently includes *everybody*.

A virtue of this second conception is that it makes plausible how human rights can be non-parochial, that is, how they can be of global reach and justify actions even against societies in whose culture those rights are not supported, and impose obligations even on people who have not caused the relevant problems. The need for a plausible way of saying how such rights can be of global reach – and a perception of the tremendous difficulties involved in showing how anything *can* be of global importance -- is a major motivation for this view. This study also argues that one should not expect there to be single best conception of human rights. The sort of universality captured by the idea of human rights lends itself to different elaborations. One should therefore not judge this approach to human rights by asking whether it can make sense of *everything* one may have wanted to say about such rights, but whether the idea of global membership rights is sensible and can accommodate a good range of central ideas about “human rights.”<sup>4</sup>

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<sup>3</sup> This is Griffin’s view: “A human right is one that a person has, not in virtue of any special status of relation to others, but simply in virtue of being human. That much is agreed. But to apply the term ‘human rights,’ we have to be able to tell what rights we have simply in virtue of being human, and there is little agreement about the relevant sense of ‘human’” (Griffin (2002), p 2). Later he says that human rights can be seen as “protections of our agency” – “what one might call our personhood” (p 4). His picture is of a “self-determiner” “who within limits is not blocked from pursuing her vision of a worthwhile life. For related statements, see Buchanan (2004), p 121f and Wellman (1982), p 181. Nussbaum (1998) seeks to derive human rights from a list of basic capabilities.

<sup>4</sup> (1) The main intuitive cost of this approach, I suppose, is that it only grants very limited space to the idea that “certain things simply must not be done to human beings, regardless of whether there is a global

Earlier work has begun to develop this conception of human rights. Risse (forthcoming/1) argues that collective ownership of the earth is one of the grounds from which membership rights in the global order are derived. Thereby that piece aims to offer a partial interpretation of this idea by way of revitalizing (alongside Blake and Risse (2007) and Blake and Risse (forthcoming)) a standpoint common in the 17<sup>th</sup> century, but that has since attracted only scarce attention.<sup>5</sup> Membership rights thus derived offer guarantees that the imposition of the global order, and its presence in commonly owned space, is acceptable to co-owners. Such a derivation, unfamiliar as it is, has the virtue of grounding human rights in highly plausible starting points. Yet there are grounds on which to argue that rights qualify as such membership rights *other than* collective ownership, a point the earlier work acknowledges but does not develop. This study seeks to develop this view further primarily by taking a closer look at these other grounds.<sup>6</sup>

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concern connected to it, and human rights capture that point.” The main theoretical virtues of this approach, which I think counter-balance this drawback, are these: by construction this approach makes clear how certain moral concerns are of global reach (which is a common intuition about human rights); it makes clear why the language of rights, rather than goals or values, is appropriate here; at least as far as the collective-ownership-based grounds are concerned, the foundations are extremely simple and obvious; and in addition, the plurality of different grounds on which global concerns can arise illuminates why there is so much disagreement about what should count as a human right. (2) The availability of different accounts of human rights may well help “to command reasoned support and to establish a secure intellectual standing” for human rights (Sen (2004), p 317). Of course, other plausible accounts will conflict with mine if they lead to a wildly different set of rights, but my concern here is *constructive* rather than *critical*.

<sup>5</sup> An exception is the literature on left-libertarianism, see for instance Vallentyne and Steiner (2000a) and (2000b). Lest one thinks this approach to human rights is excessively capitalist, materialist, misses the spirit of the human rights movement, too obviously mis-locates the concern behind human rights, or for other reasons finds this link between human rights and collective ownership just too peculiar, notice that what is 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). This point should be kept in mind throughout given that this approach will strike most readers as counter-intuitive.

<sup>6</sup> (1) Risse (forthcoming/2) also develops these two thoughts omitted in Risse (forthcoming/1), but does so in the context of specifically assessing whether labor rights are human rights. (2) Human rights, on this view, are associative rights, rights that individuals hold in virtue of belonging to a particular association. The idea of natural rights enters into this view as well because the original ownership rights are natural rights, and these rights form one of the grounds on which membership rights can be obtained. I also acknowledge the existence of a natural duty of aid, which for instance Scanlon (1979) appeals to as a motivation for why everybody should help realize human rights. There is, of course, no conflict between

2. A conception of human rights consists of four elements: First, an actual list of rights classified as human 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 or a process that generates that list; and fourth, an account of who has to do what to realize these rights, that is, an account of corresponding obligations. Any full-fledged conception would offer answers to questions about human rights such as those listed above, and would also make clear both why such a conception is worth having and why the language of rights is appropriately used here.

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 rights are held readily determines what these rights are, say), or may require argumentative work.<sup>7</sup> These components are logically tied, whereas the fourth raises rather different questions. With which component one chooses to begin, and how this choice shapes one's account, depends on what one thinks one can defensibly claim about human rights. I call conceptions that start with a list of rights *list-driven*, those that start with some specification of the basis on which they are

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the idea that there is such a natural duty of aid and the idea that there exist membership rights in the global order that can be captured in a plausible conception of human rights. In many cases, our understanding of a moral problem can be sharpened by an appeal to both.

<sup>7</sup> "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. (There might well be conceptions of human rights that are not "driven" by any one particular component; and the work of Onora O'Neill might be understood as promoting a responsibility-driven conception of human rights, see O'Neill (1986).) 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.

held *basis-driven*, and those that so use some principle generating a list as *principle-driven*. (All that is meant by “principle-driven” is that such a conception is guided by some idea of what ought to be on the list of human rights other than the specification of a basis; the primary example is a specification of their function in international politics. One should not read anything more into this terminology.) 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’ (2001) 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-forfeitability, and imprescriptibility. Only so understood will an account of human rights capture the central idea of rights that can always be claimed by any human being. (Beitz (2004), quoted from Simmons (2001), 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 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 may explicate them. Or one can develop basis-driven accounts in terms of political structures, starting with a view on either membership in any defensible domestic order, as Scanlon (1979) and Cohen (2004) do, or on membership in the global order, as I will do.<sup>8</sup> Basis-driven conceptions differ enormously.

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 (1999) along such lines, the relevant function being the preservation of a world where liberal and decent peoples can

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<sup>8</sup> 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.<sup>9</sup>

To move on to list-driven accounts, consider Rorty's (1998) "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 "progress of sentiments" has been enormous in the last two hundred years, and has led to a list of human rights 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. He considers the second and third component dispensable because neither contributes to explaining why we endorse human rights.

3. So far I have not yet said anything about the fourth component of a conception of human rights, an account of who has to do what to realize them. Any conception will

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<sup>9</sup> 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).

have to say something about whether (and when) outsiders are permitted or required to interfere when human rights are violated. Often, ideas about who ought to do what to realize human rights are taken to constrain what other ideas about them (what other components of a conception of human rights) are plausible, and it will for now be only in that respect that I discuss this fourth component.

To illustrate, consider Cohen's (2004) case for the view that human rights are a proper subset of liberal rights. A crucial move is that human rights are telling us when to interfere. Cohen notices that interference should only occur when people are no longer obligated to obey their laws. But not any shortfall of justice relieves people of a duty of compliance with the laws of their country; the shortfall has to be considerable. Thus human rights – on this view, tied to interference – are a proper subset of liberal rights. Yet one may take a different stance on the connection between human rights and interference. One may think violations make a *prima facie* case for appropriate intervention, but there might be competing reasons so that, on balance, one should *set aside* intervention. Enforcement is sometimes set aside at the domestic level too. Police do not tend to enforce laws if this would endanger bystanders. At the international level there will often be reasons to set aside interventions, partly because of the risks involved (notably with regard to military intervention), but also because of competing values such as self-determination. On such a view of the connection between human rights and intervention, Cohen's argument for human rights being a subset of liberal rights fails.

One might have thought this connection creates a meta-constraint on what conceptions of human rights are plausible. But once we see this distinction between “not intervening to enforce an alleged right because it is not a right” and “not intervening to

enforce an alleged right because there are other considerations in light of which enforcement has to be set aside,” we see that this fourth component imposes no such constraint. Different stances on that matter could be taken to create the greatest coherence with the choice of the remaining components.

Enough has been said to render it incredible that there would be a single most plausible conception of human rights, one that offers a set of answers to questions about them that is philosophically superior to any other such set. A proof of this view requires a careful look at different conceptions to assess which ones can withstand scrutiny, but crucially, coherent responses to the questions a conception of human rights answers will be supportive of each other, with disagreements between conceptions occurring along different dimensions. Alongside Griffin one might adopt a basis-driven conception, choosing as its basis considerations of agency. This would arguably deliver a relatively small list. Violations would then often register as egregious, and one can argue that egregious violations should trigger appropriate intervention. Or one can adopt a conception that leads to a longer list of rights and avoid implausibility by arguing that they are less tightly linked to enforcement.

4. This study seeks to present a basis-driven conception of human rights, the basis being *membership in the global political and economic order*. What is meant by the global order is the existing system of states that covers most of the land masses of the earth as well as the network of organizations that, while not constituting an actual government, provides for what has come to be called “global governance.” This global order has arisen from developments that began through the emergence of nation states and the

spread of European rule since the 15<sup>th</sup> century as well as 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 betterment. These institutions, jointly with the more powerful states acting alone or in concert, shape the economic order.

More could be said, but clearly it makes sense to talk about a *global order* that includes but is not reducible to actions of states; has arisen through a history of interferences; has eventually generated political and economic institutions charged with global problem-solving; and continues to evolve. For our purposes, two things matter. First of all, the major actors within this system are *interconnected*, influencing and even shaping each other's trajectory through political and economic interactions as well as through legal, cultural, and other channels. The sheer fact that now most of the land masses of the earth are indeed governed by states, rather than other possible and historically existent political structures, strikingly testifies to such influence. Moreover, nowadays incentives and prospects of governments, companies and other agents are shaped by events and decisions elsewhere. This is true also of large powers, as shown by the extent to which US foreign policy has recently been guided by fear of terrorism.

What matters, second, is that there is a point to speaking of "membership rights" in this order. Being a member of that order means to live on the territory covered by it and to be subject to those bits of this interlocking system of jurisdictions that apply to one's situation. (Crucially, nothing more is meant by "membership.") By now all human

beings are members in this sense. For there to be enough structure to the global order to render that very term applicable, and an accompanying capacity for coordinated action, is a condition for the existence of rights held within that order. And, indeed, there is enough such structure because of the existence of organizations that are designed for and in fact do concern themselves with global problem-solving. Think of the population of the world as being contained in one large set, and of the global order as captured by relations among members of that set. All citizens of a given country stand in one such relation; all persons whose countries are in the WTO in another, etc. Membership rights in this order will be rights individuals hold qua members of this set with those structures imposed on, where these internal differentiations matter when it comes to responsibilities.<sup>10</sup>

Thinking of human rights as such membership rights means thinking of them in terms of *associative* rights – rights held because individuals live under a regime where prospects are not only determined by the state in which they live, but, to a degree that varies with their life situation, by other states and other entities (where we need not commit ourselves to a view on precisely what those are). What we encountered earlier as “orthodox” conceptions of human rights is concerned with making sure an account of human rights does not appeal to contingencies other than laws of nature, general facts about human nature, or the fact that certain beings are human. A conception of human

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<sup>10</sup> One worry that might arise here is that such rights will not in fact apply to everybody. (What of North Korea?) This is a crucial point because if such membership rights would not apply to everybody currently living on this planet, there would be no point in thinking of such rights as providing a conception of human rights. Note two things. First, membership itself, as explained above, does not depend on the participation of one’s country in political and economic activities of the global order. The existence of organizations of global reach is important only to fend off the objection that there is not enough structure to render talk of membership rights meaningful. Second, more importantly, the task of establishing whether membership rights hold for everybody falls to the discussion of the different grounds on which membership rights can be held. Rights that can be derived from the collective ownership standpoint do apply to everybody. Others may not, though, and we will discuss this more below.

rights in terms of membership in the global order helps itself more freely to contingent facts, namely facts about that order and how individuals fare in it.

The defining feature of human rights in this view is that they are important moral demands against authority as it applies to individuals in their immediate environment that are at the same time also *matters of urgent global concern*. This conception can accommodate a range of reasons why certain matters should concern the world as a whole, a broader range than the idea that human rights are what is needed to protect one's humanity, personhood, or agency. To argue that X is a human right, what is required in a first, preliminary step is that X be shown to be a matter of urgency in the affected agents' immediate environment, and then, second, that a genuinely global concern can be established. (It is hard to imagine that anything could be of global concern for which that first step could not be taken, but what the constitutive of X's being a human right on this view is the second.)

A conception that understands human rights as membership rights in the global order must be distinguished from Cohen's (2006; 2004) conception in terms of membership rights in a political society. Cohen's notion of membership is that

a person's good is to be taken into account by the political society's basic institutions: to be treated as a member is to have one's good given due consideration, both in the processes of arriving at authoritative collective decisions and in the content of those decisions (Cohen (2006), p 237 f).

Human rights then are rights individuals hold in their respective communities to ensure inclusion. In the conception I defend rights that ensure inclusion in political communities turn out to be among those that are the global order's responsibility, but this is so via an additional argument. For individuals everywhere to have a claim to something vis-à-vis their respective community is not per se sufficient for this to be a claim of urgent global

concern, in the sense that violations somewhere should be of serious concern to people everywhere or to global institutions. The difference between these two kinds of membership captures an ambiguity that permeates human rights talk, namely, whether such rights in the first instance apply to each individual, or else are of global relevance. If one endorses the first stance, the question becomes why others far away should care; if one endorses the second, the question becomes how much of what is of fundamental importance to individuals can be incorporated.<sup>11</sup>

5. Let me now re-introduce the standpoint of common ownership. Ideas about common ownership of the earth matter for thinking about membership rights in the global order because that order is erected on collective owned space. This fact amounts to one ground or source of such rights. Modern political thought was preoccupied with this standpoint when justifications for European expansion were needed at a time when tight religious unity no longer provided them. 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 his audience) is the idea that the earth belongs to humankind collectively. While Grotius takes the biblical standpoint of the earth as a divine gift, like Locke he held that this view should be acceptable even if humankind had never received that revelation.

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<sup>11</sup> Does this entail that people did not have any human rights before the Universal Declaration was passed? It does not if the point of the question is whether they had any of the rights that appear on the Declaration. The goal here is to account for a list of rights that are considered to be *of common concern*. All rights on such a list could come to have that status only because they have always been of concern within more limited contexts respectively, certainly within states and other contexts in which authority is exercised. So individuals did have those rights before. But they did not have them in virtue of being members of a global order, and they did not have them in a manner that made them a global concern.

Indeed, the view that the earth originally belongs to humankind collectively remains plausible even without religious input. Two points are obvious enough: first, the resources of the earth are valuable and necessary for any human activities to unfold; and second, those resources have come into existence without human interference. These points must be considered when individual accomplishments are used to justify property rights strong enough to determine use across generations.<sup>12</sup>

*Egalitarian Ownership* is 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. (“Original” ownership does not connote with time but is a moral status.) I assert that this is the most plausible view of the ownership of natural resources, because of the two points mentioned above: that the existence of the resources of the earth is nobody’s accomplishment, whereas they are needed for any human activities to unfold. Egalitarian Ownership is 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.<sup>13</sup>

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<sup>12</sup> There is an enormous literature on the foundations of property; see Becker (1977) and Reeve (1986) for overviews. What we say may have implications for resource use over time; each generation may be morally precluded, for example, from depleting resources that might be beneficial to future generations. I do not pursue this line here.

<sup>13</sup> Would animals have to be considered co-owners in this view? They would not *have* to because any minimal morally relevant characteristic (say, a certain form of rationality) that humans possess but animals do not would allow us to restrict the set of relevant beings with needs to human beings. (This characteristic can be so minimal that the rights I will later claim can be accounted for by the approach of this study cannot readily be accounted for by a direct appeal to that feature.) But even if one wanted to count animals as co-owners this would not imply that, on this account, they would have “human” rights because animals are not subject to the global order in the same way as humans are (see below).



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. The considerations motivating Egalitarian Ownership speak to raw materials only, not to what human beings have *made* of them. The distinction between what “is just there” and what has been shaped by humans is blurred, say, for land human beings have wrested from the sea, or for natural gas harnessed from garbage deposits. But by and large, we understand well enough the idea of what exists without human interference. Note in passing that this collective ownership approach to human rights has the virtue of explicating why the language of rights, rather than, say, goals is appropriate in this context in the first place.<sup>14</sup>

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. Also,

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<sup>14</sup> A much more difficult question is under what conditions man-made products, including improvements of original resources, should no longer be accompanied by special entitlements of those who made them or their offspring. See Blake and Risse (forthcoming) for discussion. 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.

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, 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 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 (*pace*, e.g., Nelson (1990), who argues that no such inter-culturally valid claims exist). As far as such cultures are concerned, the symmetry of claims to 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, and at any rate, the particular features of the relevant cultures might provide reasons for setting aside the enforcement of any claims that might follow from Egalitarian Ownership. At the same time, this stance 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. It is for this reason that the set of human rights derived in this way is non-parochial.

6. In a next step, then, 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. 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 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. In any of these interpretations, these ownership rights 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. I submit that Common Ownership is the most plausible conception.<sup>15</sup> While I cannot offer a complete argument

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<sup>15</sup> In capital letters, “Joint Ownership” and “Common Ownership” are names of interpretations of Egalitarian Ownership and hence views about ownership of the earth, whereas in small letters “joint

for this proposal here, I can offer 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 (2005a) offers supportive arguments, by showing why the other possible conceptions are independently problematic.) After the 17<sup>th</sup> 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. 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, first, emphasizes an equality of status; second, it points out that this equality of status concerns opportunities to satisfy needs (whereas there is no sense in which each co-owner would be entitled to an equal share of what is collectively owned, let alone to the support of others in getting such a share, any more than any co-owners of the Boston Common had a claim to such a share or to the support of others to obtain it); and third, it does so insofar as these needs can be satisfied with resources that are collectively owned (that is, nothing at all is said about anything to which the original intuitions motivating Egalitarian Ownership do not apply).

To put this in the Hohfeldian rights terminology, common ownership rights must minimally include liberty rights accompanied by what Hart (1982) calls a “protective

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ownership” and “common ownership” are general forms of ownership of anything. I will continue to say that humanity “collectively” owns the earth if the precise form of ownership does not matter.

perimeter” of claim rights (p 171).<sup>16</sup> To have a liberty right is to be free of any duty to the contrary, and obviously, common ownership rights must include at least rights of that sort; that is, co-owners are under no duty to refrain from using any of the resources of the earth. Were co-ownership status reducible to such rights, we would end up with the ownership rights of a Hobbesian state of nature. That is, while nobody is under any duty to refrain from using resources in any way, nobody is under any duty not to interfere with any use either. So nobody would be able to create even minimal claim rights against others by privatizing resources. But the symmetry of claims postulated by Egalitarian Ownership demands more than liberty rights. In light of the intuitions supporting Egalitarian Ownership, to count as an interpretation of the latter, Common Ownership must guarantee some minimal access to resources, that is, impose duties to refrain from interference with certain forms of use of resources. Otherwise some might legitimately be completely deprived of access to resources.

Therefore we must add that protective perimeter of claim rights to the liberty rights. Enough mileage can be obtained from the original intuitions 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

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<sup>16</sup> For discussion of the Hohfeld terminology, see for instance Jones (1994), chapter 1, Edmundson (2004), chapter 5, and Wenar (2005).

original resources are needed by all but are nobody's accomplishment. To the extent that common ownership captures 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 materials.<sup>17</sup>

We must add one more right. In a pre-institutional state of nature, where the level of technology and organization is low, liberty rights plus a protective perimeter of claim rights plausibly guarantee individuals an equal opportunity to satisfy their basic needs to the extent that this turns on obtaining collectively owned resources. Yet we must also make sure individuals can maintain their co-ownership status under more complex arrangements. These arrangements might be property conventions in which access to raw materials or land plays little immediate role for most people, as in contemporary industrialized economies. A necessary condition for the acceptability of such conventions is that the core purpose of the original rights can still be met. That core purpose is to make sure co-owners have the opportunity to meet their basic needs. In Hohfeldian terminology, co-owners have an *immunity* from living under political and economic arrangements that interfere with those being subject to them having such opportunities. This immunity delivers a standing demand that individuals' status as equal co-owners be preserved regardless of what particular property arrangements hold across the globe. It is this immunity that will take us from collective ownership to human rights.<sup>18</sup>

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<sup>17</sup> The plausibility of such a protective perimeter depends on how many resources there are with which individuals could satisfy their needs. One assumption that enters implicitly is that – at least globally, and modulo our ability to find a sensible allocation mechanism – there is indeed “enough” to render the stipulation of such claim rights plausible. In a world that is wildly at odds with that assumption (in a manner in which ours is not, such as the post-apocalyptic scenario in Cormack McCarthy's *The Road*) much moral thought would have to be reconsidered anyway. The plausibility of such claim rights, however, would not simply be undermined by the existence of emergency situations (such as shipwreck scenarios) in which perhaps such claims to non-interference would no longer be plausible.

<sup>18</sup> 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

7. The original liberty and claim rights abstract from the existence of anything (material or immaterial, including artifacts and ideas) whose existence depends on human input and whose invention or discovery is arguably accompanied by special entitlements. Those rights only state what entitlements to resources individuals have vis-à-vis each other. Yet our world is very different from this scenario. Although humanity owns the earth collectively, and although the high seas and Antarctica are treated as a Global Common,<sup>19</sup> the remaining land is covered by states. States reserve the right to determine who enters their territory, and it is through state law that local property conventions are enforced, conventions that regulate access to both original resources and entities whose existence depends on human input. Self-determination of peoples and inviolability of state territory are guiding ideas of our political order, captured by the UN Charter and some of its major treaties, but collective ownership is not.

Such a political system is not per se inconsistent with Common Ownership, but the imposition of a system of states that divide up the world's resources needs to be reconciled with Common Ownership, on two grounds. First, each state imposes a complex system of political and economic relationships that determines which, if any, original resources individuals have access to. Second, a system of states imposes a

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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, given the *basic nature* of the needs at stake here, such agreement would only be made 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. On Grotius' understanding of rights – rights being individual possessions – it would be possible to give away even minimal rights of this sort. But I think a better way of thinking about rights is to think of them as reasons, some of which may continue to apply even if the person whose situation is at stake might find herself in a situation where she wishes to forfeit them. So while my approach does obtain much inspiration from Grotius, I part company with him when it comes to the ontology of rights.

<sup>19</sup> See Malanczuk (1997), pp 149f and pp 184 ff. Outer space is also treated in this way.

system of ownership where groups claim (group-specific) collective ownership for certain regions. Co-owners are excluded from exercising rights with regard to much of what is collectively owned. So the imposition of a state system (regardless of its moral virtues or prudential advantages) 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 moral 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. In virtue of the concentrations of power that it includes, a state system readily has the power to violate the rights of co-owners, both by undermining their opportunities to satisfy their basic needs and by impeding their ability to relocate.<sup>20</sup>

It is under these conditions that we must ask what to make of the immunity that individuals have from living under political and economic arrangements that interfere with *those subject to them* having opportunities to satisfy their basic needs. The relevant arrangement to which individuals are subject in this case is not merely the state in which they live, but the global order as a whole. Each state, in virtue of its immediate access to individuals' body and assets, might deprive them of such opportunities, but so, crucially, might other states by refusing them entry if they cannot satisfy their basic needs where they live. At any rate, this claim is true of states that do have the ability to let people enter and allow them to satisfy their basic needs without thereby making it impossible for some of their own citizens to do so. When individuals cannot satisfy their basic needs

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<sup>20</sup> This discussion does not entail any view of the sort that the global order, or civilization per se as a deviation from the envisaged fictitious situation where individuals qua co-owners are juxtaposed with commonly owned resources, is not seen as anything overtly harmful. Of course, the opposite is true. The goal of this discussion is to make sure that the benefits of the global order are not obtained at the expense of some people, or in a manner that entirely disregards some people.



where they live, other states that have this ability but refuse entry would not merely fail to come to their aid; they would deny them the opportunity to satisfy these needs.<sup>21</sup>

Common ownership rights are natural, pre-institutional rights. Once institutions are founded, guarantees must be given to co-owners that institutional power will not be used to violate their status. Since such a violation is threatened by the global order as a whole (as explained), such guarantees take on the form of moral demands against the global order, and thus of associational (membership) rights within it. Responsibilities that arise here must be allocated at the level of the state system per se, as collective responsibilities, rather than resting exclusively with individual states and then only with regard to their members. Membership rights in the global order, then, in particular interpret the immunity that delivers a standing demand that individuals' status as equal co-owners be preserved regardless of what particular property arrangements hold across the globe. Thereby the collective ownership stance partially fills in the idea of membership in the global order.

My view as developed so far 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

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<sup>21</sup> (1) One might say that generally individuals who are threatened where they live do not have the opportunity to travel to another state to ask for entry, and therefore such states would not contribute to their predicament but merely fail to come to their aid. At any rate, they would only contribute to the predicament of those who make it to their borders and are turned away. But this underdescribes the extent to which a state system based on self-determination and inviolability of territory contributes to such predicaments. Were our world no longer committed to such principles and were rich states more inclined to admit people who arrive at their borders because, say, their ability to make a living is threatened in their country of origin, organizations would spring up that specialize in making sure such individuals get to wealthier destinations. Such individuals would pay for these services by pledging future income, or charitable organizations would do this job. (2) One might also object as follows: Suppose we own a boat together and somebody interferes with your use of it. This would not mean I have to stop that interference or else let you use the boat when I am entitled to using it. But this is a wrong comparison. If we own the boat in common and this situation arises, *and we are all in the boat*, then you would have to give me refuge on your side, at least as long as the boat does not thereby turn over.

actually feel the constraints. In the case of such tribes there presumably are unusually strong reasons to set aside enforcement of human rights. Yet 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 does not mean one can do with them as one pleases. But as they would not be members of the global order, these considerations would not bear on their moral status.

8. I have argued so far that the standpoint of collective ownership of the earth gives rise to membership rights in the global order. But there is no reason to think such membership rights can be exhausted in this one way and thus that the only way in which something can become of global concern in a manner that renders the language of rights appropriate is because common ownership rights need to be protected. So we need to ask at this stage if there are grounds *other than* worries about violations of a moral status as co-owners that generate such membership rights.

Such grounds might be substantive or procedural. As far as substantive grounds are concerned, one can argue in at least three ways that something should be of global concern. First, one might argue that this is so on grounds of *mutual enlightened self-interest*. For example, it may be necessary or conducive for the preservation of peace that authority is exercised in certain ways, based on the idea that unchecked governmental authority will also be abusive vis-à-vis others, or create negative externalities (refugees, etc).<sup>22</sup> Second, one may argue that something is of global concern because there is a

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<sup>22</sup> To expand on this: Enlightened self-interest acknowledges that collapsing states spread refugees, involve others in domestic conflicts, or undermine regional stability; that national financial crises are internationally transmitted; that drug-trafficking, illegal immigration, arms trade, trafficking in women, money-laundering, international terrorism, or joint ventures combining several of these must be fought

shared causal responsibility for the matter at hand that arises out of global interconnectedness. In support of this one may refer to the considerations above to illustrate global interconnectedness in the first place.

A third substantive ground, a collective category, involves moral considerations that do not turn on interconnectedness. (The ownership standpoint could be enlisted here as well, but we have discussed it separately.) Such considerations include appeals to a natural duty of aid (which of course would have to be acknowledged independently and does not turn on particular features of the global order, and which is therefore listed here only to make explicit that it is indeed also acknowledged), as well as possible duties of rectification (where it would have to be shown that the global order per se owes the rectification, a project that Pogge (2002) undertakes).<sup>23</sup> In each case it will be crucial that a moral argument delivers the conclusion that something is of urgent global concern: that it can be shown that there is global support for the relevant sort of proposal, either in the sense that a reasonable interpretation of major moral outlooks backs it or because a case can be made that the respective considerations are so compelling that the case succeeds regardless of whether there is such a reasonable understanding of different moralities that supports the proposal.

These grounds apply generally and specifically. What we can derive from them is, first, the need for a list of common concerns (because these grounds establish that there

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globally; that disease control is a global problem as much as the creation of a sustainable environment, since, say, damage to the ozone layer is damage done to us all; that development delivers gains from trade, from cooperation in science, culture, business, and tourism. Troubled states are a global liability. Recall that concerns for peace have been a guiding theme in the formation of international organs, as well as accompanying charters, declarations, and treaties.

<sup>23</sup> For reasons explained in Risse (2005a) and (2005b), I doubt this approach to global justice succeeds and thus do not make much of it here.

are such concerns). Secondly, these grounds also can be used to argue that specific rights should be on that list. To make a case for something's being a human right by appeal to these grounds means, first, to identify the concern in question as an appropriate and urgent moral demand against authority to which one is subject in some context, and then, crucially, to argue that there is an urgent global dimension to it according to some of these substantive grounds.<sup>24</sup>

The second kind of ground is procedural. One way in which concerns can become common within a certain political structure, and one way in which they can come to be membership rights within that structure, is for them to come to be widely regarded as such, as a result of an authoritative process. Considerations of this sort do not argue for the necessity of there being a list of common concerns, but support specific rights that have been endorsed as such through such a process. A *supplementary* function such considerations may play when argumentative support is mustered for particular rights is that substantive grounds will often not establish human rights without removing remaining disagreement. (We are, after all, talking about membership rights, and whether something counts as such can turn on relevant processes among the members that are supposed to address that question.)

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<sup>24</sup> There are other international concerns that take on the shape of rights, such as concerns dealt with by private international law (a body of conventions, model laws, legal guides, and other documents and instruments that regulate private relationships across national borders). Those would not be captured here because they are not themselves demands against authority but demands against other private persons, where authorities act as mediators or enforcers. There would also be many other international treaties that capture international coordination of moral concerns that arise vis-à-vis authorities, such as the minor ILO treaties. They would not be registered as human rights treaties on this account because they would not meet the urgency standard. A precise limit to what counts as urgent and what does not will be hard to come by, but in this regard there is nothing unusual about this conception of human rights.

Procedural grounds can also be enlisted to argue that human rights express membership as the global order itself sees it.<sup>25</sup> The Universal Declaration, in the eyes of many, fixes human rights discourse. According to the present conception that elevated role receives some argumentative support. That list has emerged through a process that involved the drafting by a sophisticated and diverse committee; an adoption by the General Assembly; as well as endorsements through the subsequent ascendancy of other countries to the UN and the role that it has played as a reference point in international politics. It is a non-trivial question today how much of the Declaration is customary international law. (But in addition, at any rate, there are the Covenants that bring much of the contents of the Declaration in legally binding form, as well as other treaties that develop parts of the Declaration or add to it.) In discussing relativism Williams (2005) talks about a new “we” that needs to be “negotiated” (p 69) when parties of different cultural backgrounds encounter each other. The Declaration is a document that emerged from such negotiations, taken literally – although the negotiations happened somewhat belatedly as far as the actual “encounters” were concerned.<sup>26</sup>

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<sup>25</sup> Together, one might say, all these considerations spell out a standpoint of global public reason that assesses what is of global concern. Beitz (2001) captures a related thought: “The doctrine of human rights is a statement of standards to guide the structures and conduct of global political life insofar as these bear on the conditions of life for individuals in their societies” (p 227).

<sup>26</sup> (1) (Thomas) Risse (2000) is helpful here. Inspired by Habermasian discourse ethics, he submits that arguing and deliberating about the validity of claims are not taken seriously enough in theorizing about the interaction among agents in the international arena. He thinks the preconditions of argumentative rationality, “particularly a ‘common lifeworld’ and the mutual recognition of speakers as equals in nonhierarchical relationships are more common in international relations than is usually assumed” (p 33). He also talks about “argumentative self-entrapment” (p 32), when states pay lip-service to something but then find themselves drawn into it, so that in the end they actually act in accordance with what they are paying lip-service to. (2) Lauren (2003) summarizes the impact of the Declaration as follows – which reflects both its legal and more informal impact (p 269f): “In a period of fifty years the world witnessed a veritable revolution in the process of transforming visions of international human rights into reality. Never before in history had there been so many achievements in extending rights, setting standards, protecting rights through binding treaties and covenants, promoting rights through education and the media, enhancing rights through advisory services in the field for those who suffered, and expanding activities to break the

It is disputable how much authority this process has had. Rabkin (2005) points out that the Declaration's non-binding nature made it easy for states to endorse it without being committed to it. The apparent success of "this talkfest," says Rabkin,

encourages the very misplaced belief that there is genuine consensus when there is not. And this misplaced belief encourages ventures that go wildly beyond what the actual international community is actually able to sustain, igniting or exacerbating very serious conflict. (p 164)<sup>27</sup>

Indeed, the extent to which the Declaration commands authority on procedural grounds is not settled by drawing attention to official expressions of support. More would need to be said on that subject.

On the present view, at any rate, there will be more or less argumentative support for different rights, which is a feature that is at odds with the fact that it is desirable to have a clear answer to the question of whether X is a human right. Any proposed "human right" may receive support from any or all of these substantive and procedural grounds, and the strength of support arising from each ground may vary. Not all grounds from

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former culture of impunity. Together they helped millions of people gain their independence and assisted unknown numbers of others by preventing abuses, securing freedom from torture or prison, acquiring access to monitoring bodies and humanitarian aid, and obtaining national and international legal protections for their rights. In addition, they inspired national constitutions, regional intergovernmental organizations, and states to use the observance or violation of human rights by others as a criterion for their policies. In almost every one of these endeavors, reference was made to the Universal Declaration of Human Rights as customary international law and the power of its vision to change the world. "

<sup>27</sup> See Kennedy (2002) for some considerations as to what might be problematic about the apparent consensus on human rights; see also Mutua (2001). Nickel (2002) explores whether the current human rights system is a global governance regime, and what that would entail. A striking illustration for the phenomenon Rabkin identifies comes from John Maynard Keynes' assessment of the negotiations in Paris in 1919. To accommodate Woodrow Wilson's preconceptions, the Treaty of Versailles had to be put in a certain moral language although everybody except the President understood that doing so was pointless: "Thus instead of saying that German-Austria is prohibited from uniting with Germany except by leave of France (which would be inconsistent with the principle of self-determination), the Treaty, with delicate draftsmanship, states that 'Germany acknowledges and will respect strictly the independence of Austria, within the frontiers which may be fixed in a treaty between that State and the Principal Allied and Associated Powers; she agrees that this independence shall be inalienable, except with the consent of the Council of the League of Nations,' which sounds, but is not, quite different" (Keynes (2004), pp 94f). Keynes goes on to list some other such cases.

which membership rights derive apply equally to all individuals. Among substantive grounds, collective ownership applies categorically to everybody who lives on this planet, as does presumably any plausible duty of aid, but its force will vary with the seriousness of the case. However, considerations of enlightened self-interest and interconnectedness apply differentially, although it seems safe to say that they will not fail to apply to any case altogether in the world as it is now. A critical discourse about proposed human rights can occur if a proposed human right fails to receive support in all these ways, or if it is doubtful to what extent it is supported by those different grounds on which membership rights arise. Given that the Declaration, as well as the human rights movement following its lead, recognize a long and detailed list of rights, it should not be surprising that the precise manner in which some of them apply is contested, not only in practice, but also within a conception of human rights. In cases of lingering doubts about whether X should be a human right, what might settle the issue pragmatically, in light of the meaning-fixing role of the Declaration and other major human rights documents, is whether X is indeed listed there (and so supported on procedural grounds).

9. Indeed, then, there are different ways in which something can become of global concern in a manner that renders the language of rights appropriate. That is, global membership rights can be derived in different ways. These different ways of giving rise to global membership rights might lead to different set of rights, or support different alleged rights to different degrees. To illustrate this phenomenon, and to show in general how on this approach one would discuss particular alleged human rights, consider Articles 23(a) and 24 of the Declaration, the “right to work, to free choice of

employment, to just and favorable conditions of work and to protection against unemployment,” and the “right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.” A right to work might be like the right to marriage, which does not require the state to help people whom nobody finds attractive; the point is that a range of obstacles to marrying is considered illegitimate. A right to work would then only require the state not to obstruct employment possibilities in certain ways. Or such a right could entail the right not to be fired for certain reasons (union activity, capriciousness of the employer, etc.) The remainder of Article 23(a) would then spell out the initial “right to work.” Or else a right to work could require that the state create jobs if people do not find them.<sup>28</sup>

The fact that labor rights, especially rights to work and paid holidays, appear on the Declaration has come up for much criticism and mockery. (See Risse (forthcoming/2) for discussion.) To many, these concerns are either of insufficient importance to count as “human” rights, or else not usefully expressed as rights. Again, to show that a concern counts as a human right, we need to demonstrate that it gives rise to an urgent demand against authority in an agent’s environment, and that the issue is of urgent global concern. The second stage involves the different grounds discussed above. All rights on the Declaration obtain some support on procedural grounds. All concerns that are urgent within given agents’ immediate environment fall under a duty of aid, but this duty applies most plausibly where the hardship is biggest and the distance in power and wealth between those who suffer and those who are in a position to help is largest. But let me

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<sup>28</sup> The UN does not read that right along those demanding lines. In its General Comment No. 18, adopted on November 24, 2005, the Economic and Social Council explicitly denies that this right should be understood as such a claim right. Note, again, that these labor-related articles should be read in conjunction with Article 55 of the Charter, which commits the UN to promoting full employment.



discuss these grounds no further and focus on the other substantive grounds. As far as those grounds are concerned, how ought we to assess the claim that labor rights are human rights?

In a first step then we need to identify the urgent problem posed by the concerns motivating labor rights. The basic concern is that everybody ought to have a share in the productive system of her society because it is a conventional system that its participants are expected to comply with and in which coercive measures are used otherwise. Labor rights make sure everybody benefits from these arrangements at least in the sense that participation in labor markets is protected in some ways. There is urgency to such protection because, for most adults, paid work is the source of their livelihood, and they spend much of their time earning the money on which they must live and raise families. Employment is also a source of self-esteem. Without protection, powerful actors may take advantage of this situation. This much, then, can be said on behalf of labor rights even if the case for their being *human rights* were to fail.

This generic case for labor rights creates obligations for states to make sure nobody is systematically excluded from employment, and all are treated in certain ways at their work place. We need not decide whether the stronger interpretation (according to which the state has to provide employment) is the morally preferred one. (I doubt it.)<sup>29</sup> As I argue below, it is at any rate not a matter of *urgent global concern* whether there is a right of each person to have employment, rather than a right that the state not obstruct employment possibilities and make certain assurances for how workers are to be treated. Rights to “rest and leisure” and “reasonable limitations of working hours” also emerge

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<sup>29</sup> Arneson (1990) defends a right to work in the sense that the state has to create jobs.

from the generic case: nobody should suffer any competitive disadvantage from being unwilling to spend all his time on earning wages. Above a certain level of wealth, it is unreasonable to require total absorption into one's work to make a living; labor markets should be compatible with the pursuit of other interests, including the enjoyment of benefits made possible by society. Yet taking a right to "periodic holidays with pay" as a specification of a limitation of working hours means again to offer a specification for which there is no urgent global concern.<sup>30</sup>

To what extent would there be an urgent global concern with labor rights? Labor rights do not emerge from the standpoint of collective ownership of the earth. Using that stance for a derivation of membership rights leads to two basic guarantees that states and other powerful organizations must give, and whose realization is a global responsibility: first, they must make sure their power does not render individuals incapable of meeting their basic needs; second, they must provide opportunities for individuals to lead a life at least at subsistence level. If such guarantees exist, the specific dangers imposed on the co-ownership status through the global order are neutralized vis-à-vis the status of which individuals are ensured in virtue of their common ownership rights.

As I argue in Risse (forthcoming/1), a narrow reading of the demand that states and other powerful organizations not render individuals incapable of meeting their basic needs only gives us a very small set of human rights, namely basic rights to life and bodily integrity. Even occasional non-incapacitating torture or arbitrary arrests without grave consequences would be consistent with such protection. Yet a broader reading of

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<sup>30</sup> Walzer (1983), p 196 rejects "periodic holidays with pay" as a human right because he takes it to be unnecessarily specific. His point is that such holidays with pay take a partisan stance in favor of vacations as opposed to festivals for which time is being given off.

this demand is also available, according to which the protection provided by human rights is more *robust*. On this reading, co-ownership status is not preserved merely if it so happens that the state does not render individuals incapable of meeting their basic needs; instead, the state must be *bound* to refrain from doing so. The guiding intuition is that power must be limited so that the state cannot simply decide to become abusive.

The set of human rights we can derive from the demand that political and economic organizations not render individuals incapable of meeting their basic needs will then also include individual liberties (such as freedom from forced labor, freedom of conscience, freedom of expression and association, freedom of movement, and the freedom to emigrate), as well as political rights (the right to have an accountable representation), and due process rights (the right to a fair trial). Such rights receive an instrumental status on this conception of human rights. Since this might strike many readers as counter-intuitive (as “getting things the wrong way round”), it should be noticed that this does not mean nothing else can be said about their moral importance. Instead, it is their status *as* membership rights in the global order and thus the claim that these rights are genuinely global concerns that receives an instrumental justification. It is not problematic that some membership rights emerge as supremely important, whereas others are also very important, but receive their status as rights instrumental to the realization of *supremely* important rights. Moreover, these rights would not only be instrumental to the realization of basic needs, but also to the acceptability of states that reserve the right to determine entry to their territory. At any rate, however, this approach does not deliver rights associated with liberal democracy, the secular state, or the value of equality.

In addition to making sure the power of states and other organizations is not used to render individuals incapable of meeting their basic needs, such organizations must include opportunities for individuals to lead a life at least at subsistence level. This means the state has to make sure everybody has the opportunity to enjoy a minimally adequate standard of living, as far as food, clothing, and housing is concerned. Property conventions that provide for exclusive rights of access may make it impossible for individuals to satisfy their basic needs through original resources. To make this acceptable to co-owners, and thus to preserve their co-ownership status, states must make sure that individuals have other ways of doing this. As in the earlier case, a broader understanding of these rights suggests itself, at least in societies with sophisticated economies that make it hard to satisfy basic needs without some education. More rights could be added if securing them is essential to satisfying basic needs in the respective society. Beyond an elementary right to education, however, this does not deliver much; for instance, a human right to even basic health care would be hard to justify on this approach. Labor rights could not be derived from this approach.

What about enlightened self-interest and interconnectedness? Labor conditions affect a country's competitiveness and thus also the competitiveness of others on the world market. Global interconnectedness was to a large extent responsible for turning the labor movement of the 19<sup>th</sup> century into a transnational movement. The Communist Manifesto explains economic interconnectedness so well that one may think one reads a contemporary document. Later the Treaty of Versailles – halfhearted in its application of the idea of self-determination and unconcerned with racial equality -- created the International Labor Organization to allow for coordinated resolutions of labor issues.

Mutual self-interest played an important role in this process: it was in no country's interest to be at a competitive disadvantage if others could benefit by exposing their work force to unfavorable working conditions.<sup>31</sup>

Yet it is doubtful that mutual self-interest taken in isolation delivers a strong argument in support of labor rights. Excluding people from labor markets will not generally make countries more competitive, nor (arguably) will denying them time to recuperate. (I cannot even begin to explore the empirical issues involved here.) On the other hand, one might say *enlightened* self-interest offers some support of such rights in the sense that the realization of labor rights qua legitimate claims against one's own government will be easier if global expectations are indeed that those rights are justified.<sup>32</sup> While this would be true of any moral demand that can be raised within a given political environment, it would apply to labor rights in a manner that readily motivates coordinated action because of the existence of global markets that create connections among their participants. Still, these considerations will fail to apply in a good number of bilateral relationships between given countries A and B, which in turn creates lingering doubts about the extent to which labor rights are matters of global concern based on mutual self-interest.

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<sup>31</sup> On the history of the international labor movement prior to the ILO, see Follows (1951). See also Shotwell (1934) Regarding the question of why there is a ILO, Bartolomei de la Cruz et al. (1996) offer the following succinct answer: "These demands [for international regulation to decrease the poverty in which the workers lived] had a humanitarian foundation, but industrialists and governments feared that they would lose out to competitors if they took unilateral protective action which would raise the cost of production in their own countries" (p 3). One might think of this as one version of an argument from mutual self-interest. Morsink (1999), chapter 5, discusses the background to the labor-related articles in the Universal Declaration.

<sup>32</sup> Moravcsik (2000) explains the emergence of a strong human rights regime in post-war Europe along similar lines.

Interconnectedness makes the strongest case for thinking of labor rights as being of global concern. Global markets, after all, are collective creations – they arise from human interaction --, and affect the incentives of government and industries in the countries participating in them. To see how global economic interconnectedness creates shared responsibilities, note the following two points: First, while one-time interactions may not generate any such responsibilities, trade and other economic interactions often are structured and repeated exchanges involving markets and bodies of law, domestic and international, that regulate them. Second, these activities are mutually beneficial for the countries as a whole. For both sides, economic interactions involving violations of legitimate claims against one’s political environment lead to ill-gotten gains. Exchanges involving violations would occur at the expense of the oppressed, in the sense that either (a) their contributions do not make them better off to an extent warranted by their value, or (b) their involvement in the exchange has emerged in an oppressive way (e.g., they are coerced into working in the relevant industries), or both.

Often such concerns about economic exchanges apply country-by-country, but since there are genuinely global markets, there is an additional global responsibility to create conditions under which labor-related concerns can be realized. The best case for labor rights being membership rights, that is, is the following: labor rights (a right to work, and a right to reasonable limitations of working hours) are urgent moral demands against one’s immediate environment, for reasons presented above, and become urgent global concerns because of economic interconnectedness.<sup>33</sup>

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<sup>33</sup> For further discussion of the impact of economic interconnectedness, specifically in the context of fairness in trade, see Risse (2007) and Kurjanska and Risse (2008).

Enough of a case can be made, then, for the claim that the right to work in the more moderate sense (short of demanding full employment from the state) and the right to leisure are membership rights in the global order. However, these particular membership rights are not supported on all grounds from which such membership rights are derived, and the weakness of this argument reflects the disputed nature of labor rights as human rights. It is harder to see why a right to actual full employment would be of global concern on any of these grounds as a right that goes beyond the right not to be excluded from employment plus the right not to be fired for frivolous reasons plus the right to basic social security.<sup>34</sup> Similarly, it is harder to see why there should be a global concern with whether a right to leisure takes the specific form of paid holidays. Such a right is more plausible as a specification of a right to leisure than a right to jobs is as a specification of a right to work, but neither is a matter of urgent global concern. In both cases what argument could be made (if any) in support of these particular specifications would presumably draw heavily on parameters that are not of global relevance.

10. We are developing a basis-driven conception of human rights. I have so far described the basis and the process that generates the list of rights that emerges on this view. I have also said what I could here about the list itself. By way of concluding we need to address briefly the assignment of responsibilities. This will be sketchy: I will only say enough to make it plausible that this component can be added coherently. I do not discuss how the

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<sup>34</sup> Gewirth (1996), p 215, thinks that there is a human right “to be effectively able to earn [one’s] livelihood through [one’s] own productive work.”

burden of responsibilities should be *distributed*; my main point is to illuminate more what it means to hold rights within the global order.<sup>35</sup>

A guiding assumption has been that human rights are moral demands concerning the organization of society. Since ours continues to be a world of states -- it makes sense to say “most authority is exercised on behalf of states” -- states provide the immediate environment for people’s lives to unfold and the immediate environment for any rights to apply. This point by itself entails that the primary responsibility for the realization of human rights lies with states, regardless of why states may or may not be in a good position to do so. States are also the signatories of human rights treaties. If a state cannot be the addressee of certain rights because it is in no position to realize them, others are obligated to help that state reach a stage where it can do so. Responsibilities for human rights are differential. (It will be a matter of dispute what it means for a state to be “in a position to do;” but it should be kept in mind that we are talking about urgent matters.<sup>36</sup>)

To that extent human rights are *manifesto* rights in Feinberg’s (1973) sense. Thinking of them as membership rights means considering them as moral demands that apply where it makes sense to raise such demands, or else to create conditions under which it does. This is a matter both of creating a certain wealth level and of aid in

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<sup>35</sup> For some discussion of this question, see Miller (2001) and references therein.

<sup>36</sup> (1) Buchanan (2004) talks about an “application indeterminacy” of human rights – one in three factors that constitute this is that “because at present most if not all societies fall far short of adequately protecting human rights, institutionalizing them is to a large extent a remedial process, a matter of reforming or eradicating those institutions that facilitate the violation of human rights. But these defective institutions will vary across societies, so implementation must vary accordingly” (p 181). (2) I ignore special responsibilities that arise because two countries share a certain history (such as exploitative colonialism). Such responsibilities exist in addition to shared global responsibilities. (3) One complication that may arise is that a state is in no position to realize certain rights because its whole political and economic infrastructure is remote from a stage where making the corresponding demands would make any sense. It may not always be of global concern to transform such a country to make sure such rights are realized.



creating suitable institutions. While the Universal Declaration was passed when it barely started to make sense to talk about a global order, we can interpret it as a vision for global development. Endorsing it means endorsing the idea that we ought to make the world such that these rights apply. This view of human rights is to some extent *teleological*.<sup>37</sup>

If a state is in a position to make sure human rights are guaranteed but the government – or that part of the population that determines policy -- chooses not to do so, intervention may be appropriate. Intervention could take on different forms, ranging from political and economic pressure and support for the opposition (by giving money, offering stipends at universities abroad, shaming the government, etc.) to military intervention. It does lie in the nature of human rights that violations create a strong reason for intervention, be it to rectify violations or to create conditions under which these rights apply in the first place. From Sen (2004) we can take the following thought that illuminates further the differential nature of responsibilities involved here:

The recognition of human rights is not an insistence that everyone everywhere rises to help prevent every violation of every human right no matter where it occurs. It is, rather, an acknowledgement that if one is in a plausible position to do something effective in preventing the violation of such a right, then one does have an obligation to consider doing just that. It is still possible that other obligations or non-obligational concerns may overwhelm the reason for the particular action in question, but that reason cannot simply be brushed away as ‘none of one’s

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<sup>37</sup> (1) Compare Beitz’s (2001) way of putting the point. After explaining that a doctrine of human rights suited for contemporary practice is “significantly teleological,” he explains: “[T]he doctrine of human rights (...) is a statement of aspiration applicable to all contemporary societies, but all of its requirements may not be capable of being satisfied simultaneously or in the short run. Human rights may not bear on political choice as straightforwardly as they would if conceived in more traditional terms as side constraints or prohibitions. The actions required to satisfy a human right will depend on the case. This is not only because achieving a given right may require different strategies in different settings, but also because priorities will have to be set and compromises reached when, in the short term, the effort to secure one right threatens to block efforts to secure another.” (p 277f) (2) The framers of the Declaration were aware that they were creating a document that is teleological in character. The Chilean delegate Santa Cruz said that “realization of the right to work in all countries was for the future, but if the Declaration were to be adjusted only to existing conditions it would not achieve a very useful purpose” (Morsink (1999), p 162).

business.’ Loosely specified obligations must not be confused with no obligations at all. (p 340f).

Yet unlike intervention within states, intervention in the global order cannot be done through police organs with immediate access to individuals’ bodies and assets, but instead means intervention in a different society. Such interference might be set aside for practical or moral reasons: the costs might be too high, the risks involved unmanageable, or there might be a conflict with the value of self-determination. Again, in the domestic context too there are reasons to set aside enforcement, but internationally such reasons will occur more frequently. This by itself makes the connection between rights and remedies less tight than they are within (well-functioning) states. This is a testimony to the sort of entity the global order is. As an entity in which one can hold rights the global order is rather different from the state.<sup>38</sup>

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<sup>38</sup> (1) It is also because of these differences between the state and the global order as entities within which rights can be held that it might well be problematic for rights guaranteed by constitutions to be manifesto rights although it is unproblematic for human rights to be such rights. (2) Discussion about *accommodation* is also needed in the case of the global order. Suppose there was a society where everybody is happy to do without private property: property is held at the level of clans. If a plausible case can be made that this is how people in that society like to do things, such a case would preclude intervention. This does not mean such agreement would always be conclusive in this way (see Scanlon (1979)). But sometimes it will be.

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