LIBERAL COSMOPOLITANISM AND ECONOMIC JUSTICE

Katherine Erbeznik

A Dissertation

Submitted to the Graduate College of Bowling Green State University in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

December 2008

Committee:

Steven Wall, Advisor

Rachel A. Vannatta
Graduate Faculty Representative

Fred D. Miller, Jr.

Ellen Frankel Paul

Jeffrey Moriarty
ABSTRACT

Steven Wall, Advisor

The goal of this dissertation is to answer two questions: Is global poverty unjust, such that coercive remedies may be imposed to alleviate it? And if so, does it justify global redistribution as a remedy? This dissertation takes up the same task initiated by Thomas Pogge in his 2002 book, *World Poverty and Human Rights*, in that the theory of justice from which these questions are answered assigns priority to negative duties of non-interference, rather than positive duties of assistance. More specifically, the theory of cosmopolitan justice underlying this evaluation is that of natural rights liberalism in the tradition of John Locke and Robert Nozick. According to this theory, global poverty could be unjust only if it was the result of violating individual rights. The first half of the dissertation explores the ways in which Pogge claims poverty is the result of rights violations – that such poverty is the result of a tainted global history and that the current distribution of global resources violates the right to fair shares, – ultimately denying that these ground the injustice of poverty. Instead, I argue that global poverty is unjust because a distribution of resources that contains severe poverty violates the minimal access proviso, a constraint on property rights that takes the deprivation of others to limit the property rights of some. The second half of the dissertation, then, addresses the sorts of remedies that are justified given this injustice. Specifically, I explore why global redistribution is not the appropriate remedy for the deprivation faced by the global poor. Instead, I argue that the remedy should affect the underlying causes of such poverty and, hence, recommend institutional reforms, such as the liberalization of trade and the movement of people across borders.
For my parents Diane, James, and Ann, and my husband Nicolás, each of whom has helped me to become a better person.
ACKNOWLEDGMENTS

I would like to give a special thanks to my dissertation advisor Steven Wall for all of his guidance, helpful comments, and encouragement throughout the process. I would also like to thank Ellen Frankel Paul and Jeffrey Moriarty for the useful comments I received on the first draft of this work. Fred D. Miller deserves special thanks for including me in his dissertation seminar during which I received frequent feedback from both him and the other members at every stage of my writing; to these members, too, I offer my appreciation. Without the feedback and support of my committee I would not have been able to complete this project; the remaining faults and mistakes in the dissertation, however, remain my own. For proofreading the first draft of the dissertation, Adam White earns my appreciation. Loren Lomasky and Eric Mack have both been very generous in lending their time to answering my questions and engaging me in useful discussions on various occasions and through e-mail correspondence; for this I extend my gratitude. Lastly, I would like to acknowledge Nicolás Maloberti for all of his support, numerous discussions and arguments about all matters of this dissertation, and invaluable comments without which I would never have finished.
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INTRODUCTION

It is difficult to begin an inquiry into cosmopolitan justice\(^1\) without giving recognition to the elephant in the room – that elephant is world poverty. According to some widely accepted statistics, almost half of the world’s population, some 2.8 billion people, live on less than two dollars a day. Almost half of these people, some 1.2 billion, live on less than one dollar a day.\(^2\) 50,000 people die each day – over 18 million a year – due to poverty related causes.\(^3\) Around 20 percent of the world’s children ages 5-14, many of whom are young girls, work outside of the home and do not attend school.\(^4\) In a world isolated from distant others it may be possible to view this poverty as a foreign problem, one that everyone should be concerned about, but also one which is not a great concern, as a matter of enforceable justice, for those from whom such poverty is distant.\(^5\) While in an isolated world distant poverty may be seen as a peripheral concern, the actual world is not one of isolation. Indeed, the actual world is increasingly becoming interlaced on several dimensions – economically, politically, and culturally. Globalization, or the process of uniting disparate communities into a world society through the ongoing integration of global infrastructure, such as the internet, global media, international

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1 Though the term ‘cosmopolitanism’ can refer to several different concepts, its use here refers to the idea that duties of justice are universal, rather than political, and are morally prior to all other duties, contractual or otherwise.


3 Ibid.


5 Throughout this dissertation justice will be used to refer to that aspect of morality that justifies coercive measures or remedies.
trade, supra-national institutions like the United Nations (UN), World Bank, World Trade Organization (WTO), International Monetary Fund (IMF), etc., has moved the issue of global poverty from the periphery to center-stage. Because it is no longer feasible to view poverty as solely an abstract, distant problem, it is pertinent to ask how such poverty may be a pressing concern for everyone, no matter one’s physical proximity to it.

It is sometimes thought that the existence of global poverty always represents a kind of moral failing, one that justifies a much more extensive response than is currently undertaken. Peter Singer asserts such a view when he claims, “[I]f it is in our power to prevent something very bad from happening, without thereby sacrificing anything else morally significant, we ought, morally, to do it.” And to clarify he notes, “Nor is it [giving money away] the kind of act which philosophers and theologians have called ‘supererogatory’ – an act which it would be good to do, but not wrong not to do. On the contrary,” Singer argues, “we ought to give the money away, and it is wrong not to do so.” On Singer’s view, if poverty exists simultaneously with affluence, then the existence of poverty is itself a wrong the responsibility of which lies with those who could give some of their wealth away without sacrificing anything else of comparative moral significance.

Similarly, there are numerous articles making analogous claims, some of which are represented here: “To me, it is intuitively unacceptable not to mobilize our political, financial and technological skills to combat poverty; to fight global injustice;” “given the scale of the problems related to poverty . . . a little common sense is largely sufficient to perceive the

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7 Ibid.
injustice of the current situation;”\textsuperscript{9} or “. . . each of us could do vastly more than we do to help the needy . . . [and] . . That we do not is a serious moral failing.”\textsuperscript{10} The list could continue. The claim that is emphasized in these statements is that poverty, \textit{qua} poverty, signifies a moral failing when others enjoy affluence. There may be some validity to this, but to admit so does not say anything about whether or not poverty is a matter of enforceable justice. In other words, granting that the existence of poverty is a moral failing entails nothing about whether or not an individual or the government can coerce others to mitigate such poverty.

The distinction between moral failings and injustices that warrant enforceable remedies is often left out in discussions about global poverty. Partly this is because there are some who hold that global poverty is always both morally and politically unjust. Egalitarians, for example, may hold both that each person morally ought to be assigned an equal set of rights, opportunities, resources, capabilities, or welfare \textit{and} that the political organization of society ought to be such that the government may enforce such equality by coercive means. It is equally plausible, however, to hold a different view: that even if people ought morally to have equal capabilities, resources, or welfare, it would be wrong for the government to enforce such equality by coercive means. This latter view holds that the area of enforceable justice is narrower than the sphere of moral failings. The former view sees poverty as indicative of injustice; the latter sees it as an unfortunate circumstance the mitigation of which ought to be a concern for all moral agents, but cannot be coercively enforced.

\textsuperscript{9} Geert Demuijnck, “Poverty as a Human Rights Violation and the Limits of Nationalism,” in ibid, 66. Emphasis is mine.

That the mere existence of extreme poverty amid plenty is an injustice is not immediately intuitive. After all, poverty is the natural state of mankind. Not so very long ago nearly all people faced much of the same issues that today are faced by the global poor. It was only fairly recently, in the late 17th and early 18th centuries, that some people, and indeed some countries, departed from that natural state and began a process of growth that has led to the modern world’s pockets of affluence. The idea that growth, itself, would give rise to injustice is somewhat counterintuitive. It would mean that one person bettering himself at no one else’s expense, but without helping those less fortunate others, would treat those others unjustly, in a way that would justify some coercive remedy. While this would seem odd to many, it is the implication of some of these egalitarian views.

One reason that the egalitarian viewpoint could be appealing is that some might think that the affluence in the world today came at the expense of others. But while that could certainly be the case in some circumstances, it is not likely to be the whole story. Instead, much of the affluence of the world can probably be attributed to multiple factors, such as technological innovation, advances in medicine and sanitation, individual entrepreneurship, and trade. Of course, egalitarianism can also be compelling by considering that no one deserves his or her personal attributes or life situations, both of which play a role in determining whether a person is rich or poor. As a result, one could make sense of the idea that poverty amid affluence is unjust, even if the affluence is presumed to have arisen benignly. But this view fails to consider that individuals also exercise a certain degree of control over their lives, such that it is not always the case that intelligent people born into idyllic circumstances end up wealthy while dunces born in backwaters end up impoverished. It is certainly not clear how much of one’s material position
can be attributed to factors beyond one’s control and how much should be a credit to the person’s will.

The purpose of this dissertation, however, is not to argue that egalitarian theories of morality are mistaken. That is, it is not the purpose here to form an opinion about whether the existence of poverty is indicative of a moral failing. The purpose is instead to examine whether poverty is a political injustice – that is, an injustice that warrants coercive remedies – using the standards of a conceptual framework other than egalitarianism. In particular, the question this dissertation addresses is whether the existent poverty is the result of unjust interactions among people, namely interactions that violate individual rights. Of special interest are the ways in which poverty might be the result of institutional injustices on a global scale. Institutional injustice will be understood as violations of people’s rights that are the result of both formal and informal institutional structures coercively upheld. Poverty, on this limited view, will be considered to be of political significance only insofar as such poverty is the result of institutional structures and policies that violate individual rights.

The concern, then, is to explore the issue of poverty from an institutional framework that assigns priority to duties not to harm, as opposed to duties to aid. In particular, this dissertation shares an aim originally set by the theory of cosmopolitan justice offered by Thomas Pogge. That aim is to provide a theory of global justice, paying special attention to the problem of global poverty, which would command the attention of those who favor natural rights liberal theories of justice.\textsuperscript{11} The novelty of Pogge’s approach is that he attempts to locate the injustice of global poverty within the range of one’s negative duties not to harm others, as opposed to the more philosophically prevalent, but perhaps less politically plausible, appeals to one’s duties to assist

others. Pogge assumes that there is a common view about global poverty that accepts the following moral premise: “while it is seriously wrong to harm the global poor by causing severe poverty, it is not seriously wrong to fail to benefit them by not eradicating as much severe poverty as we might.”¹² And while he generally favors a more substantive egalitarian view, he accepts this sort of premise for the sake of argument. And so he writes, “I agree that the distinction between causing poverty and merely failing to reduce it is morally significant.”¹³ But, he argues, “I challenge the claim that the existing global order is not causing poverty, not harming the poor.”¹⁴

What Pogge’s view emphasizes is that poverty is a serious moral issue even if one takes a minimal approach to enforceable moral duties. As such, since the situation faced by those who live in dire poverty is so pressing, it becomes the central issue to address. This dissertation is a natural rights liberal approach to just this issue. Like Pogge’s view, this dissertation presupposes that enforceable duties of justice incorporate only duties not to harm others, that is, not to cause them harm through rights-violating institutions. And it supposes, in agreement with Pogge’s argument, that the existing global order is causing some poverty, and thus, is harming the poor. The main disagreement between the argument presented in this dissertation and that of Pogge’s theory lies in the nature of the harm. That is, the argument presented here diverges from that of Pogge’s on the question of what harm is being done. Because of this, the responses (and solutions) to the problem of unjust poverty presented in this dissertation and those favored by Pogge will also be different.

¹² Ibid, 12.
¹³ Ibid, 13.
¹⁴ Ibid.
Chapter one introduces the liberal cosmopolitan framework from which this dissertation addresses the issue of global poverty. This version of liberal cosmopolitanism is a libertarian theory that rests on the foundations of natural rights liberalism in the tradition of John Locke and Robert Nozick. As such, chapter one addresses the theory of human rights that takes self-ownership and private property to be the fundamental ingredients for individuals’ ability to lead good lives. Chapter one also introduces the natural rights liberal principles of justice: principles that emphasize the importance of historical precedence in determining who has rights over what parts of the physical world, whether over themselves, natural resources, or man-made objects. These sorts of historical principles of justice are in contrast to those that seek to obtain some sort of distributional outcome, whereby certain patterns or conditions are realized. The primary difference between these types of theories is the sorts of redistributive remedies that they call for when the principles are violated. While outcome-oriented principles of justice may require redistributive measures even when no one has explicitly done anything wrong, historically oriented principles will generally require some wrongdoing in order to justify redistribution. Consideration of these latter principles will show how they could give rise to the violations that Pogge claims have occurred. Lastly, chapter one will delineate the nature of the disagreement between Pogge’s view in *World Poverty and Human Rights* and the view presented in this dissertation.

Pogge offers two grounds upon which poverty could be considered unjust if one accepted a natural rights liberal framework of justice. These grounds are:
(1) “The social starting positions of the worse-off and the better-off have emerged from a single historical process that was pervaded by massive, grievous wrongs.”

(2) “The better off enjoy significant advantages in the use of a single natural resource base from whose benefits the worse-off are largely, and without compensation, excluded.”

In order for these to render certain elements of poverty unjust it must be the case that for condition (1), historical injustices have rendered certain aspects of contemporary property claims unjust; for condition (2), it must be the case that the worse-off have claims over certain amounts of natural resources, claims which are being denied to them.

Pogge has reasons to believe that these grounds are satisfied and thus reflect actual injustices. The first ground is an appeal to violations of the principle of voluntary transfer. According to this principle, property owners have the right to voluntarily transfer their property to whomever they wish, but no property transfers are legitimate unless they are made by voluntary means. However, since the actual history of the world is filled with violence and less-than-voluntary transfers, the current distribution is tainted and, thus, at least some poverty (that which results from the tainted history) cannot possibly be justified. As such, it is argued, an institutional structure that does not seek to remedy these violations is itself unjust.

Chapter two of this dissertation responds to this first ground by arguing that there is a relevant moral difference between harms to one’s ancestors and harms to oneself. The reasons for this are twofold: first, the problem of transgenerational identity makes it difficult to see the current population of the world as being harmed by distant historical actions, since presumably

15 Ibid, 203.

16 Ibid, 202. Pogge offers a third ground as well, but such a ground is directed at consequentialist libertarians and hence, runs afoul of the sort of rights that are the focus of this dissertation.
the current population of the world would not have existed but for those actions; second, considerations of non-determinism, at least epistemically, put historical counter-factuals on shaky ground and so questions of who would own what property if certain historical events had not occurred are at best speculative and at worst would lead to further property rights violations. While these considerations may seem to make all property claims spurious, this chapter argues that precedence should be given to those whose property claims have a vestige of historical pedigree meeting the standards of voluntary transfer. The intention is not to bias the status quo for certainly some property holdings will be rendered unjust as a result of historical records, but instead to note that a line must by drawn before which the past is erased for the same reasons historical pedigrees are important in the first place.

Pogge’s second ground for the injustice of global poverty stems from the failure to satisfy the so-called Lockean proviso – a constraint placed on original acquisition that holds the consideration of the welfare of others to limit one’s just appropriation. A strain of classical liberalism, beginning with Locke, has argued for the justice of unilateral acquisitions of private property, limited only by the constraints of this proviso. As Pogge understands the proviso, if the current distribution is not superior to one in which the Lockean proviso is satisfied, then the current distribution is unjust on these terms. Chapter three examines the various ways this proviso has been understood, arguing against the particular way the proviso has been interpreted by Pogge and the left-libertarians who share his view: as requiring equal shares of the physical world. This argument is rejected in chapter three on the grounds that such distribution would be required by justice only if certain conditions were met; conditions that are not in fact met. There is, however, a compelling argument on behalf of some constraint. The reason is that some versions of the Lockean proviso “get the cases right.” In other words, there are a series of
“tough” cases that any natural rights liberal or historical theory of justice must be able to accommodate. The Lockean proviso can provide a way of handling such cases. Chapter three argues that while some proviso is certainly called for, it is not best understood as requiring equal shares of the extra-personal world.

Chapter four, then, addresses the constraints of a new proviso – the minimal access proviso – that better addresses the hard cases that arise. What the minimal access proviso argues is that when certain conditions are met, that is, when the distribution of property rights leaves some people below a certain threshold and when such people can be lifted above the threshold effectively and without unduly burdening others, those below the threshold have a claim against others to access the resources necessary to rise above the threshold. How this claim is satisfied may differ in particular cases: In some cases it may mean that property owners retain some incidents of their property rights, but not the full set of rights incidents that would otherwise obtain, specifically the right to exclude access to a person. In other cases, it may mean that the property owner retains none of the rights incidents over particular amounts of resources and, hence, such resources are the rightful property of the one in need. In one sense, the appeal of the minimal access proviso is that it gets all the cases right, cases in which other versions of the Lockean proviso yielded both more and less than is necessary. But the attractiveness of the minimal access proviso extends beyond the fact that it “gets the cases right”; it can also be justified by the very reasons people have to favor a system of self-ownership and unilateral property rights in the first place.

Another ground of injustice, which Pogge does not explicitly mention, reflects the importance of national and global institutions and the policies that affect the distribution of
resources that people have. If some of these policies violate people’s rights and, as a result, reproduce poverty, then such poverty will be unjust on these grounds. Chapter five argues that indeed much of the poverty that exists can be traced back to unjust institutional practices, particularly those on the local or national level. In arguing for this, the chapter explores the causes of systemic poverty, causes that are institutional rather than natural in nature. As one might expect, most of the developing world governments uphold these sorts of institutional injustices, such as inequality in the protection of property rights, barriers to meaningful market access or exchange, support or instigation of violent conflicts, barriers to political participation, theft of personal property, and false imprisonment or subjugation of political dissenters. While Pogge rejects this sort of explanation of the causes of poverty as explanatory nationalism, it is the purpose of chapter five neither to argue that the global community bears no responsibility for these injustices nor to exculpate individual countries for the injustices of their own foreign policies. Chapter five argues that, in fact, the global community and its affluent members are not free from blame, for many of the current global institutions and policies act to buttress governments that violate the property and self-ownership rights of individuals. The global contribution comes from the ways in which individual countries, multinational corporations, and governments that violate the property and self-ownership rights of individuals. The global contribution comes from the ways in which individual countries, multinational corporations, and

\[\text{17 Pogge does draw attention to this possible source of injustice when he claims that “There is a shared institutional order that is shaped by the better off and imposed on the worse-off.” Within such institutional order there exists global poverty about which Pogge writes, “The radical inequality [including global poverty] cannot be traced to extra-social factors (such as genetic handicaps or natural disasters) which, as such, affect human being differentially” p 201. This dissertation is not interested in the moral implications of inequality, but rather of global poverty. Hence, it is interested only in the extent to which global poverty may be the result of unjust institutions imposed upon people.}\]

\[\text{18 Thomas Pogge, World Poverty and Human Rights, 139-44.}\]
Supranational organizations are complicit with developing world governments, such as granting these governments borrowing privileges through the IMF, foreign aid through the World Bank, trade in arms, which are then used against individuals in the recipient countries, and goods obtained through slave labor or other coercive means. But contributions to global poverty also come from the unjust policies instigated by various individual countries, such as various trade barriers upheld by the WTO and immigration laws that prevent people from escaping from the primary cause of their continued poverty – their national and local governments. And so, chapter five concludes with the ways in which at least some global poverty is the result of systemic injustices on a global scale. Such injustices are ones that the global community and its affluent members are complicit in, by lending support to governments’ actions or by failing to make the requisite changes when it is within their power to do so.

The final question, then, is what ought to be done about the unjust poverty that results from the various policies of global institutions. Supposing that something should be done, it is relevant to then ask what. And, in considering the answer to this question, one should take into account the effectiveness of one’s solution, for it is important to avoid exacerbating the injustice. One suggestion often repeated is that of global redistribution. Pogge’s solution, for example, a Global Resource Dividend – a dividend that would tax the sale of natural resources, redistributing such funds from those that consume natural resources to those who largely do not benefit from the use of such resources. Chapter six examines the general solution of global redistribution and argues that it is not likely to be effective. The argument addresses the negative externalities that have historically followed foreign aid and details why global redistribution is likely to face many of these same problems. Since foreign aid has so far proved to be disastrous, rendering the global poor worse off than they were before, global redistribution is also unlikely
to mitigate the amount of poverty that exists. And it might even have the opposite effect – that of exacerbating the problem.

Chapter seven, then, addresses two more plausible solutions to remedying the injustices that cause global poverty. The argument is that the best way to end the injustice that the poor face – that is, of lacking access to resources necessary for their survival and ability to self-govern – is to change the global policies that perpetuate their poverty. Even though the primary cause of the continued poverty is the local institutional orders under which most of the poor live, the global community and its members can change the ways in which their actions either buttress such institutions or themselves perpetuate poverty. While there are certainly many changes that should be made, chapter seven addresses just two of these policy changes – the removal of both protectionist trade barriers and some immigration restrictions. The conclusion of this chapter is that these change offer a more promising means from which the poor might escape poverty.

The conclusion of this dissertation is that Pogge is right that the global community and its affluent members are not innocent; in so far as any individual or group has the power to affect change, he or it owes something to the global poor, but what he or it owes them is not redistribution, but rather certain policy changes. Those with the power to affect change owe the global poor a lot more; they owe them an effort to change both global and individual government hegemonic policies that practically guarantee that poverty will remain a problem for generations to come.
CHAPTER I. LIBERAL COSMOPOLITANISM AND HUMAN RIGHTS

INTRODUCTION

It is now widely accepted that individuals have duties of justice to people who reside outside the confines of their political borders; that is, that justice is cosmopolitan, rather than communitarian. The reason for this is that many people conceive of justice as that which governs the interactions between persons, not persons who care about one another, not persons who identify with one another, but persons more broadly. This is not to deny that there may be special duties of justice that govern the interactions specifically of people who share these special features of care or identity, but rather to state that general duties, ones that individuals have irrespective of the groups they identify with or care about, extend to all persons generally. These duties are typically described in terms of respecting human rights.

Although references to human rights are ubiquitous, there is very little consensus over what these rights are rights to. The members of the UN signed, in 1948, the Universal Declaration of Human Rights (UDHR), detailing a number of different rights from political freedoms and civil liberties to welfare entitlements. But even among those who ratified the formal doctrine there is little agreement about which rights are enforceable and which are merely goals or moral exemplars. And so it should come as no surprise that the philosophical debate is just as torn.

The focus of this dissertation is on a theory of rights that is minimal – a theory of rights that assigns moral precedence to negative rights against interference over positive rights to more
substantive goods or services. A view such as this holds that enforceable positive rights depend, for their existence, on being consensual or on being logically derivative from negative rights. The reason the focus of this dissertation is on this theory of rights is twofold: first, nearly everyone agrees that people have negative rights against interference, while the idea that people have non-consensual or non-derivative welfare rights is less universally accepted. The second reason is that it is often assumed that only egalitarian theories of justice take the plight of the global poor seriously and that adherence to natural rights liberal principles would only serve to justify the extent of poverty that exists. This dissertation argues that this is in fact a fallacious characterization of natural rights liberal theories and that all persons – even those who accept as basic only a minimal sense of enforceable obligation to others – must take seriously the continued existence of global poverty. There is more than one theory, however, that can be classified as natural rights liberal. Whether the arguments in this dissertation apply to all such theories is debatable, for this dissertation is intended to apply specifically to adherents of natural rights liberalism, a view in the tradition of John Locke and Robert Nozick.

The first section of this chapter provides a general outline of the normative perspective that characterizes natural rights liberalism. Natural rights liberalism holds that the basic rights that all persons enjoy are natural, not necessarily in the sense of being metaphysical, but as being pre-political; that is, such rights are logically prior to government and civil society. Because

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19 Negative rights are thought to be those rights that grant the rights holder an area of freedom within which no one may interfere and that require others to refrain from doing certain things that interfere with that area of freedom. Rights to self-govern fit into this category. Positive rights, on the other hand, are generally held to be those rights that guarantee the rights holder the provision of certain goods or services and require others to give up some of their own goods or services in order to supply such provision. Rights to charity and rights to a minimal quality of life would fit into this latter category of rights.
such rights are logically, and morally, prior to legal rights, natural rights constrain what any
government (or person) may do in the pursuit of its ends. Similarly, natural rights bind persons
not only when respecting rights is socially optimal, but also when it is not. Nozick calls such
rights “side-constraints” because they constrain the means a person can use to fulfill his ends,
even if his ends involve maximizing socially optimal outcomes or minimizing the violation of
others’ rights.\textsuperscript{20} Lastly, while natural rights liberalism understands enforceable rights as
correlates to obligations on the part of others to respect those rights, not all obligations may be
enforceable. In other words, natural rights may not exhaust obligation. Persons may have
obligations that are not protected or enforceable. Natural rights liberalism makes no claim about
the sphere of moral obligation simply by restricting rights to what is morally enforceable.

The second section introduces what might be taken as the foundational right for natural
rights liberalism – the right of self-ownership. The plausibility of natural rights liberalism stems
in part from the appeal that this right enjoys. This section outlines what it means to say that
individuals are self-owners and what such rights entail. Because the attractiveness of natural
rights liberalism relies on the intuitive plausibility of the self-ownership thesis, this section also
addresses some of the worries that have been raised against the thesis. These worries include the
claim that the appeal of the self-ownership thesis is inversely proportionate to its determinacy,
such that the more determinate the thesis is, the more it loses its plausibility or appeal. The
second claim is that self-ownership is incompatible with more substantive equality. Section two
addresses these concerns in order to plump for the plausibility of the right of self-ownership

constraint view [of rights] forbids you to violate these moral constraints in the pursuit of your goals; whereas the
view whose objective is to minimize the violation of these rights allows you to violate the rights (the constraints) in
order to lessen their total violation in the society.”
The third section addresses another area of rights that is equally significant from the perspective of natural rights liberalism: world-ownership rights. Many rights can be classified as property rights; self-ownership rights are property rights over one’s person, and world-ownership rights are rights over natural resources and other extra-personal property. This section argues that by taking self-ownership rights seriously we should also take seriously individual’s right to remove natural resources from the commons and transform them into private property. Following Lawrence Becker, if there are three levels of justification for property rights – general, specific, and particular justifications – then this section addresses only the second. That is, this section takes for granted that there ought to be property rights (the general justification) and addresses instead the reasons why there ought to be private property rights rather than any other sort (the specific justification). The third justification, why a particular person ought to have a particular property right in a particular thing, is reserved for chapter three.

The penultimate section of the chapter addresses the principles of justice that govern a system of rights understood as pre-political side-constraints and demarcated into private dominions over which individuals have exclusive sovereignty. These principles focus on the history of property claims in that what justifies a particular holding of property is that the holder has acquired it by voluntary means and all previous holders also obtained the property in similar fashion. And so, the principles that govern the distribution and transfer of rights will look at the history of claims that people have. This section also revisits the ways in which Pogge thinks these principles have been violated, giving rise to poverty and rendering it unjust. Section four further outlines how the violation of these principles may give rise to the charges he mentions.

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The last section summarizes more specifically the nature of the argument offered in this dissertation. This theory agrees with Thomas Pogge that some of the poverty that exists is unjust on the grounds that the principles of justice are being violated and that these violations cause some amount of global poverty. Further, both theories maintain that there are negative duties not to harm others by interfering with their rights. Since others’ rights are being violated – namely, the rights of the global poor – they are being harmed. However, there are two points of departure between the view offered in this dissertation and that of Pogge. One is a more substantive disagreement about what the principles of justice outlined in the previous section really amount to and about what remedies should be initiated in response to the global harms that perpetuate poverty. This is the disagreement that this dissertation addresses. But another disagreement is more formal. The last section clarifies the nature of this formal disagreement and argues that Pogge’s notions both of harm and of human rights are broader than can be justified by the natural rights framework adopted in this work. And so the section clarifies the ways in which people can be harmed, conceptions upon which most natural rights liberals would agree.

The conclusion to be gleaned from this chapter is that natural rights liberalism is a plausible and intuitively appealing theory of justice. Moreover, even though its substantive claims are far more minimal than those of the egalitarians, natural rights liberalism takes global poverty very seriously insofar as such poverty is a violation of liberal principles of justice. Like egalitarian theories of justice, natural rights liberalism gives precedence to the issue of global poverty since a substantial amount of poverty can be traced to roots lying in the violation of individual rights. That natural rights liberalism treats global poverty as seriously as the egalitarians purport to makes it a theory of interest to anyone concerned with global poverty and cosmopolitan justice.
I. THE NATURE OF NATURAL RIGHTS LIBERALISM

Natural rights, as understood by those classified as part of the natural rights liberal tradition, share at least three premises:

(1) Natural rights are pre-political; that is, they are not a matter of political/social consensus. They are rights that can and do exist outside of the context of government.

(2) Natural rights are side-constraints; rights act to constrain the actions of both individuals and political/social institutions such that one’s rights may not be violated even if such violations would prevent further violations of others’ rights.

(3) Natural rights theories represent the ways in which people can be coerced to treat others, but they do not mandate all the ways in which one may be otherwise obligated to treat others. In other words, theories of rights do not exhaust theories of obligation.

While there are several meanings of the term “natural” in relation to natural rights, here it is used to refer specifically to the sense of being pre-political, rather than of being metaphysical. They are not necessarily “built into the fabric of the world,” but are rather dictates about how it is right to treat people; mandates that are irrespective of any political or social consensus. While there is more than one compelling story about the foundation of such rights, it need not concern us here which, if any, are the true stories. One might note that any theory that purports to be able to explain how institutions or governments can violate the rights of their constituents presupposes that rights are morally pre-political, whether such rights are justified by appeal to some natural attribute that all persons share or whether they are contractual. The reason is that if rights exist

only by the will of political power, as in the case of so-called positive theories of rights, governments could not violate the rights of their citizens unless they were to violate their own laws. This seems wrong and something the history of the 20th century has evidenced. Governments can and, unfortunately, often have performed actions that have led to massive rights violations. Anyone who allows for this sort of condemnatory moral judgment on the actions of governments presupposes something like pre-political rights, as does this version of natural rights liberalism.

The notion of human rights that has become particularly fashionable in the last five decades borrows heavily from the natural rights tradition. Human rights are not considered to be subject to global political consensus but are, rather, thought to bind political and social institutions irrespective of these institutions’ agreement regarding the content of such rights. As such, human rights, like natural rights, are pre-political.

Natural rights are also considered to be side-constraints. What this implies is that they act as restrictions on the various means an institution can employ in the pursuit of its ends, including the ends of social justice. This is because for natural rights theories individual lives are important in themselves and not as a means to achieving some end, however worthy that end may seem to be. That natural rights are side-constraints involves the idea that one person’s rights may not be truncated even in order to protect the rights of others. The idea here is that even though rights are valuable, the respect of some rights is not to be maximized by violating others. The implication of this is that one person cannot be forced to sacrifice his own good or be sacrificed by others in order to benefit, or protect the rights of, others.

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Sometimes, however, this notion of rights is said to be paradoxical. The reason is that a particular understanding of rationality states that, “if $x$ is a good, then more of $x$ is always better than less of $x$.” Hence, it would seem that rationality would require one to violate some persons’ rights if doing so is necessary to prevent even more rights from being violated. This notion of rationality is mistaken, at least from the viewpoint of personal sacrifice. For while it usually rational for an individual to prefer more of a value for herself, rather than less, she may still be rational even if she does not prefer more of a value for others, especially if this state of affairs can only be achieved at her expense. While it may be rational for a person to prefer a situation in which a value for another is increased, rather than one in which the value remains the same or decreases, it seems rational not to prefer such an increase when it means one’s own value will decrease, even if one’s own value decreases less than the other’s value increases. This response reflects a common objection to maximizing moral theories – that they do not take seriously the moral separateness of persons.  

The moral separateness of persons expresses the impermissibility of impersonal aggregation; that is, it rules out making moral judgments on the basis of an action’s overall aggregate good as opposed to its distributional burdens and benefits. The moral separateness of persons implies that it may not always be rational for a person to accept losses in her own life unless the gains that are accrued as a result of those losses are accrued to her or to her interests. Hence, it is not necessarily rational for a person to accept losses in her own life in order to further impersonal ends. Natural rights liberalism rejects this sort of moral balancing act, whereby one person’s losses are justified by the weight of others’ gains.

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24 This criticism was first introduced by John Rawls in *A Theory of Justice* (Cambridge, Massachusetts: Harvard University Press, 1999), 24.
The other side of the problem is more difficult. For, it is easier to see that it is not always personally rational to accept losses unless one also gains, in some way, from such losses later on. It is less easy to see why it is not rational for others to sacrifice a person (by violating his rights) in order to prevent more rights from being violated. That is, for some, it may not be obvious why rationality does not require one to kill one potential organ donor in order to save five other persons who are in need of organs. The response to this claim is that taking seriously the value of individual life prohibits sacrificing one person to produce a better consequence for another. There may be cases in which one cannot avoid “dirtying one’s hands”; that is, there may be cases in which one cannot avoid violating a right. In such cases, it may be perfectly rational to choose the option that violates the least amount of rights. But such a case is different from one in which a person faces the choice of either violating some people’s rights in order to lessen the total rights violations in the world (or to produce a better outcome in terms of total value in the world) or refraining from violating others’ rights, even though such restraint would result in a less impersonally optimal outcome. In the latter case, one ought to refrain from rights violations. That others do not refrain is no reason for one not to refrain. And so, conceiving of natural rights as side-constraints is not obviously paradoxical from the standpoint of rationality.

The last important aspect of natural rights as conceived by natural rights liberalism is that natural rights protect individuals from others’ incursions within the areas over which the individual is sovereign. That is, natural rights protect individual sovereignty by prohibiting

25 Many people do not actually find this case to be unproblematic or particularly rational. Yet, many also find that similar cases, like the Trolley cases, push their intuitions towards the rationality of moral balancing. It seems to me that our intuitions regarding the donor case and other similar “easier” cases should indicate that we are equally not permitted to engage in Utilitarian calculations in the “harder” cases. See Judith Jarvis Thomson for a discussion of these cases, “Killing, Letting Die, and the Trolley Problem,” *The Monist*, 59, 1976, 204-17.
others from interfering within the space over which one has dominion. Rights do not, however, provide moral guidance about all the other ways a person may be morally obligated to treat himself or another. As such, rights only constrain the ways in which a person may be coerced to act in his own life and in his interactions with others; it does not constrain the ways in which a person might have non-enforceable moral obligations or reasons to treat himself and others in particular ways.26 This is the sense in which rights theories do not exhaust morality.

II. SELF-OWNERSHIP RIGHTS

Self-ownership rights are a subset of ownership rights more generally. The concept of ownership rights has been delineated thoroughly by Tony Honoré in his paper, “Ownership.” According to Honoré’s account, any concept of liberal ownership must allow for a certain set of rights incidents to be unified in a single person.27 Of these incidents, Honoré writes, “Ownership comprises the right to possess, the right to use, the right to manage, the right to the income of the thing, the right to the capital, the right to security, the rights or incidents of transmissibility and absence of term, the duty to prevent harm, liability to execution, and the incident of residuarity.”28 While some of these incidents – the right to possess, use, and manage – are self-

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26 Natural rights are used here to refer to enforceable rights that are basic or general as opposed to those derived by legal contract. Also, this discussion ignores natural liberties, except where such liberties fall within the sphere of one’s protected domain.


28 Ibid, 165.
The rights to possess, use, and manage one’s property, and the right to security against expropriation, seem to be the most fundamental concepts of ownership. Without these rights over a thing, one could not rightly say such a thing is one’s property, that one has ownership rights in that thing. Part of this is that ownership implies governance and one cannot govern one’s property without the right to use, manage, and possess it. Nor can one govern one’s property without security against expropriation. The right to the income of the thing and the right to the capital, upon exercising the right to alienate one’s property, seem to be closely connected with the fundamental rights of ownership. If one has rights of use and management, it would seem to follow that one has rights to income and capital arising from one’s property use. The right to bequeath one’s property – that is, the right to transmit one’s property to another upon death – is another right that seems to derive is plausibility from the right to manage. One’s interests in one’s property can extend beyond one’s death if one makes plans or has reasonable expectation that one’s successors will take on the role of property manager, that is, as property owner. Most, if not all, cases of property ownership will end upon death; that is, the absence of term will be indeterminate insofar as one’s life span will be indeterminate, but will be determined to end upon one’s death. The duty to prevent harm is entailed by ownership claims but is rather a liability, and not a right, that comes with property ownership. The corollary, of sorts, of having the right to use and manage one’s property is the responsibility to ensure that

29 Liability to execution means one’s property can be used to repay a debt one owes to another when other means of repayment cannot be obtained. The incident of residuarity means that the original owner retains the property right when lesser rights, such as contractual rights, expire. Ibid.
one’s property is not used in a way that violates others’ rights. One may not use one’s property in such a way that one can knowingly and foreseeably anticipate harm done to others. Another liability is the charge that one’s property can be used to exact compensation for debts one may incur (liability to execution). If one can earn income and the capital from the sale of his property, then one’s property can also be used as payment for delinquent debt. This is also a corollary of sorts. Lastly, ownership can be shared and special or limited rights may apply to such cases. In short, a liberal conception of ownership will encompass most, if not all, of these rights incidents.\(^{30}\)

Natural rights theories can be characterized by their acceptance of the self-ownership thesis, that is, the claim that individuals have robust rights over themselves – their body parts, talents, and abilities. These claims give to individuals’ spheres of moral sovereignty within which no one else may interfere. And such ownership claims include the rights incidents included in Honoré’s account of liberal rights.\(^{31}\) One has the right – in that all others are excluded from doing so – to use, manage, possess, earn income, and sell or trade for capital parts of oneself.\(^{32}\) One also has the right to security of his body. Such right has an absence of term upon death, after which the reference to ownership of one’s self becomes meaningless. One has various liabilities over the use of his person – the duty to prevent harm and the liability to be

\(^{30}\) Ibid, 166-79.

\(^{31}\) Honoré himself holds that a person cannot, in any real sense, own his body or liberty, that the analogy is tenuous. But insofar as it makes sense to say that a person, and only that person, has the right to use, manage, possess, earn the income from, etc. his body, he can be said to have ownership rights in it.

\(^{32}\) There is some debate as to whether moral agents can sell the whole of their property, that is, themselves, into slavery, for example. I leave open the answer to this question.
used to pay on a debt (as in punishment). In short, while some of these rights may have restrictions due to the nature of the property, the concept of self-ownership is able to encompass the various incidents associated with the liberal conception of ownership.

The idea that a person has exclusive control over his person – his mind and body – is intuitively appealing. Whatever moral code one holds, in order to be plausible, it ought to be able to make sense of the wrongness of slavery (of the typical kind; that is, slavery by force and not contract), murder, theft, rape, and assault. One way to understand the wrongness of these actions is that they impermissibly interfere with objects under another’s legitimate control. Such control prohibits anyone from interfering without the owner’s consent. Slavery is objectionable, but wage labor is generally not. Murder is wrong, but suicide and euthanasia may not be. Rape is prohibited, but violent, consensual sex and prostitution may be permissible. Theft is objectionable, but voluntary transfers of property are generally benign. Assault is impermissible, but ultimate fighting matches and other acts of consensual violence may be allowable. The feature which distinguishes the wrong acts from the permissible ones is the consent of the person whose property rights are being engaged in some way. The reason consent plays such an important role is because when a person has ownership rights over certain goods (her body and talents being some of those goods) only she has the right to transfer them or waive them as she pleases but no one else may trespass upon such goods without her permission.

The notion of self-ownership also helps to make sense of many of the rights that are outlined in the UDHR. Articles 3-6 outline the rights to life, liberty, and security, including rights against torture, slavery, and enforced servitude. All of these rights may be seen as

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33 Again, there is some debate about how much one can be used to pay a debt, that is, whether people can be made to undergo forced labor or indentured servitude in order to repay a debt. And again, I leave this open.
included in one’s self-ownership rights since such rights protect a person against slavery, murder, and assault. Article 9 protects individuals from false imprisonment or arbitrary arrest, which would be included in the right owners have against the unjustified seizure of their property, in this case, their person. Similarly articles 12 and 13 protect the right to privacy and free movement, all of which would follow if individuals have sovereignty over their own person and personal property – their body parts, talents, and abilities. Articles 16, 20, and 27 protect the rights to enter into contracts (of marriage or association) with willing others. As already noted, consensual acts between willing adults is an implication of having ownership rights over one’s self. Likewise, article 19 asserts that each person is entitled to freedom of thought. Freedom of conscience seems so much a part of one’s self-ownership that if the content of one’s mind is not one’s own it is hard to know what else could be. In short, many of the rights that people take as necessary for a free and equal society stem from the same concerns that motivate the ownership right over one’s self. This helps to reinforce the appeal of the self-ownership thesis.

Not all people, however, find the self-ownership thesis so appealing or intuitively plausible. Barbara Fried, for example, has argued that the self-ownership thesis is plausible only insofar as it is left indeterminate. 34 The idea here is that since ownership rights are complex and tend to include several different claims, all of which involve some controversy, determining which of the claims self-owners have rights to will inevitably challenge the plausibility of the thesis. For, people are bound to disagree about some of the claims that owners enjoy. Other critics have challenged the attractiveness of the self-ownership thesis by pointing out its

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incompatibility with enforced substantive equality. G.A. Cohen, for example, has argued that once the implications of the self-ownership thesis are revealed, one must choose either self-ownership or the substantive equality of persons.\footnote{G.A. Cohen, \textit{Self-Ownership, Freedom, and Equality}, (Cambridge, UK: Cambridge University Press, 1995).} The following sub-sections will address these concerns individually. One of the reasons these concerns are important is that the appeal (not the justification) of natural rights liberalism rests on the intuitive appeal that the self-ownership thesis enjoys. Hence, in order to plump for the plausibility of natural rights liberalism, the self-ownership thesis must be plausible.

II.1. The Indeterminacy Objection

One worry about the plausibility of the self-ownership thesis is that it enjoys intuitive plausibility only insofar as it is indeterminate. According to Fried, self-ownership suffers from a kind of indeterminacy. The notion of ownership rights is complex; rights are bundles which bestow upon the owner various claims, liberties, powers, and immunities.\footnote{See W.N. Hohfeld, \textit{Fundamental Legal Conceptions as Applied in Judicial Reasoning}, David Campbell and Phillip A. Thomas, [Eds.], (Burlington, VT: Ashgate Publishing Ltd., 2002).} As such, to say that a person is a self-owner does not provide exactly what property incidents the person has nor does it delineate exactly where the property lines can be drawn.\footnote{For example, the self-ownership thesis does not immediately provide answers to the questions: Do owners have the right to their ideas such that they can protect these ideas using force (i.e. intellectual property rights)? Do owners have the right to exclude and exact compensation from all those that merely brush against or slightly trespass upon their property boundaries? Where do those boundaries lie for self-owners? Etc.} Once the content of such rights begins to be filled in, the argument claims, the concept of self-ownership will begin to lose some of its widespread appeal; for, the content of such claims can be controversial.
Further, since interactions between people are both unavoidable and potentially beneficial, the boundaries of people’s property rights are often going to be blurry and it will be necessary to adjudicate who has the right of way in particular situations. The self-ownership thesis does not seem to have an immediate way of adjudicating in which of these cases the blurred boundaries give the right of way to the self-owner and in which the right of way should be awarded to the other person. In other words, human interactions are likely to lead to externalities, both positive and negative. Self-ownership, by itself, does not tell us which externalities must be internalized and which may be shared with others.

The first part of this objection concerns the content of one’s self-ownership rights. The idea is that since rights are complex bundles of various claims, liberties, powers, and immunities, and since each of the so-called sticks in the bundle truncates the sphere of liberties enjoyed by all others, filling out the content of such claims may threaten the appeal of the self-ownership thesis. So, for example, while it is probably uncontroversial to say that a person has rights to determine how or when her body parts will be used, it is less agreed upon whether or not a person can be held responsible for failing to save a person drowning in a pond. In Samaritan cases, one may wonder whether one has the right not to help a person in need even if in regular cases one has the right to determine one’s own actions. Similarly, while it may seem right that individuals retain the fruits of their labor, it may also seem right that they share such fruits with those in need. And so the rights to use, posses, manage, earn income, and put up as capital one’s self-owned parts might be accepted without also accepting that one’s right to use or earn income is without limits or constraints. It might be entirely plausible to hold that self-ownership is compatible both with Samaritan and charity rights. In other words, self-ownership, by itself, cannot rule out the permissibility of enforcing such rights. Indeed, self-ownership would lose its initial plausibility
if it attempted to do so. But self-ownership need not rule out enforceable Samaritan or charity rights. All that the assertion of self-ownership rights does is place a burden on those who think some limits are justified to argue that one’s self-ownership rights are constrained in such a way. The constraint would simply change the extent of one’s right incidents.

Even though self-ownership may admit of some indeterminacy regarding its content it is certainly not entirely indeterminate. As one might understand the self-ownership thesis, this form of ownership is akin to the kind of ownership claims that slaveholders have over slaves by legal, rather than by moral, right. And so self-ownership rights include claims to the robust use and control of one’s body parts, talents, and abilities; liberties to perform a variety of actions that do not interfere with others’ claims over their person or property; powers to trade, sell, loan, rent, or otherwise transfer the whole or various parts of their self-owned property – body parts, talents, and abilities; and lastly, immunities against others selling, transferring, or trespassing on the various areas over which self-owners enjoy sovereign control. Acknowledging these rights, it is completely determinate that forcing a person to donate his kidney or simply stealing it from him is a violation of his self-ownership rights, as is involuntary slavery or servitude. Spelling the rights out in this way does not seem to challenge the intuitive appeal for it only erects a burden that others must mount in order to constrain one’s rights over oneself or one’s property in particular ways.

The question regarding the boundary of one’s self-ownership rights admits of some indeterminacy as well. Whether or not a person has a right that prohibits another from brushing

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38 G.A. Cohen writes, “Each person possesses over himself, as a matter or moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way that a slaveholder is entitled, legally speaking, to dispose over his slave.” *Self-Ownership, Freedom, and Equality*, 68.
his shoulder as they both walk down a crowded street is not clear. Even if it is clear that sexual assault is a violation of one’s self-ownership rights, it may not be clear whether an accidental touch on a crowded subway warrants a claim of violation. Similarly, if one’s purse is stolen in a lively bar it surely counts as trespass but if a drink spills on one’s expensive handbag in this same bar, it is questionable whether the action is a trespass. There may be several ways to adjudicate this controversy. One way is to consider the risk one must be expected to take by living and interacting with others. For example, a person entering a crowded bar undertakes some risk of being spilt upon. Since one cannot enjoy this good without also accepting some risk, we may say that one enters the bar acknowledging such risk and indicates a willingness to accept it when it happens unintentionally. The same could be said of a person walking down a busy street; one encounters the risk when one lives in a society that innocent brushings and minor inconveniences may occur. But the accepted risk has a limit; living in society carries some risk but it ought not to be too great. One need not accept the risk of experiencing molestation or uninvited sexual contact just by walking down the street or by entering a public subway. There are some inconveniences that one must risk to gain the benefit of interacting and living among others, but the price must not be so high that one would be better off living in isolation from others.

Another way to adjudicate the extent of self-ownership’s boundaries and the content of its rights incidents is to consider the externalities, both positive and negative, in which the exercise of one’s property rights might result. An externality is a benefit or burden that is incurred by a third party as the result of another’s action. An example of a positive externality is living in a neighborhood where the residents maintain their lawns and gardens. In this case, one benefits both aesthetically and, perhaps, even financially (in terms of home value) from the
actions of the individual homeowners who are not likely intending their actions to benefit anyone but themselves. In such a case, all the costs of the action are borne by the conscientious gardeners, but the benefits accrue to their neighbors as well. And so, it is reasonable to ask who *ought* to bear the cost in this case; that is, it is reasonable to ask whether the gardener has, as part of his self-ownership rights, the legitimate claim to compensation for the others’ enjoyment. Most people agree that in the case of positive externalities, if the person willingly chooses to produce such a good knowing that he cannot exclude others from benefiting from his good, he must reasonably be expected to bear all the costs, even while others receive part of the benefit.

There are some positive externalities in which the situation is different in that the provider of a certain good may be entitled to charge compensation for the good’s provision. These so-called “public goods” – goods that are non-exclusive (the provider of the good cannot exclude non-providers from its enjoyment) and non-rivalrous (one person’s enjoyment does not detract from the enjoyment of others) – are of the sort that people can be expected to contribute towards the costs of the good’s provision. But the reason that others may be expected to contribute to the cost of the good does not depend on their enjoyment. In other words, even though the neighborhood garden satisfies both of the criteria for public goods, the garden is both non-exclusive and non-rivalrous, it is not a public good in the sense that all persons may be expected to contribute toward its provision. And so, there is something else that distinguishes public goods from private goods that result in some positive externalities. Some other argument is required to shift the burden of cost solely from the provider onto others, an argument that would be other than the fact that others benefit from its provision. Barring such an argument, it seems reasonable to conclude that in many cases in which a third party is inadvertently benefited
by another’s action, the person who willingly performs the action must be said to shoulder the burden of the cost.

Negative externalities are such that the actor enjoys the benefit of his actions but shifts the costs of his actions onto unwilling third parties. A typical example of a negative externality is air pollution; while the factory benefits from producing its goods, the general public pays some of the costs of the provision in the form of diminished air quality. And, unlike certain positive externalities, pollution could be made exclusive. That is, one could internalize the costs and benefits of the actions that cause the pollution. By not internalizing the costs of one’s actions one shifts the burden onto others, in the case of pollution, onto the people living in the vicinity. The relevant question, however, is the same: where do one’s property lines end and what liabilities do one’s property rights include? Who must bear the cost, the actor or the third party?

As in the case of positive externalities, we may plausibly say that the cost must be borne by the actor who acts voluntarily. With positive externalities, the burden shouldered by the actor is the cost of the provision without recourse to charge others who subsequently share in the benefit of one’s action. In the case of negative externalities, however, the cost is also the provision of the good, including the cost of increased measures to internalize one’s actions so as to not disperse, unwillingly, the costs onto others. It seems in the case of negative externalities, those who bear the burden of such actions may rightfully claim their rights are being violated. This is unlike positive externalities, cases in which the person who bears the burden – the provider – is not entitled to demand compensation from those he benefits, whether intentionally or otherwise, nor are the rights of the provider being violated by the enjoyment of others.

As in the case of expected risk, there are cases at the margin where it is unclear whether the provider of a good is entitled to compensation when it is non-exclusive and non-rivalrous;
that is, there are cases in which there is genuine disagreement regarding what counts as a public good. Another problem is how much of a negative externality has to occur – that is, how must burden others have to reasonably bear – before it is required for the actor to internalize the burden herself. Where the line of reasonable risk or acceptable externalities is drawn is slightly indeterminate, but not completely so. To think that this sense of indeterminacy destroys the very concept of self-ownership is to commit the fallacy of the heap. While no one number of sand grains constitutes a heap, it is certainly not the case that the concept of a heap is no longer plausible. There will be some room for individual discretion and social convention in making self-ownership boundaries more determinate in a society populated by others, but this does not render the concept of self-ownership either empty or even especially problematic. Again, self-ownership rights erect a barrier of somewhat blurred boundaries; in particular cases where the boundaries overlap some adjudication must be made. And while self-ownership rights contain a determinate set of core rights incidents, the argument can be made that the rights are not nearly as extensive as one might think. But self-ownership rights do place that burden of justification on those who think such rights merit constraint.

And so, to conclude, while it is true that appeal to the self-ownership thesis by itself does not provide conclusive answers to all the hard questions, it provides enough of a determinate area of protection to be meaningful. Self-owners enjoy exclusive sovereignty over their person – their body parts, talents, and abilities. Some boundaries may be blurred when we live in a society populated by others, and it is here that self-ownership becomes especially valuable, but it is also here that some indeterminate cases arise. These cases are indeterminate only insofar as it is unclear whether the overlap constitutes a rights violation of one or a liberty of another. In the trivial cases we need to defer to something else – namely, social convention. Less trivial cases
require justification to determine who has the right of way. Neither aspect of the indeterminacy, however, threatens the plausibility or the usefulness of the self-ownership thesis. In the more consequential case, the self-ownership thesis mounts a burden of proof against those who wish to extend the liberties or claims of others and truncate the boundaries of self-ownership rights, but it does not provide a definitive argument against such attempts at justification.

II.ii. The Substantive Equality Objection

Another doubt about the appeal of the self-ownership thesis is that self-ownership is thought to be logically incompatible with substantive equality. Cohen argues that while self-ownership is intuitively plausible, insofar as it is logically incompatible with substantive equality, we should favor equality over self-ownership. This objection really has two parts: the first is whether self-ownership is indeed logically incompatible with substantive equality, and the other is whether we should favor such equality over self-ownership.

Several authors, under the title of left-libertarians, have argued that robust self-ownership is, in fact, logically compatible with substantive equality. The reason for this is that self-ownership requires some kind of equality in outcomes, the currency of which is a matter open to argument.

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39 For further arguments against the indeterminacy claim as an objection to self-ownership see G.A. Cohen, Self-Ownership, Freedom, and Equality, 213-17.

40 Substantive equality can be contrasted with formal equality or equality of opportunity. Substantive equality requires some kind of equality in outcomes, the currency of which is a matter open to argument.

ownership entitles individuals to exclusive control over their persons – their body parts, talents, and abilities; self-ownership, however, says nothing about individual entitlements over natural resources. Since one’s self-owned talents and abilities require external resources in order to generate income, that a person has superior natural endowments does not translate into superior wealth without the use of external resources. And if self-ownership says nothing about the justice of extra-personal property ownership, then the distribution of natural resources may cohere with an egalitarian pattern, resulting in substantive equality, without violating self-ownership rights.

The argument of the left-libertarians has been mounted in response to the rather compelling arguments offered by Cohen. According to Cohen, self-ownership is incompatible with redistributive taxation, since once a person owns certain amounts of property, interfering with those ownership claims is akin to interfering with the person and, thus, counts as theft. He argues that while the original distribution of property could certainly have been conducted along egalitarian lines, this would not help the cause of substantive equality, since people’s rights to transfer and trade their property would likely lead to vastly unequal distributions in proportion to the vastly unequal talents that people have. Any remedy for these inequalities in the form of redistributive taxation would violate self-ownership rights since self-owners are, presumably, entitled to their labor and the fruits thereof. If self-owners are allotted equal shares and then labor on those shares producing some excess, which they then trade with willing others, thereby making some profit and becoming wealthier than their neighbors, they have violated no rights and must be entitled to those unequal shares. In order to re-equalize the distribution one would


43 Ibid.
have to take some of what one earned and give it to another, who has no prior rights to it. This, Cohen argues, can be seen as theft and is outlawed by self-ownership rights.

The left-libertarian response is to assert that redistributive taxation is not necessarily theft even if self-owners obtained the taxed property via their labor and talents. The reason is that if natural resources were owned in an egalitarian manner such that each individual is entitled to \( x \) amount of natural resources, if a person’s productive efforts yield the original amount \( x \) plus some excess productive amount \( y \), the person may only be entitled to an equal share of the excess \( y \) over and above the part that can be attributed to his labor. Since the person was only entitled to \( x \) and not \( x + y \), redistributing from him some amount of \( y \) would not be a violation of his rights.\(^4^4\) Or so the argument goes. The point that this argument is supposed to elucidate is that whether or not any taxation or redistributive measures violate one’s self-ownership rights will depend on what world ownership rights a person may have. World-ownership rights, they claim, are completely independent of self-ownership rights. Hence, there are several different distributions of world-ownership rights that will be logically compatible with self-ownership rights.

This question – whether or not self-ownership rights are compatible with redistributive taxation and, hence, substantive equality – will come up again in chapter three and, so, the full response is left until then. The second concern, whether or not one should favor substantive equality over self-ownership, if they should be incompatible in some way, is much harder to answer and a full response is beyond the scope of this dissertation. One reason one ought to favor self-ownership is that substantive equality may require extensive interferences in the lives of individuals. Since individuals, voluntarily engaging in transactions each finds mutually

\(^{44}\) The argument offered by Michael Otsuka in *Libertarianism Without Inequality* is similar to this one.
beneficial, may disrupt the pattern of substantive equality in a society, it is only by restricting individual liberty or by otherwise interfering with individual holdings that one can thereby control the distributional outcome. The proponent of substantive equality is unlikely to be moved by this concern, but it is a concern that ought to move anyone concerned with individual liberty.

As Cohen notes in Self-Ownership, Freedom, and Equality one cannot refute self-ownership; one can only diminish its appeal. Similarly, one cannot refute the moral claims to substantive equality; one can only give reasons to support the claims against it. Chapter three will support an argument about world-ownership that will tend to disfavor substantive equality. While, again, this is unlikely to convince any proponents of substantive equality, it, hopefully, offers a challenge that they must take seriously. At any rate, this dissertation will presume that in the case of conflict, self-ownership rights should prevail.

III. WORLD-OWNERSHIP RIGHTS

World-ownership rights concern the ownership of things in the physical world other than human beings. In the extra-personal world, there are three sorts of formal property arrangements that are possible. These are:

(1) Negative Common Ownership: all persons have the liberty to use the world and its resources, but no one has an exclusive right to anything such that this right may be protected (morally) by coercive force.46

45 See Robert Nozick’s discussion on how liberty upsets patterns, particularly his Wilt Chamberlain example, in Anarchy, State, and Utopia, 160-64.

46 A. John Simmons calls this the “negative community.” The Lockean Theory of Rights, 238.
(2) Positive Common Ownership: all persons share the ownership of the world, where each person holds an undivided proportional share but no one individual holds an exclusive right to anything.\footnote{Simmons calls this the “joint positive community,” ibid.}

(3) Private Ownership: all persons have the opportunity to claim a particular part of the world as exclusively his own, thereby acquiring the moral right to protect his claim using coercive force.

Natural rights liberalism lends support primarily to the third regime – the regime of private property. A private property regime does not rule out communal ownership that is voluntarily entered into. Private property regimes do rule out, however, regime (2), which, by contrast, is not voluntarily entered into. Regime (2) says that the world is owned by the group of all persons such that each person shares equally with all others a claim over all the world’s resources. In such a regime no one is morally entitled to enjoy exclusive use of any resources without the consent of all others; while each is allotted a proportional share, the share does not pick out any resources in particular. Regime (1), contrary to (2), does not allow for any protected proportional shares since one is given only the liberty to enjoy some resources, but no protected right. In regime (2) one has a protected right to some share, but not to any particular share whereas in regime (1), one lacks any such protected rights.\footnote{Presumably, in order to be taken seriously, common ownership must allow for private consumption of food and water. Once eaten or drank such resources are in the control of the individual who consumed them and can no longer be common. If this exclusive removal of resources from the commons as private property were not permitted, then human life could not sustain common ownership.}

The question about what kind of property regime is justified given the concerns of self-ownership and natural rights liberalism is not a question of fact, that is, it is not about whether
property was originally owned communally or not at all.\textsuperscript{49} For even if natural resources were originally unowned, that is, even if acquiring possession of resources could not be either just or unjust, it may still be the case that in order to establish, not resource possession, but rather resource ownership, as a normative term, one must meet the standards of justice regarding property ownership. Hence, whatever regime is required by justice will be a matter of whether or not it best upholds the other moral values that we have. For natural rights liberalism the sort of moral value that underlies natural rights, and in particular, the right of self-ownership is the value of individual liberty understood as the ability to live one’s own life, according to one’s own life plans, without coercive interference by others.\textsuperscript{50} In order for one to have this sort of self-governance, one must have exclusive control over one’s body and mind in the way that the self-ownership right guarantees. Similarly, in order to possess the ability to form projects and execute them in accordance with one’s life plan, one must be able to obtain exclusive control

\textsuperscript{49} Edward Feser seems to think that the question is factual and so he argues that since the world was originally unowned there can be no moral claims to common world-ownership rights. It is not always wrong to move normatively from is to ought, but as a justification against those who would argue otherwise, such a move begs the question. See Feser, “There is No Such Thing as an Unjust Appropriation,” \textit{Social Philosophy and Policy}, 2005, 56-80.

The reason for this is that persons are physical beings living in a physical world. The projects people will have will require for their execution the use of physical resources. And so, the same moral value that underlies the self-ownership thesis would seem to underlie the importance of private property.

Consideration of this moral value seems to rule out the normative appeal of both negative and positive common ownership regimes. The reason for this is that negative common ownership, while protecting individuals’ liberty to use resources in the pursuit of their projects and life plans, does not protect individuals’ exclusive right to such resources. And so, a person’s ability to pursue her projects could be thwarted by another’s exercise of his liberty to use whatever resources are available, including the one’s already being used by others. Such a property regime would provide little incentive for individuals to engage in anything more than immediate or short term projects, making difficult the formation of a coherent life plan, which necessarily includes both short term and long term projects.

Positive common ownership faces a similar problem, for while it protects more than the liberty to use resources, it prevents the privatization of projects and life plans. In doing so, it forces each person to share the values of all others. It does this by guaranteeing to each person a share of resources whether or not one contributes anything to the production of such resources. And, even if one does contribute to the production, improvement, or increase of resources it does not guarantee one that share of resources that one produces, improves, or increases. Hence, it provides little or no protection for one’s projects or life plans since the fulfillment of one’s

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51 Projects can be understood as plans to realize some value that one has, whether the project involves increasing one’s own welfare, increasing the welfare of others, or simply to produce something of aesthetic value. Life plans are the long-term values or ends one has that guide which sorts of projects one engages in.
projects would depend on what others’ projects are. Insofar as the rights protected by positive common ownership regimes give every person the right to veto any other person’s use of specific resources, it also gives others the power to determine not just a person’s material wellbeing, but also his ability to pursue the projects of his choice. Self-government beyond the most short-term or insignificant actions would be limited. And so, protection of an individual’s liberty to self-govern by pursuing his own projects in accordance with his own life plan free of others’ interference requires the ability to obtain private ownership of some resources outside of one’s self, one’s body and mind.

Saying this, however, does not answer the third level of justification for property – that is, what justifies a particular person’s right to a particular resource. In other words, claiming that private property is the appropriate property regime does not mandate which person should be entitled to what property and in what amounts. For example, private property rights may entitle each person to an equal share of the world’s resources. Or it might mean that private property may be acquired unilaterally and in unequal amounts. And there are also several other options in between. The aspect of property rights that involves who is entitled to which property and in what amounts will be the subject of chapter three. For now, however, it is important to note only that private property rights are normatively superior to both negative and positive common ownership regimes if we take seriously the moral commitments underlying natural rights liberalism.
IV. THREE PRINCIPLES OF JUSTICE

Assuming that private property is the property regime most justified by the concerns of natural rights liberalism, the next question is what principles of justice govern such a regime. In other words, it is necessary to specify the principles that govern the acquisition of such rights. Following Robert Nozick in *Anarchy, State, and Utopia* the three principles of justice that characterize natural rights liberalism are the principles of original acquisition, of voluntary transfer, and of compensation. The principle of voluntary transfer states that property rights may be transferred between persons as long as such transfers are conducted voluntarily with the consent of each party involved. The principle of original acquisition states that individuals may remove resources from the commons and take them as private property as long as one’s acquisition does not violate others’ rights.\(^{52}\) Lastly, the principle of compensation states that any violations of the previous two principles ought to be compensated in a way that remedies the initial violation, to the extent that such a violation can be remedied. Known as the entitlement theory of justice, these principles dictate that what people are entitled to depends on the historical pedigree of property transfers and original acquisition. As such, they are distinguished from patterned principles of justice whereby a distribution of property is just insofar as it adheres to a preferred pattern. The result is a theory of justice that is sensitive to the process of property acquisition, but not particularly sensitive to the resulting distribution.

In order for global poverty to be unjust according to the entitlement theory of justice, it would have to be the case that such poverty violates one or more of the principles of justice sketched above. Thomas Pogge has argued that indeed, global poverty runs afoul of these

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\(^{52}\) This principle is purposely left vague since its content is the subject of some controversy. This controversy is taken up in chapter three.
principles. In fact, he maintains that global poverty is unjust in the light of both the principle of voluntary transfer and the principle of original acquisition. As Pogge understands it, the principle of original acquisition permits individuals to remove resources from the commons only to the extent of one’s fair share. Removal of more than one’s share is permitted only by compensating others’ for their loss. His claim is that each person has a right to a certain share of natural resources and he argues that people would never agree to a unilateral acquisition of resources as private property unless they could hope that their position would be better off under this private property arrangement than under a property regime where acquisition was limited to one’s fair shares. And so he writes:

Defenders of capitalist institutions have developed conceptions of justice that support rights to unilateral appropriation of disproportionate shares of resources while accepting that all inhabitants of the earth ultimately have equal claim to its resources. These conceptions are based on the thought that such rights are justified if all are better off with them than anyone would be if appropriation were limited to proportional shares.¹⁵³

In this quote Pogge refers to the inclusion of a proviso that constrains one’s original acquisition by considering the welfare of others. While the proviso he refers to is not necessarily one adopted by defenders of capitalist institutions, it is defended by left-libertarian theorists who also adopt the self-ownership thesis and some sort of private property regime. And so, as they understand the proviso, it entitles individuals to proportional shares of natural resources – shares that individuals retain unless they would be willing to give them up in lieu of a regime in which they would be better off. Since the existence of extreme global poverty renders plausible the

idea that the poor would be better off retaining their proportional shares than they are under the current regime where they lack such shares, the argument is that those who enjoy access to greater shares of resources owe compensation to the global poor.

The principle of voluntary transfer is also thought by Pogge to render some amount of global poverty unjust. Since the principle of voluntary transfer legitimates any property transfers that have been acquired by consensual transmission between individuals at least one of which is entitled to the property being transferred, global poverty would be unjust according to this principle only if it is the result of unjust transfers. Pogge offers the actual history, littered with violence, abuse, slavery, theft, and other acts involving unjust acquisitions of property and advantage as evidence of this injustice. He writes that, “The present circumstances of the global poor are significantly shaped by a dramatic period of conquest and colonization, with severe oppression, enslavement, even genocide, through which the native institutions and cultures of four continents were destroyed or severely traumatized.” Since the current, actual distribution of property rights has evolved from this tainted past, Pogge concludes that global poverty must be the result of these violations. Hence, he concludes, those that hold many resources ought to compensate those who hold few.

Lastly, one could suppose it the case that there are ways in which institutions can violate individual rights either by the policies such institutions enforce or the sorts of actions they permit or incentivize. This concern is taken up in the last section of this chapter which seeks to clarify what counts as harming a person. Such clarification is necessary since the view this dissertation adopts diverges from that of Pogge’s theory, to which this dissertation is a response, in two

54 Ibid, 203.
important ways: concerning the ways in which a person can harm another and the sorts of enforceable rights that people enjoy. The next section seeks to explain these two differences.

V. CONCEPTIONS OF HARM

According to natural rights liberals, to harm a person is to violate his rights. Insofar as Pogge limits his argument to this notion of harm his view seems plausible. The explication of Pogge’s argument above relied only on this narrow notion of harm. Pogge, however, seems to slide between this traditional classical liberal notion of harm and a more expanded concept which requires not only that a person refrain from violating others’ rights but also refrain from benefiting from another person’s misfortune. Furthermore, even when Pogge adopts the narrow version of harm used in this dissertation, the set of rights he claims people have is more egalitarian than that of the rights upheld by natural rights liberalism. This section will clarify, then, the scope within which the disagreement with Pogge lies. The arguments that he makes that rely on this wider notion of harm and this egalitarian set of human rights are beyond the scope of this dissertation, which considers only Pogge’s arguments that assume a natural rights liberal theory of justice.

V.i. Is Receiving a Benefit a Way of Contributing to Harm?

Throughout his book World Poverty and Human Rights Pogge conflates the notion of ‘contribution’ with that of ‘benefiting’. He claims that compensation for harms done will


depend not only on how much one contributes to those harms, but also on how much one
benefits from them. When describing the two ways in which poverty amounts to a moral
challenge to the global order, Pogge writes, “we may be failing to fulfill our positive duty to help
persons in acute distress; and we may be failing to fulfill our more stringent negative duty not to
uphold injustice, not to contribute to or profit from the unjust impoverishment of others.”
While there is little disagreement about whether people have enforceable duties not to contribute
to harming others, it is much less obvious that individuals also have enforceable duties not to
benefit in various ways from the harm done to others. That is, of course, if they are not also
contributors to that harm.

To illustrate the difference here consider the following case: suppose there is only one job
opening and two equally qualified applicants. If one of the applicants is mugged on the way to
the job interview causing him to miss the interview and the other applicant receives the job offer,
the hired applicant has not thereby harmed the mugged applicant. In such a case, only the
mugger has harmed the failed applicant; just because the second applicant benefits from this
mugging does not mean that he contributes to the harm. Nor does he owe anything to the
mugged applicant as a result of his benefit. This example conforms to the generally accepted
conception of harm, one in which contribution to the harm is a necessary condition for an
enforceable duty to compensate. But benefiting from a harm suffered by another, provided one’s
hands are clean, is neither necessary nor sufficient to render the benefit an act of harm.

One could also add that Pogge himself benefits from the harm that is done to the global
poor since he has defined his career and success on the shoulders of global poverty. But

57 Ibid, 39 and Pogge, World Poverty and Human Rights, 50.
58 Ibid. Emphasis on “to contribute to or profit from” is mine.
certainly not even he would claim that this type of benefiting amounts to a form of harm. It is considerations such as these that lead one to claim that there may be both innocent and not-so-innocent ways of benefiting from harms committed upon others. While making a living working for a non-profit organization like Oxfam may be a benign way of benefiting from poverty, making a living manufacturing goods produced from cheap labor in poor countries is not considered to be so innocent, at least not according to Pogge.59 If benefiting in this way is indeed a way of harming the global poor then it also renders much of the rich world’s inhabitants guilty for such poverty that exists, for most people consume such goods.

This view, however, is implausible. When one hires inexpensive labor, one offers such laborers an opportunity to earn a living that they may otherwise have lacked. And this is true even if the reason those people are poor includes various rights violations they have suffered. As long as one does not contribute to those rights violations, making people’s lives even slightly better by providing opportunities for employment does not count as harming them, even if the employer benefits from this inexpensive labor. The thought that hiring people for low wages is an injustice stems from the erroneous belief that the employer could pay higher wages but lacks the incentive to do so because the poor are desperate and are willing to work for less. While this may sometimes be the case, it is only rarely so. Employers generally set wages according to the market conditions that they face. In lower income countries, employers may pay low wages but they also pay those wages to individuals who lack many other marketable skills. To pay a higher wage the employer would likely have to require greater productivity per worker and such increases in productivity would most likely require greater skilled labor. And so, even if the

employer may benefit from the poverty unjustly caused by another, the employer also benefits the laborers by offering opportunities for income.

There is another problem with the argument that hiring cheap labor is a way of unjustly benefiting from poverty, which is that there is a relevant difference between what one ought to do and what one must do in order to avoid harming. Even if an employer could pay higher wages, it is not a matter of enforceable justice that one be paid as much as one’s employer can afford. Just because the market conditions are such that people command lower wages, for whatever reason, it does not mean that the employer treats them unjustly just because he could pay them more. So, while the employer may have a moral obligation to pay his workers more, he is under no enforceable obligation to do so.

Consider the example that Pogge provides of what he counts as a not-so-innocent way of benefiting from an injustice done to another. He writes:

Imagine . . . a society in which an aboriginal minority suffers wage discrimination in education and employment, reducing their wages far below those of their compatriots. As an affluent foreigner, you may think perhaps you ought to do something to assist these people. But if you are profiting from the discrimination (by employing an aboriginal driver at half the wage other drivers receive, for instance), then more is morally at stake: we judge ourselves more harshly for taking advantage of an injustice by pocketing such gains than for failing to spend other assets we have on supporting the poor.60

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This case is similar in many ways to the cases just discussed. Suppose that in this example aborigines are not permitted to attend the same schools as non-aborigines and that the schools allotted for aboriginal children are inferior to those of non-aboriginal children. Suppose that, because of this, aborigines occupy jobs that are inferior to those jobs held by non-aborigines. And suppose further that, even within the same occupation, aborigines command lower wages than non-aborigines, not because the law commands it, but rather because people would not otherwise employ the aborigines. In a case so stipulated, an affluent foreigner does not treat the aborigine unjustly simply by hiring him at this lower wage. This result requires explaining since one might wonder how this treatment is different from cases of exploitation, cases in which one might be tempted to think some injustice occurs.

Exploitation, in the non-Marxian sense, can be defined as taking unfair advantage of a person’s vulnerability. Yet, this definition needs to be filled out further before it can be useful since what counts as unfair will depend on one’s conception of justice. According to Stanley Benn, exploitation requires that two conditions be met: “that there is no reasonably eligible alternative [for the person exploited] and that the consideration or advantage received [by the exploiter] is incommensurate with the price paid.” He further adds that, “One is not exploited if one is offered what one desperately needs at a fair and reasonable price.” On this conception of exploitation if one has a reasonable alternative to accepting the offer the potential exploiter presents, or if one is offered a fair market price for the trade, then the exchange is not exploitative. Included in this notion of exploitation is the idea that the exploiter and the

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62 Ibid.
exploitee hold asymmetric positions of power; the exploiter exercises a kind of power over the exploitee of which he wrongly takes advantage.\textsuperscript{63}

If this concept of exploitation is correct then it can be concluded that the affluent foreigner does not exploit the aboriginal driver. One reason is that there is no asymmetrical position of power within this relationship of exchange. If the affluent foreigner pays the asking price the aborigine demands then the foreigner does not exert any sort of influence on the driver. This seems to be so precisely because the aboriginal driver does not face a situation in which there are no reasonable alternatives to accepting the low price for his services. The aboriginal driver may, presumably, ask for a higher price when he encounters foreigners or he may try another profession if the price he commands does not meet his satisfaction. Only if the aboriginal driver is in a desperate situation, one in which the passenger is aware, has no other reasonable alternatives, and is pressured to accept an exceptionally low price as a result of an asymmetric position of power, does the passenger thereby exploit the driver. To see this, contrast it with a clear case of exploitation: suppose a person is abandoned by his kidnappers on a secluded road in the middle of the desert and finally encounters a single passing car. If the car driver agrees to drive the stranded person to safety only on the condition that the person turns over 95\% of his future earnings to the driver, then the driver exploits the stranded man.\textsuperscript{64} But notice that in this case the stranded kidnapping victim has both no other alternative to accepting the driver’s offer and the offer is clearly unfair in that the price is far from commensurate to the service rendered. Also, due to the vulnerability of the stranded man, as a result of having no


\textsuperscript{64} I thank Jeffrey Moriarty for bringing this kind of case to my attention.
other alternatives, the driver occupies an asymmetric position of power with respect to the stranded man. Hence, this case undoubtedly meets the conditions of exploitation.

What the above discussion illustrates is that one treats another badly by benefiting from the injustices that the other has suffered. Whether or not treating someone this way is a violation of her rights is a separate question. In chapter four it will be argued that people do have a right against being placed in an exploitative situation of the stranded man as described above. However, a person does not have the more general right against another benefiting from his injustice if he has at least one reasonable alternative and if the other person offers the exchange on reasonable or fair terms (however that is defined). And so, benefiting from a prejudice is not unjust, though it may be morally wrong for other reasons.

There is one uncontroversial way to benefit not-so-innocently from another’s injustice: that is to accept or purchase stolen goods. But the wrong-making feature of this act lies not in the benefit one receives, but rather in the nature of the act itself. If person A steals goods from person B and then gives or sells those goods to person C, person C not only receives a benefit from A’s initial action, but also herself violates B’s property rights. She wrongs B when she keeps property that rightfully belongs to B. Of course, if C does not know that B has a rightful claim to the property purchased or received from A, then person C is innocent, though she still owes an obligation to return the property she possesses, property over which she has no right, to person B. However, if she can be expected to have known that such goods were wrongly acquired then she shares A’s guilt. But it is not the benefit C receives that makes the action wrong; it is rather the act of depriving B of property over which B has a rightful claim. Again, consideration of this case does not change the judgment that benefiting from a harm done to another, of which one is innocent, does not amount to treating that person unjustly.
The conception of harm that includes a duty not to benefit from an injustice is also problematic from the perspective of natural rights liberalism in that it amounts to claiming that individuals have a positive duty to correct an injustice when they interact with a person who has suffered one. This kind of duty strongly resembles a positive duty to assist others in need, a duty that is considered non-enforceable by adherents of natural rights liberalism. Besides, it would seem odd that such a duty would only arise in cases of interaction since one could simply avoid incurring a duty by avoiding any interaction with the poor. In other words, simply by hiring the non-aboriginal driver one could avoid incurring the duty to compensate a person for another’s injustice. This notion may be devastating for the world’s poor if it led people to refuse to purchase goods made from cheap labor. Rather than secure higher wages for such workers, it is more likely that those workers would become unemployed, being worse off than before.

V.ii. Welfare Rights and Harm

Another conflation occurs in Pogge’s writing between positive and negative rights. Pogge purports to be giving a theory about how one’s negative duties not to harm others commit one to affect substantive changes in the global institutional order, including global redistribution. But the novelty of his approach is weakened if negative duties simply amount to duties to satisfy certain positive rights. It is usually thought that positive rights are entitlements to certain goods or services secured by others and that negative rights are claims against others’ interference with one’s life and property. And these rights are generally thought to correlate with both positive and negative duties such that positive rights correspond to positive duties and vice versa with negative rights and duties. However, when outlining his theory of human rights, Pogge includes several claims which could not be classified as non-interference rights. These claims could,
rather, be characterized as welfare rights: rights to goods that are taken to be necessary for a
decent life. Such entitlements may include rights to an income, rights to healthcare and
education, and so on. And so he writes that, “Though disagreements about what human
flourishing consists in may prove intractable, it may well be possible to bypass them by agreeing
that nutrition, clothing, shelter, certain basic freedoms, as well as social interaction, education,
and participation are important means to it, which social justice must secure for all.” But this is
precisely the disagreement that cannot be bypassed since it is the very disagreement that sets
proponents of solely negative rights apart from those who advocate more substantive positive
rights.

It may not be illegitimate in certain contexts to conflate the notion of positive and
negative rights; the distinction is far from unproblematic. The problem here is rather that if
Pogge means to be arguing, from classical liberal principles, that global poverty is unjust, he
must also adopt the framework of rights that underlies those principles. Such a framework does
not include substantive entitlements to certain goods, primarily because in order to secure those
goods, others must provide the means with which to do so. Demanding that people secure goods
for the benefit of others is generally prohibited by the principle of self-ownership and its
underlying value, the value of self-government understood as the value of living one’s own life
by pursuing projects of one’s choice in coherence with one’s life plan free from others’
unjustified, coercive interference.

In response to this concern, Pogge asserts that he conceives of human rights not as rights
to be supplied certain goods by others – positive rights – but rather as rights that any institutional
order ought to make secure. Hence, he writes:

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I do not endorse the “maximalist” view that a human right to X gives you a moral claim on everyone else that they each do whatever is in their power to ensure that you have X. Instead, I defend an institutional understanding according to which a human right to X gives you a moral claim against all others that they do not harm you by cooperating, without compensating protection and reform efforts, in imposing upon you an institutional order under which you lack secure access to X as part of a foreseeable and avoidable human rights deficit.\(^6^6\)

He conceives that there is a significant difference between positive duties for individuals and positive duties for institutions. In other words, what is usually conceived as a positive right to X – the right to be supplied X by others – Pogge considers a negative right to X – the negative right not to live within an institutional order in which one’s access to X is insecure. And, at first glance, this seems like a plausible distinction. But upon further reflection one can see that this difference is shallow for the idea is that if one cannot secure X for oneself, presumably there must be some sort of alternative mechanism which secures one’s access. This mechanism could secure access for X in one of two ways – by producing X itself or by taxing others in order to supply X. Since the mechanism in this case is the institutional order, which is not a productive entity, the access would have to be secured by redistributing resources from some people who have access to X to those who lack such access. This redistribution is not beyond justification, but not as a typical negative right; that is, a right that would be endorsed by a ‘minimalist’ theory of justice, such as natural rights liberalism.

According to natural rights liberalism, that one has a right not to be forcibly denied access to X – as long as X is open for acquisition – does not entail that one has a right to X.

\(^6^6\) Pogge, “Severe Poverty as a Violation of Negative Duties,” 67.
Hence, although one has a right not to live under institutional rules whereby one is forcibly denied the opportunity to acquire goods such as education, healthcare, and adequate food and shelter, one does not have the right that these goods by supplied for free or by others. If the institutional rules are such that one lacks access to these things not by force, but rather by circumstance or luck, then while this is unfortunate, it is not unjust. The injustice of lacking these goods relies upon an underlying theory of rights that is not adopted by natural rights liberalism and the three principles of justice outlined in the previous section. It is rather to think that if one cannot secure such goods on one’s own, they must be supplied to him from the property of others. These are positive rights whether or not their duty holders are each individual or the collection of all individuals, namely those who live under the same institutional order.

Natural rights liberalism may entail some positive rights, but these rights cannot be established simply by stating that one has them; they must be justified by the values natural rights liberals maintain, namely that of self-ownership and individual liberty or self-governance.

And so, if Pogge’s purpose is to convince classical liberals that they are harming the global poor, he must convince them by arguing that their own principles are violated. That is the purpose of this dissertation. Pogge, however, misses the mark when he conflates benefiting from harm with contributing to it and by, without justification, mixing in positive rights to certain resources with the negative rights against interference characteristic of classical liberal theories. Instead, the purpose in this dissertation is to take up what Pogge started. It will assume, with Pogge, that institutions and individuals have negative duties not to harm others, that harm consists in violating people’s property rights over themselves and over their resources, and that some amount of global poverty is the result of such rights violations. While the conclusion offered here will be markedly different from the ends Pogge hopes to achieve, it is the purpose of
this work to convince natural rights liberals that poverty is something about which they ought to be concerned – at least the poverty that is the result of rights violations – and to convince those who doubt that natural rights liberal theories can adequately take seriously the issue of global poverty that it offers just as serious solutions to the problem of poverty as do egalitarians.
CHAPTER II. VIOLENT HISTORIES AND PRESENT INJUSTICE

INTRODUCTION

One could imagine a world in which there was a finite amount of resources, which once consumed were thereafter irreparable, such that one person’s wealth necessarily truncated the amount of wealth another could enjoy. In such a world, one could only get rich by depriving others of goods or resources. While such a world is certainly conceivable, it is not the world humans, in fact, occupy. The actual world is, rather, one in which new resources are continuously discovered and created and where the proverbial economic and welfare pie is constantly enlarged. In the actual world, it is both possible and, indeed, common that people better themselves while making no one worse off. Acknowledging this, however, does not mean that people never better themselves at others’ expense whether inadvertently or intentionally; rather, it means such zero-sum behavior is not the general rule. Some people hold the belief that while much of the affluence that currently exists was made fairly, produced by people who worked hard and earned the wealth they currently possess, at least some of the wealth — or, rather, at least some of the poverty that exists — is the result of theft, pillage, and other sorts of property rights violations.

This chapter will address the claim that a significant amount of global poverty is unjust on the grounds that it is the direct result of property rights violations on a global scale. The idea here is that while autonomy and self-determination are now touted as rights that all peoples and states enjoy, they were not always so respected. In particular, some have pointed to a specific part of history as a source of systemic injustice: the emergence of the global community, commencing with colonialism, followed by the geo-political and self-interested demarcation of
individual states, and continuing until decolonization following World War II.\textsuperscript{67} Colonialism – the systematic domination by one country over another as practiced predominantly by the European powers in the 19\textsuperscript{th} and 20\textsuperscript{th} centuries – is charged with involving pervasive violations to the principle of voluntary transfer. And it is further charged that these rights violations have caused the existence of poverty that currently exists. Thomas Pogge, for example, writes, “The present circumstances of the global poor are significantly shaped by a dramatic period of conquest and colonization, with severe oppression, enslavement, even genocide, through which the native institutions and cultures of four continents were destroyed or severely traumatized.”\textsuperscript{68}

As the argument goes, since the current distribution of property is a direct descendent of this deplorable past, the existent poverty must thereby be unjust. The purpose of this chapter is to argue that this is not necessarily so, that is, it is not necessarily the case that people who currently live in poverty have suffered an injustice. For in order for them to have suffered an injustice, they themselves would have to have been wronged, that is, their rights must have been violated. And it must be the case that someone has wronged them, such that someone has violated their


property rights either over themselves or over their extra-personal property. This chapter argues that these conditions cannot be met by distant historical events.

This chapter does not deny that property violations and other atrocities against personal property occurred in the past. That is an empirical matter that can only be determined by uncovering the historical facts. The problem this chapter faces is more complicated than the discovery of historic violations, for in order to conclude that the present population has unjustly suffered from these wrongs, it must be known that the rights of the current generation have been violated and that there are those alive that owe them compensation. So, there are several questions that must be addressed: (1) Are there people currently in existence who can be held responsible for the rights violations that occurred during colonialism? (2) Have certain contemporary people or groups benefited unjustly from these rights violations? That is, do some people now have more than they are entitled to because of previous unjust actions? And last (3) Have certain people or groups in existence today suffered an injustice as a result of these historic transgressions?

Before beginning, the notion of harm must be clarified. As outlined in chapter one, to harm someone is to contribute to the violation of that person’s rights. One way to contribute to a rights violation is to wrongly accept the gains of another’s loss. This is not the same as benefiting from another’s misfortune; rather it is to accept and hold property that rightfully belongs to another. And so, the complaint that is being made here regarding the purported transgressions of colonialism can be understood as the claim that some people are unjustly deprived of property that belongs to them, property which another illegitimately possesses.

One way to determine whether a person has been unjustly deprived of something or has suffered an injustice is to trace the property rights of a particular object to its rightful owner and
determine whether that object is in fact in the possession of the legitimate owner. This, however, would be next to impossible on a grand scale, for even some contemporary rights claims would be hard to trace due to the lack of proper records and accounting. Also, it is likely that searching deep into the past would reveal multiple unjust transfers. In short, these considerations reveal that historical ownership claims may be opaque in many ways.

Another way one can determine whether a person has suffered an injustice is to ask whether the person is worse off as a result of another’s action than she otherwise would be. This is not entirely satisfactory since a person’s rights could be violated even though under certain descriptions it would be hard to classify her as worse off. One could imagine an overweight, perpetual dieter kidnapped and locked in a room with a treadmill, rice cakes, and water. Even if she escapes 20 pounds lighter and is generally pleased with the results, it does not mean that her rights were not thereby violated by the forced imprisonment. She may not press charges or demand compensation, but it does not mean that the perpetrator’s actions are *ex post facto* legitimate as a result. And so, being made worse off is not a necessary condition for determining whether an injustice has occurred. And it is also not a sufficient condition for determining whether a person has suffered an injustice since a person could be made worse of by another’s action even when that other was perfectly permitted to act as he did. So, for example, one can imagine that a competitor opens a restaurant right across the street from your diner. As a result of this, your diner loses business and your profits significantly decline. While in this case you are surely worse off than you were before your competitor opened, you have just as surely not suffered an injustice. The competitor does not perform an illegitimate action by opening his restaurant. And so, determining whether someone has been made worse off as a result of certain actions may signal an injustice, but it need not always do so.
Nevertheless, since it can be presumed without much objection that at least some injustices in fact occurred as a result of colonialist policies and actions, it will be helpful for determining whether contemporary persons or groups are victims of these injustices to ask whether some people are worse off today than they would otherwise have been if these injustices had never occurred. And since the concern is whether existent poverty is unjust as a result of these transgressions, it is possible to ignore any potential cases in which a person suffered the injustice but was instead made better off.

Determining whether persons have suffered an injustice as result of historical rights violations, though, is only half the story. For an injustice is a two-part concept – there must be a victim and a perpetrator. In the case of historic harms, both the perpetrators and the victims are presumably dead. While this neither changes the nature of the act nor repudiates the victims’ suffering, it would seem to repudiate the victim’s (or his descendant’s) claim to compensation. For one cannot demand compensation from an innocent bystander no matter how badly one suffers. And so, since presumably if some existent poverty is unjust, the relevance of this finding will be that it deserves some kind of remedy, and it does thereby matter whether there is anyone alive who is responsible for the past damages. So, not only is it important to determine whether anyone suffers an injustice as a result of some past injustice, it is equally important to uncover whether there is anyone alive responsible for the remedy. Otherwise, claiming that such poverty is an injustice is a blunt sword to wield.

This chapter proceeds, then, by examining these concerns in turn. The first section takes up the concern regarding the perpetrators. While almost all of the actual actors have quit the stage so to speak, some have claimed that there is a kind of collective responsibility that a society bears for its government’s actions, even when these actions belong to its predecessors. And so,
this section examines the plausibility of collective responsibility and, in particular, the validity of transgenerational collective responsibility.

The second section addresses a similar issue which is that, even if it were plausible to deny the tenability of transgenerational collective responsibility, it would still be appropriate to ask whether anyone or group possesses more, as a result of the past injustice, than he or it is entitled to possess as a matter of right. So, this section asks whether some people or groups forfeit their possession of some amount of property as a result of having received goods that they do not have rightful claims to, that is, whether anyone has duties of restitution for being in possession of wrongfully transferred property.

The third section takes a different turn and asks, instead, about the victims. Even if there are no responsible perpetrators, while this would mean that no one owes, as a matter of enforceable justice, compensation to anyone, it would still be relevant to know whether any people living in poverty today suffer an injustice as a result of these past actions. While this would not incur an enforceable obligation on anyone to make amends, it would make ceremonial reparations seem more appropriate. In other words, even if it were true that the average taxpayer in the United States was not responsible for the internment of the Japanese during World War II, it may still make practical sense to offer reparations to the victims of a wrong, as a symbol of the regret the nation vicariously felt for the harm done to these individuals. It may not have been a matter of obligation or enforceable justice, but it may certainly be a praiseworthy gesture. And so, section four asks whether there are those who have suffered injustices as a result of colonial wrongs and whether these injustices call for enforceable remedy.

This chapter concludes that historic rights violations have a kind of moral statute of limitations on their enforceable remedies. The reason for this is that there is an insurmountable
identity problem involving both the perpetrators and the victims. Contemporary persons can
neither be held responsible for their ancestor’s sins nor suffer injustices perpetrated on their
preceding kin. This is not just a theoretical ‘philosopher’s’ problem, but is a real problem for
enforceable justice. Human action is relevant; people are responsible only for their own actions
and the actions of those under their care. Because of this, it would be unjust to make others
forcibly sacrifice things of value to them in order to make amends for another’s sins and it would
be unjust to relieve persons and groups of their own responsibility on the grounds that their
ancestors or ethnic group had historically been treated unjustly. One only has a justified claim if
one has oneself been treated unjustly and this is largely not the case as a result of historical
wrongs. In other words, persons are largely not treated unjustly because of the facts of history.

In short, in view of these identity problems it cannot be established that most poverty in
the world today is unjust on historical grounds. This is not to deny that some poverty may be the
result of some historic rights violations. Nor is it to say that restitution for stolen goods is never
called for; indeed, it almost always is. When a victim and perpetrator can be identified, or when
one illegitimately holds stolen property, the one must make the appropriate amends to the other.
The argument made here is that one cannot say that a significant amount of the poverty that
exists today is the result of historic harms, such that it is unjust on these grounds.

I. TRANSGENERATIONAL COLLECTIVE RESPONSIBILITY

To see the force of the aforementioned moral statute of limitations, it is helpful to begin
with the idea of transgenerational collective responsibility. The reason for this is that while no
individual perpetrator of the trans-Atlantic slave trade or colonial expropriator of East Asian or
African natural resources is still alive, the institutions under which such individual agents were
acting are still in existence. Namely, the various colonial powers – largely the European countries – are still in existence. But, of course, the membership of those institutions has evolved; there has been a so-called cast change. So, the important question becomes whether it is reasonable to hold those currently existing citizens of the former colonial powers responsible for the actions of some earlier members of their shared institutional structure. If it turns out not to be reasonable to do so, one part of the moral statute of limitations will be established – that transgenerational collective responsibility is unjustified and that people today cannot be held morally responsible for the transgressions of preceding peoples.

Before the question of transgenerational collective responsibility can be broached, the topic of collective responsibility in general has to be examined. The notion of responsibility implicit in collective responsibility is parallel to the notion of individual responsibility. Responsibility could mean one or more of three things: (1) it could mean causal responsibility, such that there is a causal chain connecting the action of a person to the event in question; (2) it could mean accountability or liability, such that even if one is not causally responsible for bringing about some action, one can be liable anyway for compensation; or (3) it could mean moral responsibility, such that it is proper to assign moral praise or blame to the person or group. These three meanings are independent since it is perfectly plausible to hold one entity causally responsible for some event and yet deny that the same entity is accountable or morally responsible for the event. This is the judgment typically made when an animal or child engages in some harmful action. In these cases, it is typical to hold a parent or animal owner accountable for the actions of his child or animal. Yet no one would claim that the owner or parent was also

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causally responsible for the event. It is also plausible to hold a person accountable for some wrong and yet assign no moral responsibility to that person. Again, in the case of children or animals, if an animal causes some harm the owner may be accountable for the damages and still be free of moral blame (if the owner did not act negligently, for example). The question is whether or not such senses of responsibility can be attributed to collectives and if so, on what conditions.

The literature regarding collective responsibility comprises two main schools of thought: those that believe collective responsibility is, as a whole, tendentious on the ground that collectives cannot be anything over and above their particular members and those who believe that groups can and often are responsible for the actions a few of their members commit. For the first school, those who hold collective responsibility to be problematic, the collective can be responsible if and only if the members of the collective are individually responsible; the central belief being that collective responsibility is necessarily distributional.\textsuperscript{70} For it is widely accepted that a person can only be responsible for his own actions or failure of action, in cases of negligence for instance. This school admits that people often speak of groups – teams, casts, families – as if they were agents capable of intentional action, but they maintain that such talk is metaphorical and is usually done in a context in which responsibility does not seem to matter, that is, where nothing hangs on the assignment of responsibility. So, for example, a person might say that the cast of a movie was responsible for its box office flop without implying that

each individual cast member was responsible for the failure. But in this kind of case, no compensation or moral blame is appropriate and so, responsibility is not performing a crucial function in the judgment. Nevertheless, adherents of this view would claim that the attribution of collective responsibility to a group as a basis for compensation or blame is a sloppy use of language.

There are other theorists, however, who maintain the view that collective responsibility is a viable notion, even when it is not the case that each individual is personally responsible for the beneficial or harmful action. They aver that when certain conditions are met, groups can be held responsible for actions that only a few individuals actually commit. The idea here is that when it comes to collective responsibility the case is similar to the parent-child or animal-owner relationship in that causal responsibility is not considered necessary for attributing responsibility, namely liability. Indeed it is almost never the case that each member of a collective plays a role in causally bringing about the harm in question. Rather, the senses of responsibility attributable to groups are that of liability or accountability and moral responsibility.

Joel Feinberg has classified the different concepts of liability attributable to collectives. These are: vicarious liability, collective liability, liability with non-contributory fault, and contributory group fault. Since this chapter is interested in whether or not citizens can be held accountable for the actions of states, each of these concepts will be examined in light of whether

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72 For the purposes here I ignore the discussion of group intentionality or group agency, though it does play a large role in the view of those who accept collective responsibility. This sort of attribution relies on a metaphysics and phenomenology alien to the sort of moral individualism presumed by the theory offered here.

the citizen body meets the conditions required to establish collective liability. The ultimate aim, however, is to evaluate whether or not current generations can be held responsible for the past actions of states and so, if it turns out that a particular kind of liability can make sense of collective citizen responsibility for state’s actions, it will then be explored whether it translates into transgenerational responsibility.  

_Vicarious Liability_

Vicarious liability is a kind of collective responsibility whereby “an actor is liable for someone else’s tortuous conduct.” It is in this sort of case that one person is assigned causal responsibility but another assigned liability, as in the cases of the parent-child and animal-owner relationships. This sort of liability is also seemingly appropriate in the context of the employer-employee or principal-agent relationship. In the case of the employee and employer relationship, if an employee acts within the confines of his duties and commits a tortuous action, the employer can be held liable for the employee’s action. Similarly, an employer can be held liable for an employee’s actions committed outside the scope of his formal duties if such actions should have

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74 It is ambitious to think that an adequate review of this topic is possible in the few pages allotted here. It is doubtful that anyone will be entirely convinced by the rejection of citizen responsibility for state action, but there is certainly reason to believe that if one accepts the moral framework and underlying values of natural rights liberalism, with its adherence to moral individualism, one should also reject this sort of collective responsibility or liability.


been anticipated upon hiring the employee or at some time during his employment. This kind of vicarious liability is called negligent hiring, retention, or supervision. Likewise, in the case of the principal-agent relationship, the principal can be held liable for an agent’s tortuous action if the agent acted wrongly while performing his duties as an agent or if the principals should have foreseen the agent’s potential to commit such actions.

The concept of collective responsibility for wrongs committed by governments may initially seem to cohere with this employer-employee or principal-agent model of collective responsibility. After all, the citizens of democratic governments supposedly “employ” government agents by voting for them, and the agents purport to act in the interests of their constituents. However, this model is largely metaphorical when applied to any actual government. The employee-employer relationship seems to assume that there is some kind of direct control or supervision over the actions of the employee, supervision over which the employer is responsible. The control that citizens have over their delegates, once elected, is far from direct. In fact, there is very little oversight for delegates’ actions and there is an extensive degree of obscurity between the ballot box and the decisions politicians make in the course of government procedures. Furthermore, delegates are not chosen by consensus but rather by majority rule and so it is relevant to ask just who the principals of this agent are. While not every company hires their employees by consensus and yet may still be held responsible for the negligent actions an employee commits, it is generally not the case that a minority of company executives have explicitly asked that the employee not be hired. This is exactly what often occurs, though, for those who explicitly choose not to vote for a particular delegate. And so, we may ask whether those people are truly responsible for the delegates’ actions. In short, a

77 Ibid.
government is not a business in the relevant sense and the citizens are certainly not the employers of the government in any relevant sense. Someone will be elected even if all show potential for negligent action, unlike the case of companies who may opt to hire no one if the candidate pool is unsatisfactory.

There is a further issue that makes the actions of governments not adhere to this model, which is that if an employee begins to exhibit potential for negligent action, the employer may fire the employee, thereby relieving its liability for the employee’s future actions. But if one’s delegate performs an action over which one disapproves, one cannot ‘fire’ one’s delegate until the next election before which the delegate could engage in further wrongdoing, and even then one person does not act in concert with all other citizens who may reelect the negligent or wrongdoing delegate. As attractive as the principal-agent relationship might seem as a description of the relationship between citizens and states, it is little more than metaphorical. Hence, it is unlikely to provide a compelling case for citizen responsibility when governments do wrong.

There is certainly disagreement about this, however. David Miller, for example, writes, “Here [in democracies] the policies pursued by the state can reasonably be seen as policies for whose effects the citizen body as a whole is collectively responsible, given that they have authorized the government to act of their behalf in a free election.” And he adds, “And even where the consequences flow from patterns of behavior that are not the direct result of political decision, the patterns of behavior are open to democratic control.” What he fails to acknowledge is how indirect this control actually is. It is difficult to see modern democratic

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79 Ibid, 260-61.
elections as real choices or real instances of authorization when, in many cases, voting is compulsory and when it is often the case that one’s vote is cast in favor of “the lesser of two evils.” Unlike the case of the employer or the principal, who may opt not to have an employee or agent if no candidate is desirable, the political process does not leave open that option. Hence, someone will be chosen whether or not anyone in particular authorizes that person to act on her behalf. It is hard to imagine the choice of the lesser evil as a kind of authorization. Further, even if it were plausible to count votes as authorization, one could hardly count voting against someone as authorization. Yet Miller attests to the contrary when he writes, “Nor, if the group has a formal procedure for reaching decision, will voting against the action or policy in question necessarily exempt you from responsibility.” His reason for thinking this stems from his view that democratic governments reflect the beliefs of nations, that is, of groups of people who belong to a recognizable community. He argues that enjoying the benefits of nationality or community membership comes with the price of collective responsibility for national or community beliefs and the actions that stem from those beliefs. And this is true, he maintains, even if one disagrees with any particular belief or action.

The problem with this view is that citizenship is neither chosen nor voluntarily entered into. One is a citizen or a member of an ethnic or national community whether one wants to be or not. And while it is surely possible to take active steps to embrace one’s citizenship, ethnicity, or nationality, it should also be possible to avoid it, at least on a normative level, if not also on the descriptive level. And, avoidance should not require too great of an effort if acceptance presumably does not. If nationality is to bind people both for good and for bad, then such

80 Ibid, 254-55.
nationality must be normative and not descriptive. Normative nationality would require stricter conditions in order to maintain that a person is a member of that community or another.

Citizen responsibility for state action on the grounds of vicarious liability would, then, certainly not pick out every citizen as responsible. Just as the notion of political obligation on the grounds of received benefits is problematic so is the notion of community solidarity on such grounds. If there is no option to opt out of such a scheme, then one cannot be held accountable for the actions of the group that one would opt out of if such option were available. This does leave open the possibility that many willing members of a given community or citizenry can be held responsible for the actions of the state or community leaders, especially when the community leaders act in accordance with the prevailing public opinion. What it does rule out is indiscriminate collective responsibility on descriptive, rather than normative, grounds.

Whether or not this model of collective responsibility applies to communities over time, that is, whether or not some citizens or community members can be held responsible for wrongs committed by their past members is an independent question. And this question is complicated by the fact that the nature of the agent has changed over time: what were once almost universally autocracies or aristocracies have become democracies. Surely this matters in holding people today responsible for the actions of past governments. And it is consideration of this that has led David Miller to claim that the responsibility does not fall on being a member of a continuous state, but rather on being a member of a continuous nation. A nation, for Miller, is defined as a “group with a common identity: belonging to the nation is partially constitutive of the identity of each member;” further, they are “groups of people who feel that they belong together because

81 Ibid, 257.
of what they have in common.”

What they have in common is supposed to include, “a public culture, a set of understandings about how their collective life should be led, including principles that set the terms of their political association . . . and guide, in broad terms, the making of political decisions.”

Nations are “groups that recognize special obligations to one another, so that in that respect they are not like groups formed on a contractual basis to realize the predetermined aims and objectives of the members, where the reason for becoming and remaining a member is entirely instrumental.”

Lastly, a nation is such that “the continued existence of the nation is regarded by its members as a valuable good, so that even if we could imagine the instrumental benefits of membership, such as personal security, being provided in some other way, they would regard with horror and dismay any suggestion that the nation should be disbanded . . . .”

Once again, if nations can be held responsible for what a few of their members do, such as their leaders, then it is reasonable to ask what groups in actuality could meet the conditions set out for nationhood. For surely the United States, as a political unit, is not a nation in this sense. Some people may feel that being an American is part of their identity, that they share an understanding with other American citizens, that they owe special obligations to such people, and that being a member of the group is an intrinsic good such that disbanding the group would be more than just an inconvenient thing, but it is certainly not the case that all, of even perhaps most, do. Much the same can be said about many Western societies; societies in which individualism is held up as one of the highest political values as opposed to some sort of communal solidarity.

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82 Ibid.

83 Ibid.

84 Ibid, 257-58.

85 Ibid, 258.
Even if nations construed in this manner do exist with greater frequency than has so far been admitted, it is still reasonable to question whether nations can be held responsible for the actions of their previous members. If one considers European nations as former colonizers, most of the governments comprising such nations were aristocracies where only a privileged subset of people controlled the decision making apparatus of the state. And, of course, that subset is currently dead. Further, it is hard to maintain that the current members of any nation share with past members a public culture or understanding of how their collective political life should be led. After all, the political culture will have changed dramatically in most cases and no current generation shares a collective political life with people who are now dead. And so, even if they share similar identities and cultural history, it is hard to link them together in communitarian terms as having a kind of solidarity. Similarly, it is questionable whether current generations see themselves as owing special duties of obligation to their ancestors. While it is certainly the case that people may take on historic responsibility and assume a sense of guilt for what was committed by their ancestors in the past, such responsibility will be a matter of voluntary consent and would not apply generally to all members of a collective. The opposing view, that one need not consent to take on this responsibility in order to nevertheless incur it, relies on a communitarian intuition that all members of a nation – past and present – share in the fate of each other such that pride and guilt for others’ actions, even distant others, is part of the very identity of individuals. But this sort of justification is opposed to the sort of moral individualism that underlies natural rights liberalism.

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86 This intuition is endorsed by David Miller in *National Responsibility and Global Justice*, (Oxford University Press, 2007), 141.
Both David Miller and Janna Thompson argue that it is justifiable to hold the current cast that comprises nations responsible for what some previous cast members committed even if the agents performing the actions were states with different political organizations.\textsuperscript{87} Thompson, for example, argues that there are special obligations that transcend generations. She argues that if we can make sense of holding current nations responsible for treaties made by their former members, then we should be able to make sense of holding current members responsible for the wrongs done by their former members. This argument assumes, however, that nations actually do have such obligations. But this is not necessarily the case. States, for example, may voluntarily take on such obligations for prudential reasons, considering, for example, that one is likely to face negative repercussions in future agreements if one fails to honor past ones. But, this does not mean that any state \textit{must} take on such obligations. Similarly, some states may take on the responsibility of past injustices, in terms of making official apologies, for example, but it also seems that no state is required to do so. In fact, such apologies may serve a very useful purpose, but that purpose will be forward looking, as a way of paving the ground for future interactions, rather than as backward looking, as cases for reparations are usually framed.

Miller, on the other hand, makes his argument by appealing to the principle of inheritance; he says that since most nations accept that people can inherit their ancestor’s resources, they should also be able to inherit their debts.\textsuperscript{88} He takes this one step further by saying what is true of individuals is true of nations; that is, he claims that since nations inherit territory, political institutions, and resources from the past, nations can inherit liability from the


\textsuperscript{88} Ibid, 150-58.
past as well. The first problem with this is that it is unclear how nations inherit anything over
and above what individuals inherit. In other words, anthropomorphizing nations runs counter to
ontological individualism, and if nations inherit anything it is simply the aggregate of what
individuals inherit. But, putting aside this disagreement, his argument seems to be similar to
Thompson’s in that he relies on the idea that if a nation can inherit policies and institutions from
the past, it inherits the good with the bad. His argument is that if a nation can inherit obligations
to continue unfinished projects that are beneficial to the nation, then it can also inherit
obligations to make right previous bad policies or actions. Also like Thompson, Miller
assumes that nations do have obligations to fulfill promises made by the past; yet, it was noted
above, while nations may have self-interested reasons to fulfill promises and abide by treaties
made in the past, there may be no moral obligation to do so. And if there is no obligation to
accept the benign policies of the past, there is also no obligation to accept the bad policies.

In short, there are far too many problems with trying to stretch the notion of vicarious
liability, as embodied by the principal-agent relationship, to hold the current citizens of nations
as the principals, whose agents were governments acting before their time. But even if the
notion could be so stretched, it is not the case that we can hold all citizens of the former
colonizers responsible for what the colonial powers did, since the previous analysis applies only
to those who conceive of themselves as comprising a national community that exists over time.
Such a communitarian view is often rejected by advocates of liberalism, the latter view being the
predominant one within the former colonizing countries.

89 Ibid.
Collective Liability

A second kind of liability that applies to groups is collective liability. Of this kind of liability Feinberg writes:

Under certain circumstances, collective responsibility is a natural and prudent way of organizing the affairs of an organization, which the members might well be expected to undertake themselves, quite voluntarily. This is true only of those organizations where there is already a high degree of *de facto* solidarity. . . . A group has solidarity to the degree that its members have mutual interests, bonds of affection, and a “common lot.”

This type of liability is typified by corporations or groups comprised by voluntary membership, like teams or clubs. This sort of liability is different from the first sort only insofar as, while the first sort applies to groups organized in a principal-agent relationship, the latter refers to groups organized as joint enterprises. Corporations, for example, are joint enterprises in that they are joined by a common end and a set of shared practices. Similarly, voluntary organizations like churches or clubs can be seen as joint enterprises with common ends and beliefs.

Legally there have been some successful cases in which groups were prosecuted for actions only a few or even one member committed. In one case a corporate board of directors was held collectively liable for a breach that only the Chairman approved and of which none of the other members were aware. 90 In another series of cases involving the Ku Klux Klan, the Klan was held liable for actions committed by a few individual members. 91 According to this

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91 See, for example, *Williams v. Southern White Knights.* 890 F.2d 1166 (1989); *Person v. Miller.* 870 F.2d 655 (1989); *Vietnamese Fisherman’s Association v. Knights of the Ku Klux Klan* 543 F. Supp. 198 (1982). Other cases,
version of liability, the justification in these cases is thought to arise from the fact that these
groups share a joint venture, a common end to which each member ascribes. Part of what makes
this sort of liability plausible is that membership in such groups is voluntary. It is not the case
that only a majority of Klan members share awful beliefs and nefarious goals. Sharing
prejudiced beliefs and the goal of racial purity is constitutive of being a Klan member. Similarly,
being a corporate director requires signing up to take on the liability of the corporation’s profits
and losses, its good decisions and bad. As such, voluntary organizations and business ventures
have a sort of de facto solidarity that makes the notion of shared responsibility tenable, if not
entirely convincing.

This notion of collective liability becomes tenuous the more that solidarity is attributed
to groups that share only very peripheral commonalities, like nations in the purely descriptive
sense as those who share common institutions and cultural history. For one thing, in order for
nations to exhibit the sort of solidarity present in Klan members or corporate bodies, members of
the nation would have to share a common end and a shared set of practices. Similarly, these
shared ends and practices would have to play more than a purely instrumental role in a person’s
life. So, for example, a group of citizens could all have as an end the ability to live in a free and
equal society governed by the rule of law, but for many of these citizens this end would be solely
instrumental; it would be a way such a person can live his own life according to his own life
plans with the least amount of interference from others. This is not the sort of shared end that is
indicative of solidarity. For another thing, nations in the descriptive sense are not voluntary
organizations that individuals must either embrace the values of or sign up for in order to be

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in contrast, such as *NAACP v. Claiborne Hardware Co.* 458 U.S. 886 (1982), argued that “mere association . . . was insufficient to predicate liability.”
counted a member of the group. Nations are in large part comprised of individuals who have simply found themselves in the group without having taken any action to indicate their willingness to be a part of it. Even if there is a set of values they all share, this does not indicate solidarity unless these values play a crucial role in each individual’s life, and not merely an instrumental one. One can even think one’s own country the most desirable place to live, all things considered, and yet feel no sense of shared interest or common lot with other citizens.

This kind of liability, like the former, seems to be an adequate model of collective responsibility only for those groups that self-identify as part of coherent community. But in the highly heterogeneous societies that make up the modern state system, it would be hard to classify its citizens as nations in the relevant sense. There is certainly some amount of patriotism and national pride in every country, but such feelings are not typical in the modern state, particularly the Western liberal states. Furthermore, as in the case of vicarious liability, collective liability based on solidarity becomes more problematic in the discussion of responsibility for historical violations.

In consideration of what might at first seem like an uncontroversial case of national responsibility, one may believe that the citizens of the newly created United States of America exhibited the sorts of shared ends indicative of *de facto* solidarity. In sharing such ends, there would be a case to be made that all citizens shared some degree of responsibility for the existence of African-American slavery. Yet, it would be difficult to argue that even then the citizens of the United States shared a common end in more than an instrumental sense. In fact, the values most emphasized in the American founding were individual liberty and freedom from others imposing their values and ways of life on one. Hence, these values were indicative of a shared lot only in the sense of rejecting the English government and its repression, rather than
any desire to be a self-determined community. Further, it would be hard to include many of those existing individuals as part of a community with a common end since some people – namely, women and the landless – were excluded from political participation. And so, to imagine that even all those who lived contemporaneously with the institution of American slavery shared collective responsibility for its existence is to attribute a \textit{de facto} solidarity with a group that probably did not meet the required standards.

As far as the citizens of the Southern states are concerned, a case could probably be made that such people did conform to the standards of group solidarity, particularly when it came time to defend their rights to hold slaves. But part of what makes it plausible to attribute responsibility to this group is that most of them acted in some way to support this unjust practice, either by engaging in it or by fighting for the right to engage in it. And so, it is probably not the existence of \textit{de facto} solidarity that motivates the attribution of collective responsibility, but rather the fact that the actions of most southerners contributed to the maintenance of the practice.

Collective responsibility for colonialism would face similar problems. It is hard to make the claim that the citizens of England or France shared a \textit{de facto} solidarity with each other. With the class differences that tended to exist in aristocratic societies or, in the case of England, in newly industrialized societies, it is difficult to know what ends were shared between the aristocracy and the working class or between the nobility and the peasants. We might say something different about the political elites and their supporters. Certainly those who championed colonialism relished in the glory of England’s successes. They might even have felt that it was the Englishmen’s duty to civilize those “barbarous” people in Africa and Asia. We may think these people collectively responsible for the wrongdoings committed in the quest for colonial rule. But, again, it is reasonable to ask whether it is the solidarity that is doing the work
in this case, or whether it is because the political elite and their supporters, themselves, engaged in or supported the harmful actions.

If claims of collective responsibility for American slavery or colonialism are problematic even for people who lived during the time of these events, then one could imagine the controversy increasing for transgenerational claims of collective responsibility. In order to make sense of the claims for collective liability one would have to say that there is *de facto* solidarity between generations, such that they have common ends and a shared set of practices. And even if there is a shared set of institutions – for instance, the United States government and constitution – one would have to see this shared set of institutions as playing an active role in a person life and conception of her self. Miller claims that if people feel pride in their countries’ past achievements – the winning of wars, the making of a major discovery, or some other memorable event – then they ought also to feel guilt for their countries past wrongs. He writes, “One cannot, morally speaking, identify with the positive past achievements of one’s nation and take pride in them without at the same time acknowledging responsibility, and the need to apologize, for past actions that were harmful to others.”

This, however, does not seem right. A mother often feels pride when her adult son makes a great achievement and this seems appropriate, but it does not seem appropriate to hold her responsible for the harm her adult son commits. Liberals adhere to the rule that one can be responsible only for one’s own actions or the actions of those under one’s care. Where collective liability is appropriate is when one’s solidarity with the group contributes to the circumstances under which the wrong action is committed. But, pride for a nation’s past achievements, like pride a mother feels for her son’s success, does not make one responsible for the wrongs committed by members of that nation.

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Even if *de facto* solidarity could justify collective liability for contemporaries, transgenerational solidarity is too tenuous to ground responsibility.

*Liability with Non-contributory Fault*

A third type of collective responsibility that Feinberg mentions is liability with non-contributory fault. A typical example of this sort of liability is a case where all drunk drivers are liable for an injury caused by a token drunk driver. All drunk drivers are responsible since each of them places others at negligent risk, even though only a few actually kill or injure a person in doing so. Feinberg acknowledges that it would impractical, if not unjust, to hold all of them responsible for the action done by one, but he maintains they are all responsible in some way for the risk that their action creates for such wrongdoings to occur.

This sort of liability is different from collective liability in that the set of all drunk drivers does not comprise a group with any kind of relationship to one another. Hence, the fact that one person drives drunk does not contribute to another person’s drunk driving. It is this fact that distinguishes this sort of case from cases involving groups such as the Neo-Nazis or Aryan Brotherhood. Whereas the fact that a group of people legitimizes the beliefs one has can contribute to one acting on those beliefs, there is no obvious contribution one drunk driver makes to another drinker’s decision to drive.

In cases of non-contributory fault the individual cases are independent; but the group of them makes the harm more likely since the more people engaging in risky behavior, the more likely harm to another will result. But, even still, while a person could be liable for placing others in risk, he cannot be held liable for a harm another commits. His liability is for his action only. And so, Feinberg is right that while there is a way to consider each responsible for the
harm that is committed, it is in the sense that nothing – no compensation – hangs on the attribution.

This kind of liability is not analogous to the citizen and state relationship. Being a member of a state or nation is not to engage in a kind of risky behavior, precisely because it is no behavior at all. Citizenship is not voluntary and applies to a person irrespective of the actions that person takes, short of emigrating. It may be risky to embrace certain communities, like the Ku Klux Klan or racist national groups, but the collective responsibility that is attributable to such groups is more a result of the contribution their beliefs make upon the actions of others like themselves.

Contributory Group Fault

The last type of liability Feinberg delineates is contributory group fault. This kind of liability is fitting when it is the case that a whole group contributes to the harm, each person performing a part. If one person buys the gun, another stakes out the victim, and yet the third ends up pulling the trigger, all three are responsible for the shooting because each one contributed to the event’s occurrence. This is different from the other types of collective liability outlined above in that, for contributory group fault, one own actions must play a causal role in bringing about a wrongdoing, such that without one’s actions the harm might not have been done.

While there are some uncontroversial cases like the one above, there are others in which it is reasonable to question whether each person is really responsible for certain actions just because they contribute in some indirect way to their occurrence. So, for example, Feinberg asks, “Do I carry my own share of ‘moral guilt’ for the Vietnamese abomination as a
consequence of my payment of war taxes? Feinberg concludes that since taxes are not voluntary, the payment of them cannot be taken as contributing to the harm. This issue became important during the Nuremberg Trials since there were many people who contributed to make the Nazis and their concentration camps possible. Even those who opposed the actions of Hitler and the S.S. officers paid their taxes and worked in bakeries or shops that fed or clothed the Nazis. One could question to what degree one must contribute and how direct that contribution must be in order to hold a person responsible under contributory group fault. Ultimately, the best answer must be that responsibility comes in degrees. It is not typically the case that a gun seller is held responsible for selling a gun to a man who later kills another, unless there was negligence involved. And while the courts have held hotels and bars who serve alcohol responsible for accidents that their patrons cause when it can be shown that the bar acted negligently in doing so, it is negligence that motivates the attribution of responsibility, rather than the mere fact that the bar served the “weapon” used to commit the harm. Paying taxes to a government, however, could not reasonably be seen as negligently enabling its actions, except to a very remote degree. And so, for state action, those held liable under this sort of responsibility must be those who can be reasonably said to have contributed to the harm in question in some intentional way or to have acted negligibly in not preventing the harmful action.

The case for transgenerational collective responsibility cannot be made sense of by appeal to contributory group fault. Under no plausible understanding of causation can citizens in existence today have contributed to the wrong actions committed in the past, before they were

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born. While there were certainly those who were at fault for past sins, there were those that engaged in slavery, expropriation of resources, and the rest, and there were those who benefited, it does not seem justified to hold citizens responsible for what their ancestors did unless they unjustly benefited from such actions in that they now control resources that rightfully belong to another. Hence, it seems that the important question is not: can we hold citizens in existence today responsible for the actions of their governments in the past, as colonial rulers? The question is rather, who has unjustly benefited from past actions; that is, who has more resources than they are entitled to as a result of past misdeeds? The idea of holding collective groups responsible for actions that only a few members commit is controversial enough. But the idea of transgenerational collective responsibility is largely untenable.

II. BENEFICIARIES OF HISTORICAL WRONGS

Even if it is true that no one today could be held responsible for the injustices committed in the past, one could still ask whether the affluence that is concentrated in certain parts of the world is a direct result of these injustices. In other words, one could ask whether the “West” got rich by colonizing poorer countries and whether the injustices committed played a causal role in the inequalities of wealth that exist. This is clearly an empirical question that could only be answered by examining the facts. Unfortunately, there is little consensus on the role that colonialism had either on the affluence of the West or on the poverty in some of the formerly colonized nations. It can plausibly be argued that even without colonialism, the colonized countries would have been at an economic disadvantage compared to the colonial powers such that in order to import technology and other more advanced goods, these countries would have had to export natural resources, much in the same way they do today. And the money and
technology of extraction may have required the sale of such resources-laden opportunities to others. But it can also be plausibly argued that the formation of modern states would have looked different if it had occurred as the result of self-determination rather than third-party demarcation. This self-determined statehood may have been more likely to avoid much of the problems that the former colonies in fact face – conflict, bad policies, tyranny, etc. Similarly, without colonialism the former colonies would have had the opportunity to form institutions that worked for them rather than having these imposed by others from the outside. While this would not ensure that the institutions actually chosen would have been “good” ones in the sense of promoting development and freedom, it at least would have been presented as a chance to “get it right.” The point is that there is really no easy way to determine the effect colonialism had on the economic wellbeing of either the former colonies or colonizers.

It may be that time makes opaque any claims that whole groups of people owe their resources or lack thereof to events that occurred in the past. This opacity does not render all current holdings legitimate simply on the grounds that a certain time has lapsed. Certainly, some people have gained materially from a tarnished past and where particular property holdings – such as land, historical artifacts, and works of art – can be traced to an instance of theft or other property infringement, a case for restitution can be made. What the passage of time does do, however, is assign priority to more recent history. If the historical entitlement theory of property is to have any meaning at all, given an ancient history of property holdings and thefts, transfers and abuses, it must take seriously holdings that have a legitimate pedigree of property transfers within some reasonable span of history. The explanation for this seeming “present possession

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95 For this reason it seems right that the artwork and other material assets stolen from Holocaust victims should be returned to the rightful owners, if they can be found.
“bias” stems from the reasons one has to prefer historical theories of entitlement over outcome orientated principles. Outcome orientated principles of distributional justice require that the distribution of property holdings conform to a certain pattern. The pattern is unlikely to be realized by individuals engaging in consensual transactions and exchange. Hence, in order to realize a given pattern, redistribution must occasionally occur; in other words, the state would have to interrupt the system of voluntary transfers in order to coercively transfer some property between individuals. This sort of required interference is a reason to favor historical entitlement since historical entitlement theories governed by voluntary transfers are more likely to further individuals’ ability to pursue their own projects in accordance with their own life plans. And so, if property has undergone a number of legitimate transfers and if the original ownership of the property is opaque, it seems as if the holdings should remain as they are. But this is the case only if the original ownership is opaque. When stolen property can be properly identified and when there is someone who has a rightful claim to the property, it should be returned. And so, Swiss banks should not be allowed to retain the accounts comprised of money stolen from Holocaust victims, museums may be legitimately required to return stolen art work, but Massachusetts should not be returned to the Mohican or Wampanoag Indian tribes.

Besides, while the effect colonialism had on the wellbeing of either party is not easily discovered, there is reason to think that the affluence of the West is not a direct result of this tarnished past. For more than natural resources, it is having the proper institutions – ones that support both political and economic freedom – that has allowed the West to succeed and others to fall behind. One can see evidence of this by observing the success of some former colonies like Hong Kong, Singapore, and Malaysia. Even in Africa, Botswana is a prime example of a country that, upon independence, chose institutions that supported trade and entrepreneurship.
As a result, Botswana currently enjoys status as a middle-income country, one of the few in sub-Saharan Africa.\textsuperscript{96} The point is that it is far less likely that people have failed to flourish solely as a result of theft; it is far more likely that one’s materially wellbeing is largely the result of human choices. When cases to the contrary can be found, there may be a call for restitution, but such cases are likely to be individual and to not encompass whole populations of people.

The idea of transgenerational liability and restitution is problematic from the side of the perpetrators. Not only is it the case that collective responsibility is itself a controversial concept, but transgenerational collective responsibility is simply beyond the pale of liberal justice, especially as conceived by natural rights liberalism. Furthermore, while it is certainly acknowledged that to accept stolen property is unjust and violates the rights of the rightful property owner, there is always a statute of limitations due to the fact that property changes hands, value is added, and there becomes a point at which the property that once was stolen no longer bears any resemblance to its former image or object. Even within the common law, there are acceptable limits on title searches, before which the claim is taken to be forfeit. Individual cases of restitution can and often should be made, but the blanket claim that the “West” achieved its affluence by theft and subjugation is unjustified. And so restitution claims in order to be justified must be made to particular individuals and not to whole nations of people.

\textbf{III. VICTIMS OF HISTORIC WRONGS}

The previous two sections addressed the obligations descendents of the original perpetrators might have to make restitution for historic harms, but there is the further question of

whether there are any victims of historical harms, such that any existent people suffer an injustice as a result of these harms. As stated in the introduction to this chapter, there is no easy way to determine who suffers an injustice as a result of a historic harm. The only way to even start is to ask whether anyone is worse off as a result of the event than she otherwise would be.97 So, the question becomes whether anyone now alive is a victim of the rights violation that occurred in the past. One could be such a victim if one has less resources than one would have had if such past violations had never occurred.98

This kind of counterfactual claim poses several difficulties.99 The first is that human behavior is not conducted along scientific laws of nature. In other words, humans seemingly act freely, and as such, there are no epistemically obvious causal laws that determine what someone would have done had some event not occurred. A person could have done a number of different things had history turned out differently, so to presume that a victim of theft would have passed down his property to his descendents is just one of the many actions that a property owner could have performed. The second difficulty, and the main focus of this chapter, is that the current descendents, those whose rights are evaluated, might not have existed if not for the occurrence of

97 The other alternative is to ask whether people who would have been alive would be better off than those who are actually alive, but this sort of identity-independent calculation is in direct contrast to rights theories that are identity dependent. See James Fishkin, “Justice between Generations: Compensation, Identity, and Group Membership,” in John W. Chapman [ed.] Nomos XXXIII: Compensatory Justice, (New York University Press, 1991), 85-96.

98 This is not to deny that people can be harmed in a non-propertied way; that is, people may be emotionally harmed or suffer decreases in their self-respect as a result of others’ actions. But these harms, if present, can be reflected in what property they may have had if they had not suffered in these ways. Hence, in theory, we look at the counterfactual that takes all of these factors into account.

certain past events. Since a person’s numerical identity depends on the specific time and other unique factors present when she was actually conceived, imagining what this person might now be entitled to had certain past events not occurred becomes difficult, especially if it would be the case that this particular person would not have been born.

The latter problem was introduced by Derek Parfit in *Reasons and Persons*. There Parfit cites what he takes to be a plausible claim about the identity of a person. As he calls it, the *time-dependence claim*, says: “If any particular person had not been conceived when he was in fact conceived [or within a month thereof], it is in fact true that he would never have existed.”100 If this is true about a person’s identity, then it will also be true that if certain past events had not occurred, some people would not now exist. But if a person would not exist but for the occurrence of a particular event, then as long as the person’s life is worth living, he cannot be made worse off by that event.101 If one considers colonization, for example, the phenomenon

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100 Derek Parfit, *Reasons and Persons*, (Oxford University Press, 1984), 352. The acceptance of the view presupposes the non-existence of Cartesian souls or any other kind of essential feature that makes a person identity independent of the genealogical make-up. Rather, it is to accept a kind of materialist view whereby one’s genealogical make-up makes the person who he or she is.

101 It is interesting to note that the legal system of the United States denies the right that a child might have to file suit against her parent or other facilitator in her birth as a case of “wrongful life.” The reasoning given is that to recognize such a claim would be to weigh the harms suffered by virtue of being born against “the utter void of non-existence” a calculation about which the New York Court of Appeals writes,

> Whether it is better never to have been born at all than to have been born with even gross deficiencies is a mystery more properly to be left to the philosophers and the theologians. Surely the law can assert no competence to resolve the issue, particularly in view of the very nearly uniform high value which the law and mankind has on human life, rather than its absence.
characterized by that name was not comprised of one event, but was rather systemic, and so it is plausible to hold that many, if not all, of the citizens that currently exist in the former colonies would not have existed if colonization had never happened. Hence, according to the previous analysis, colonial abuses cannot be said to have made these current inhabitants worse off.\textsuperscript{102}

Some have objected to this line of argument, faulting it for being counter-intuitive.\textsuperscript{103} But it is not as counter-intuitive (or wrong) as some may think. The current generation of African-Americans whose ancestors were slaves can serve as a useful example. If not for the institution of slavery many African-Americans now alive would never have existed. In order for each to have been conceived, if slavery had never happened, it would have had to be the case that their fathers and mothers united in their native countries, hard enough tasks given the disparate areas from which the slaves originated, not to mention conceived with the same egg and sperm that was actually realized. The chances of this being the case point out the obvious fact that if slavery had never occurred many of the people in existence today would not have existed at all.

\textit{Greco v. United States.} 893 P.2d 345 (1995) in Best and Barnes, Basic Tort Law, 554. The point is that someone cannot be harmed by her birth and she cannot be harmed by something without which her birth would not have occurred.

\textsuperscript{102} This line of argument has been used to argue against reparations for American slavery as well. See Stephen Kershner, “Are the Descendants of Slaves Owed Compensation for Slavery?” \textit{Journal of Applied Philosophy}, 16(1), (1999) and “Reparations for Slavery and Justice” \textit{The University of Memphis Law Review}, 33(2), (2003).

\textsuperscript{103} For example, A. John Simmons writes, “[this] analysis fails, I think, because it involves either: (a) a tacit assumption that a significant injustice necessarily alters subsequent conditions for the conception of offspring; (b) an assumption that the relevant claims always concern identity across possible worlds, rather than some version of the “counterpart” relation across worlds; (c) an assumption that perfect identity of genetic makeup is the single privileged criterion of personal identity; or (d) some combination of these assumptions.” “Historical Rights and Fair Shares,” \textit{Law and Philosophy}, 14(2), (1995), n. 41, 178.
This fact does not change the wrongness of slavery, but it does make the claim that current African-Americans are harmed by past slavery problematic. Descendants of slaves are not harmed, in the sense of suffering a rights violation, by the very fact that slavery existed or by the fact that their ancestors were harmed. If they are harmed in any way, that is, if the rights of the current generation are violated, it is not because they have less than they would have had if slavery had not occurred, but rather because they have less than they would have if racism did not persist. That is, the harm would be one that would be located within a person’s own lifetime.\textsuperscript{104}

Since colonialism, like slavery, was systemic and permeated many people’s lives, it is plausible that many, if not all, of the people currently existing in the former colonies would not have existed if colonialism had never happened. As such, they cannot have been harmed by it. That is, they cannot have less than they are entitled to; there is no counterfactual claim in which the rights violations never occurred and these people had more than they currently do. This is because there is no counterfactual in which the violations never occurred and these people existed; different people would exist in that counterfactual. The only way that their rights may be violated is if they have been unjustly deprived of property as a result of current violations of their rights. But before examining these new claims, it is important to see why some people have found the non-identity claims particularly counterintuitive.

What makes the judgment that one cannot be harmed by past events, in the absence of which one would not exist, counterintuitive is that these judgments seem to imply that one also

\textsuperscript{104} I am not sure if people have a right not to be the subject of racism. Certainly, people have the right not to be subject to discriminatory laws, but whether they have a right not to be subject to personal discrimination in hiring, for instance, is another matter. Settling this question, however, is beyond the scope of this dissertation.
cannot harm future generations by one’s actions. According to the story painted above, it ought to be the case that permanently damaging the environment, such that future people suffer severe health problems, does not violate those people’s rights. This may be counterintuitive because it would seem as though nothing that current generations do can harm or violate any future person’s rights, even if current generations should destroy the world. Even though this counterintuitive result may be true (it would depend on how pervasive the action is, that is, how likely it is to affect the future composition of the world), it is counterintuitive only insofar as one takes the composition of the future generation to be already decided. When moral calculations are made about the riskiness of current actions, insofar as they might violate a person’s rights, they are done so with the assumption that the rights being violated are those of a person whose identity is determined. But, if Parfit’s view of identity is correct, then this composition is not already determined. Since the people who will exist in the future will be glad that it is they that exist and not some other people (as long as their lives are worth living), they will not be harmed or even made worse-off by the choices of the past generation.

There are certainly some ways that the actions of current generations can harm future generations. One can imagine, for example, that a person plants a bomb that will detonate in 100 years. Since the planting of the bomb is unlikely to have much effect on the future composition of the world, this action would definitely violate the rights of those who are then injured by the bomb. These people are the same people who would have existed if the bomb had not been planted and so they would have a legitimate complaint against the perpetrator, if one were still alive. But, for those actions that would affect the future identity of individuals, it is not the case that those actions can violate their rights unless their lives are not worth living. One can, however, judge that some actions are better or worse with respect to future generations, even
though they are better or worse for no one in particular. As Parfit explains, when one is deciding between two possible outcomes, “If in either of two possible outcomes the same number of people would ever live, it would be worse if those who live are worse off, or have a lower quality of life, than those who would have lived.”105 Even though on a rights account, like the one assumed in this dissertation, consequences do not account for the justice or injustice of an action, when no particular person’s rights will be violated (since they would not have existed in the absence of the particular choice) consequences can be used to assess whether the choice is better or worse.

That being said, a person could still object that since on a rights account people have no enforceable reason to act to bring about the better outcome, as long as no one’s rights are violated, there is no enforceable reason why they should choose the better outcome. This may be true. However, just because one may not have an enforceable reason to perform some action does not mean that one has no reason to perform it. While it may not be unjust to bring about the worse outcome, it might be imprudent or uncaring in various respects. After all, presumably one will have descendents that will exist in the future and one might have reasons of care to prefer that one’s descendents be those whose lives are better than one’s whose lives would be worse. And even if one has no descendents, one might still have reasons of care for future people in general, such that one might have reason to bring about a better outcome. So, although one does not have reasons of justice to prefer one action to another, this does not mean that one does not have other moral reasons for preferring a particular action.

What can be concluded, then, from the previous discussion is that actions that only affect future generations (whose compositions have yet to be determined) may be better or worse even

though they cannot be just or unjust. Historical wrongs, however, did violate some people’s rights, and in that way they can be deemed unjust, and not merely bad or worse. But these actions do not violate the rights of the descendants, in many cases, for the same reasons. It is not the case that the current population comprises people who are worse off than they would have been if those events had not occurred – even assuming that current people are in fact worse off than the people that would have existed, which is itself a contestable claim – because the current population would be occupied by different people if certain historical events had not occurred.

George Sher has argued extensively for a version of transgenerational wrongs that can take into account the non-identity problem while still making it the case that current generations have a just complaint against past actions. One of his suggestions is to employ a counterfactual in which a particular event never occurs but in which the same person still exists. The idea here is that the proper understanding of the claim that current generations are owed compensation for the wrongs inflicted upon their ancestors is one in which the person who now exists has fewer holdings that she would have had if some event had not occurred, but where she still existed.106

The problem with this suggestion is twofold. First, there is the initial problem of determining who would now have what if certain events had not taken place. This presumes it can be determined what actions individual people would have taken under different conditions. Such calculations would be controversial at best since human action appears not to follow universal deterministic laws. The second problem is that in order for some events not to have occurred but for the person herself to have still existed, extensive changes would have had to occur in the counterfactual world such that it would diverge greatly from the actual world and hence, would

have much less relevance for current claims. For example, if my grandfather had not been drafted in World War II he might have finished college and had a better job. If that had happened my mom might not have been raised in a poor and abusive household. And then she might not have married the first guy to come along (my dad) and would have gone to college herself. But then I would not have been born. In order for it to be the case that I am still born my mother and father would have to have been united within a pretty small time frame. But that would be very unlikely if the previous events had been different. Hence, extraordinary circumstances would have to be true, circumstances that would be far removed from what the actual world looks like. The relevance of such worlds, as different as they are from the actual world, is highly tenuous.

Another suggestion Sher proposes is a version of a “counterpart” argument. He asks that the identity of the person in the counterfactual where the wrongful event does not occur be a person who is similar to the person who exists in the actual world. In other words, he claims that transgenerational compensation can be made sense of if one asks what a person, relevantly like the person who now exists, would have had if some event had not occurred. The idea is that the person in the counterfactual need not be identical to the person in the actual world; he need only be a “counterpart” of the person in the actual world. The “counterpart” must be someone who resembles the actual person in certain respects. David Lewis, the advocate of counterpart theory, claims there is no necessary distinction between a person with the same ancestral lines but different actions versus a person with similar descriptions but different ancestral lines. He writes:

For instance, consider two inhabitants of a certain world that is exactly like ours in every detail until 1888, and thereafter diverges. One has exactly the ancestral
origins of our Hitler; that is so in virtue of events within the region of perfect match that ended just before his birth. . . . The other has quite different ancestral origins, but as he grows up he gradually duplicates more and more of the infamous deeds of our Hitler until after 1930 his career matches our Hitler’s career in every detail. Meanwhile the first lives an obscure and blameless life. Does this world prove that Hitler might have lived a blameless life? Or does it prove that he might have had different ancestral origins? Lewis concludes that both questions can be affirmed, though in different contexts. It is possible to agree with Lewis and still deny that this is relevant for transgenerational compensation claims. After all, if the question is whether Hitler could have had different origins, the answer would be no if one meant by Hitler, that guy who died in a bunker in 1945. But if one means whether a person who fit the propositional description of the guy called Hitler in this world could have had different ancestral origins, then the answer would be yes. Again, if the question is whether the guy called Hitler in the actual world, the guy who died in a bunker in 1945 in this world, could have lived a blameless life, one might say yes (this would depend on one’s view of the metaphysics of the mind). But if one asked whether a person who fit the description one has of Hitler (the propositional sentences that are true of the actual Hitler), could have lived a blameless life, then, obviously the answer is no. So, depending on the context, the counterfactuals involving Hitler can be either true or false.

But, for questions of transgenerational harms if one asks whether the actual person should be owed compensation for some action just because some person who fit the true propositional descriptions of the actual person (i.e. “is the daughter of x, is the first child of x, is a descendent

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of x), then the answer is no. It does not matter what someone else would have had. It matters what *this* person would have had and this person would not have existed. Hence, *this* person is not owed compensation on these grounds.

The final suggestion that Sher offers is one in which the harm that is supposed to have been done to the current generation is located within that generation’s lifespan. Namely, it is the harm of failing to compensate one’s ancestors. The idea is that if it were the case that one’s parents had been compensated for their parent’s or grandparent’s rights violations, after one was conceived, one would be entitled to more holdings than one currently has. Hence, one employs not some counterfactual story that branches off at the time in the past when the damages occurred but rather looks for certain wrongs that are, “systematically correlated with certain wrongs done *within* the current generation.”

In this way, historical damages are recast as perpetuating current damages and still deserving of compensation. The perpetuating damage is that the historical damage has yet to be rectified. Sher claims the continuation of non-rectification is a current damage. So the proper counterfactual will ask how much better off a person would be now if the historical damages had been compensated to her parents immediately after she was conceived, thereby locating the damage and branching off at some time after the person already begins to exist.

The problem with this view is similar to the problem first mentioned at the introduction of this section. It assumes all the way up the chain that the person originally owed compensation would have passed down the compensation that he would have received. But this is not necessarily the case. In order to argue that a descendant has a moral claim on the property an ancestor would have had, we would have to know what that ancestor would have done with his

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property. This, however, cannot be known. After all, property is exchanged all the time. This might be different for family relics or priceless artifacts which can be assumed, with more accuracy, to remain in the family. Other property, however, is more fluid; it is exchanged, gained, and lost everyday. To assume that certain property would have been passed down to subsequent generations is to assume laws of human nature that there are no reasons to accept. Furthermore, in making reparations based on these assumptions, property would be transferred from someone who may have a legitimate claim to it.

Since transgenerational compensation has been found to be problematic in many ways, it may be more appropriate to ask whether current people have less than they would otherwise be entitled to if certain present rights violations, perhaps left over from the past, did not occur. It is a commonly assumed, both in the West and elsewhere that the lives of those residing in the former colonies – particularly in Africa – are unjustly worse-off as a result of the imbalance of power created in part by colonialism. In what is called ‘neocolonialism’, many believe that the former colonial powers, the IMF and World Bank, and ‘big business’ or multi-national corporations have de facto, though indirect, economic control over the resources and governments of the former colonies. This control, while distinct in kind from political or military control, is not distinct in purpose, or so the argument goes. If neocolonialism really does violate the rights of the inhabitants of the former colonies, then perhaps these claims might be justified.

IV. ARE THE FORMER COLONIES VICTIMS OF NEOCOLONIALISM?

It has been argued above that one way to count the citizens of the former colonies victims of colonial harms is (1) to determine that there exists a counterfactual, sufficiently similar to our
world, but where the same person both exists and has more holdings than he currently does; or (2) to determine that the citizens of the former colonies continue to be harmed by past injustices. It was also argued above that the first condition would be satisfied, if at all, only by singular individuals, but not for whole groups. It remains, then, to examine whether the second condition holds; that is, whether the poverty of some groups is the result of injustices they suffer today, whether or not they are themselves the result of past colonial actions.

The concept of neocolonialism became popular shortly after decolonization and continues to be thrown around today. The idea is that colonialism is more than military occupation and political control; it also involves the economic domination one country can have over another by means of controlling trade rules, by using loans or grants to turn ruling elites into puppets of other governments, and by taking advantage of lopsided terms of trade to exploit natural resources. Despite the use of the words ‘colonialism’ and ‘domination’ it is not yet clear that any of these economic actions are unjust in that they violate people’s rights.

One could imagine a case in which a desperately poor person faces several employers, each of whom offer her a job in exchange for a relatively low wage. She would obviously prefer to be paid more than this amount, but her desperation requires that she accept the at least one of the offers. In this situation, one might be tempted to describe this event as exploitation since the women is desperate and faces lop-sided terms of trade with respect to each of the potential employers. But, as long as the women can make the choice between options and is not offered an amount highly distorted by the asymmetrical relationship, then as long as she voluntarily agrees to the contract, whatever the reasons, she is not unjustly exploited. This case is akin to
most economic relations between wealthy countries or multinational corporations and poor countries.\(^\text{109}\)

While it may be true that the developing world may, due to poverty, have no better choice than to sell their natural resources at a lower price than they may otherwise have agreed to if their economic circumstances had been different, buying their resources at this price does not violate their rights unless the contract was made by force; that is, by threat of violence for failure to comply with the proposition. Further, if the claims made in this chapter are right, then there is no recourse to claims that the “exploitation” is unjust because the West made these countries poor in the first place. For, the West is simply comprised of individuals who had no effect on historical events, and the developing world is made of people who are no worse off then they would have been if colonialism had never happened since they would not have existed. And so, as long as there is no coercion involved, unfavorable terms of trade alone do not make the exchange unjustly exploitative.

Even if lopsided terms of trade do not make trade between wealthy and poorer countries unjust, there are some ‘neocolonial’ actions that are certainly unjust. One of these involves the

\(^{109}\) Not all cases of pejorative exploitation involve injustice, though they may all represent a moral failing of some kind. Feinberg identifies two types of pejorative exploitation that can occur when a person A profits from his relations with person B: “(1) A’s act can be exploitative and coercive, as when his proposal effectively forces B to act in a way that benefits A; (2) A’s act can be exploitative and noncoercive, as when he takes advantage of B’s traits or circumstances to make a profit for himself either with B’s consent or without the mediation of B’s choice at all.” Joel Feinberg, *Harmless Wrongdoing*, (New York: Oxford University Press, 1990), 178. The case involving the poor women and the employer falls into the second kind of exploitation; it is exploitative but noncoercive. The fact that it is noncoercive may not affect the wrongness of the exchange, but it does affect the justice of the exchange. The women’s rights were not violated, though she was taken advantage of. Taking advantage of another may be morally wrong, but it is not always a matter of enforceable justice.
various trade barriers that are enacted against select products from certain countries. One argument commonly made is that the rich world keeps some countries poor by allowing free trade of natural resources but enacting high tariffs on manufactured goods. What these high tariffs do is make it unprofitable for the poorer countries to produce manufactured goods, leaving them with only natural resource extraction and raw materials to export profitably. Since there is a correlation between manufactured exports and higher income, creating barriers to manufacturing acts as a way of keeping countries poor. And indeed the rich world does do this. For example, unmanufactured tobacco faces an average tariff rate in industrial countries of only 1.2 percent whereas its manufactured counterpart faces an average rate of 18.1 percent.110 Similarly, the average tariff rate of animal hides and skins is only 0.1 percent compared to leather’s rate of 2.9 percent and manufactured leather goods with a rate of 7.2 percent.111 The point here is that by engaging in “tariff escalation” and making manufactured goods more expensive for consumers in the industrial world, the tariffs make the manufacturers of these goods less competitive with respect to domestic producers. This effectively keeps the developing world in the business of raw material extraction and out of more industrial industries. Such tariffs, like all trade barriers, violate the rights of both the producers and consumers who each have the right to contract voluntarily with each other for a price mutually satisfactory to each. Enforcing these penalties on producers of manufactured goods in poorer countries not only helps to keep them poor but also violates their rights and the rights of their potential customers. This would count as a form of ‘neocolonialism’ that violates the rights of the poor and helps to


111 Ibid.
make their poverty unjust. Trade barriers and tariff escalation, however, have nothing to do with the history of colonialism. And so, they are not harms that stem from history at all; these sorts of trade barriers inflicted on the poor as a result of their inferior bargaining power are a true example of unjust exploitation since the rich countries use threats and force to maintain them.

So, the conclusion of this chapter is that while some poverty may be unjust as a result of history, it cannot be said that a significant amount of people’s rights today are violated as a result of historical injustices. While it is true that human history is full of atrocities, thefts, pillages, and conquests, many of those events involved people who are now dead. There can be no real victims of these historic harms since no one is actually made worse off because of the past if these events were necessary in order for them to exist at all. While this may leave some critics unsatisfied, it is necessary to remember that at some point in the past all people have ancestors some of which were victims and some of which were perpetrators of wrongs. None of us have pristine bloodlines. And so, unless specific amounts of resources can be traced from their rightful owner to the hands of the one who holds it illegitimately, to try to rectify the past is only likely to create new rights violations.
CHAPTER III. RESOURCE OWNERSHIP AND THE LOCKEAN PROVISO

INTRODUCTION

If consideration of the actual history does not render a significant amount of poverty unjust, it may be the case that a fictitious history does. According to proponents of natural rights liberalism property holdings are legitimate if they have been justly acquired and justly transferred. The last chapter argued that while the history of property transfers has been far from perfectly just, there is reason to adopt a moral statute of limitations that places transgenerational injustices beyond the realm of compensation since remedying them will likely lead to further rights violations. A fictitious history, on the other hand, can show how it is possible to arrive at a distribution of property without violating any of the principles of justice. So if the fictitious history could result in a distribution of property similar to the actual one, then there will nothing inherently wrong with the actual distribution. But, if no history that complies with the principle of original acquisition and voluntary transfer could result in a distribution of property whereby some are vastly wealthy and some extremely poor, then this will indicate that the current distribution of property is unjust.

Since it seems perfectly plausible that the principle of voluntary transfer could yield vast inequalities in wealth without violating anyone’s rights, consideration of the fictitious history will focus on the principle of original acquisition. The principle of original acquisition governs how one person, as opposed to some other, can come to have legitimate claims to certain resources. Chapter one of this dissertation addressed the specific justification of property – that is, it briefly addressed why private property is to be preferred over both positive and negative common ownership of natural resources. The chapter was silent, however, about what sort of
private property arrangement is justified. For private ownership of natural resources is compatible with several different rules governing acquisition, each of which would change the resulting distributional outcome. For example, it could be that property may be acquired unilaterally and in unequal shares on a first come, first serve basis, but it could also be that property is only legitimately acquired in an amount that leaves an equal share for all others; further, it could be that property can be acquired only in the amount that leaves some for others, though not necessarily an equal share. The value of self-ownership does not by itself point to one of these distributional rules. Even within the history of natural rights liberalism, there is little agreement regarding the proper principle of acquisition.

Part of the reason that this issue is controversial is that the tradition of natural rights liberalism, beginning with Locke, has tended to assume that the earth belongs to all persons in common and that, as a result, each person is entitled to some part of it. Locke is thought to have expressed this idea in a passage which has come to be known as the Lockean proviso. The proviso is sometimes thought to constrain the amount of property any one person can originally appropriate such that each person is entitled only to acquire a proportional amount, leaving the rest for others to enjoy. The problem that this chapter addresses is whether or not such a constraint is justified and, if it is, what the constraint amounts to.

Many writers in the natural rights tradition have simply presumed, without argument, that any legitimate theory of property ownership necessarily contains a proviso constraining original acquisition. Others presume the contrary, that there are no constraints on original

112 See Robert Nozick, _Anarchy, State, and Utopia_, Hillel Steiner, _An Essay on Rights_, (Cambridge, MA: Blackwell Publishers, 1994), and Michael Otsuka, _Libertarianism without Inequality_. 
acquisition.\textsuperscript{113} These two views disagree about the extent to which one can acquire ownership over extra-personal property, such as natural resources and land. The resolution of the disagreement is important because it determines the parameters of property ownership; parameters by which to evaluate the current distribution of property rights and, more specifically, the justice of poverty amongst plenty.

One way to assess the legitimacy of the proviso – the constraint on the amount of property a person can legitimately appropriate – is to consider the justification for the provisos that have been offered in the history of natural rights liberalism. This chapter, then, will proceed as follows: the first section explores the original proviso, that of Locke, who is thought to be the father of the natural rights liberal tradition. Locke’s writings, however, are thought to have contained both classical liberal and egalitarian ideas so there is ample disagreement about the content of the proviso and what it requires of original appropriators. Locke’s egalitarian threads have been defended by those that call themselves the “left-libertarians.”\textsuperscript{114} Section two will evaluate their more egalitarian gloss on the Lockean proviso, a gloss also seemingly adopted by Pogge. The third section looks to the version of the proviso provided by Robert Nozick, a follower of Locke’s more classical liberal or libertarian tendencies. Section four examines another plausible line of argument justifying a constraint on individual property rights – that of individual autonomy. The final section reveals a conclusion and a problem. The conclusion is that none of the arguments on behalf of a constraint on original acquisition are entirely satisfactory. But it is not easy to conclude that there is \textit{no} justification for a proviso constraining property acquisition because there are cases in which this conclusion would be implausible. That

\textsuperscript{113} See, for example, Murray Rothbard, \textit{The Ethics of Liberty}, (New York: New York University Press, 1998).

\textsuperscript{114} This group includes Hillel Steiner, Peter Vallentyne, Nicolaus Tideman, and Michael Otsuka.
is, there are cases that seem to provide a moral challenge to any view that would place no constraints on property acquisition. This section introduces this problem, which will be taken up in the following chapter.

I. THE LOCKEAN PROVISO

It is Locke who is generally credited with the formulation of the theory of property rights from which natural rights liberalism claims its legacy. According to Locke, private property ownership is a natural right, derivative upon the natural right of self-ownership. Locke writes, “Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his.”¹¹⁵ The right of property ownership is derived, according to Locke, from the right of self-ownership by the medium of labor. As Locke attests, “Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.”¹¹⁶ On this reasoning, since a person owns his labor, as part of himself, whatever unowned resource he exerts his labor upon, thereby transforming it into something new (the resource plus the labor), he comes to have ownership rights in.

The controversy within Locke’s theory surrounds the limitations he seems to place on the amount of resources one can originally appropriate. Locke is said to have had two provisos: one against waste and one against prejudice to others. The uncontroversial no-waste proviso is provided by Locke as follows:

¹¹⁵ Locke, II: 27, 287-8.
¹¹⁶ Ibid, 288.
The same Law of Nature, that does by this means give us Property, does also
bound that Property too. . . . As much as anyone can make use of to any
advantage of life before it spoils; so much he may by his labour fix a Property in.
Whatever is beyond this, is more than his share, and belongs to others.117

This proviso is exegetically uncontroversial since Locke clearly states that one’s ability to use a
resource before it spoils binds the extent of one’s property rights over that resource. It is also
uncontested that Locke thinks the no-waste requirement is rendered moot by the conventional
use of money. For Locke adds:

This I dare boldly affirm, That the same Rule of Propriety, (viz.) that every Man
should have as much as he could make use of, would still hold in the World,
without straitning any body . . . had not the Invention of Money, and the tacit
Agreement of Men to put a value on it, introduced (by Consent) larger
possessions, and a Right to them; . . . 118

Since property can be exchanged for money – a resource that is non-perishable – no property that
extends beyond what one can privately use need stay in that property owner’s hands. A property
owner may exchange his excess resources for money, a non-perishable good, which, according to
Locke, “may be hoarded up without injury to any one, these metals not spoiling or decaying in
the hands of the possessor.”119

While the no-waste proviso is unproblematic, the second proviso has been the source of
much contention. That proviso, the no-prejudice-to-others or, Lockean, proviso is stated as

117 Locke, II: 31, 290.
118 Locke, II: 36, 293.
119 Locke, II: 50, 302.
follows: “For this labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others.”

The controversy regarding this proviso is both exegetical and justificatory; that is, some deny that Locke even intended such a proviso and some claim that even if Locke intended it, it is simply unjustifiable. Regarding the exegetical controversy, some scholars have thought that Locke only intended to have one proviso, the proviso against waste. Others have held that the no-prejudice-to-others proviso is the crux of Locke’s theory of property. In all, there are at least four different positions that have been taken regarding this proviso: (1) To deny that Locke intended such a limit on the acquisition of resources; (2) To claim that, like the no-waste proviso, the no-prejudice-to-others proviso is superseded by either man’s industriousness or by contract along with the use of money; (3) To hold it as a necessary condition of the justice of property acquisition; and (4) To hold it, not as a necessary condition, but as merely a sufficient condition for just acquisition.

One particular advocate of position (4), Jeremy Waldron, has written that:

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120 Locke II: 27, 288.

[The] sufficiency proviso [no-prejudice proviso] is better understood as a sufficient condition – no pun intended! – highlighting the point that there is certainly no difficulty with unilateral acquisition (which satisfies the other provisos) in circumstances of plenty, but leaving open the possibility that some other basis might have to be found to regulate acquisition in circumstances of scarcity.\textsuperscript{122}

Waldron’s reasons for thinking that the Lockean proviso is just one way of achieving the end that Locke attributes to private property – that of the preservation or subsistence of man – are that in conditions of scarcity, the maintenance of this proviso would have disastrous consequences for people’s self-preservation. Waldron writes, “the ‘enough and as good’ idea cannot be construed as a restriction on legitimate appropriation without concluding that it is inconsistent with what Locke claimed to be the fundamental law of nature,”\textsuperscript{123} – that of self-preservation. He writes this because, assuming that property is severely limited in some way, no one would be able to appropriate anything without negatively affecting someone, and hence he himself would be negatively affected. But this would be inconsistent, for Locke thinks that the right to private property is derived from the right, or the duty, to preserve oneself.\textsuperscript{124}

Waldron notes that Locke recognizes a right (rather than merely a liberty\textsuperscript{125}) to the resources necessary for his subsistence, but denies that the “Sufficiency Limitation” or the Lockean proviso is necessary to satisfy this right.\textsuperscript{126} One need not be able to appropriate in order

\textsuperscript{122} Jeremy Waldron, \textit{God, Locke, and Equality}, 172.

\textsuperscript{123} Jeremy Waldron, \textit{The Right to Private Property}, 213.

\textsuperscript{124} Ibid.

\textsuperscript{125} That is, a claim that can be protected using force, rather than an unprotected interest. See Hohfeld, edited 2002.

\textsuperscript{126} Ibid, 214.
to have his subsistence needs met. One may labor or be the recipient of charity and still achieve the same end, that of self-preservation. And Waldron rejects the Marxist view that working for another alienates one’s labor and thereby denies one’s self-ownership merely on the grounds that one does not own the product of his labor. The laborer earns what his labor is worth but not the resource his labor is “mixed with.” That one’s right to subsistence – if such a right is indeed justified – can be met by means other than original appropriation brings into doubt the claim that the Lockean proviso is a necessary constraint on original appropriation.

Yet some have attributed to Locke the claim that the proviso is just such a necessary constraint. A. John Simmons, for example, writes, “[I] will call this limit the “fair share limit,” and will understand the requirement that enough and as good be left in common for others as limiting each to appropriation only within a fair share of the common.” His reasons for holding this position stem from his view that the ends that property rights are intended to serve are both self-preservation and self-government. He concludes that these ends cannot be satisfied unless all may be able to appropriate natural resources. He does not ignore the fact that others have rejected the idea that private acquisition is necessary for self-preservation, but he does seem to deny that any other means but appropriation can satisfy the end of self-government.


128 Most notably, perhaps, is Robert Nozick, *Anarchy, State, and Utopia*; his position will be taken up in a later section. See also A. John Simmons, *The Lockean Theory of Rights*. Again, notably, the group that calls themselves the “left-libertarians” also assume a necessary limit on original appropriation stemming from the “enough and as good” statement. Their position is taken up in next section. See Hillel Steiner, *An Essay on Rights* and Michael Otsuka, *Libertarianism Without Inequality*.


130 Ibid.
Simmons attributes to Locke the justification, “that no person should be dependent on others for preservation, unless that person is incapable of self-support.” One problem with attributing this view to Locke is that it lacks textual support. The passage Simmons quotes to support this justification is in the First Treatise where Locke claims that God could not have given the world to Adam and his descendants to rule over all others. Locke writes:

The most specious thing to be said, is, that he that is Proprietor of the whole World, may deny all the rest of Mankind Food, and so at his pleasure starve them, if they will not acknowledge his Sovereignty, and Obey his Will. If this were true, it would be a good Argument to prove, that there was never any such Property, that God never gave any such Private Dominion; since it is more reasonable to think, that God who bid Mankind increase and multiply, should himself give them all a Right, to make use of the Food and Rayment, and other Conveniences of Life . . . than to make them depend upon the Will of a Man for their Subsistence, who should have Power to destroy them all when he pleased . .

Since Locke’s intent in this argument is to refute Robert Filmer’s defense of the Divine Right of Kings, as descendants from Adam, Locke’s purpose here is to show that God would not have enslaved all men by placing them in the power of but one man. However, just because Locke thinks no one should be subjugated to the domination of one man, a King or despotic ruler, does not mean that he thinks all men should be property appropriators.

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131 Ibid, 284.

What gives credence to Simmons claim, however, is the idea that there must be some limit on property acquisition besides what a person can use without wasting since it is possible to imagine a person who had the power to utilize all the property in the world without wasting it. If there were no necessary constraint on acquisition similar or identical to the Lockean proviso, then this person’s acquisition would be just, though he would be capable of subjugating everyone else. And this would clearly be problematic if the justification of property is to protect the self-government of individuals. This worry, however, seems needless for in order that this person was able to appropriate the whole earth, he would have to have arrived first and alone in order to lay his claim. For, supposing that other people already exist, their use of property in self-preservation amounts to their appropriation of such resources. And even supposing that all resources become privately owned by first-comers when new-comers arrive, the new-comers are not thereby subjugated to the will of the property-owners. As long as there is competition for labor, laboring for a wage is not akin to subjugation.133

So, while Simmons’ view fails to provide an adequate justification for the necessity of limiting private appropriation, he does convince his readers that Locke intended property ownership as a protection against the subjugation of individuals to one another’s will. Insofar as that requires that people are able to appropriate unowned resources, his argument fails. But, insofar as that requires that people are able to use some amount of resources in order to survive, he is successful. That is an issue that will be raised again later.

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133 I do not have room here for a full rejection of the Marxist view of exploitation, where the alienation of one’s labor denies one’s self-ownership, thereby making it akin to subjugation. For a thorough rejection of Marx and his analytic Marxist followers, see David Gordon, *Resurrecting Marx*, (Edison, NJ: Transaction Publishers, 1991).
The last reading that is sometimes attributed to Locke is the view that he never intended to limit acquisition in this manner, that is by “leaving enough and as good” for others. This interpretation of Locke takes two forms. The first is that the ‘enough and as good’ clause is simply an effect of the no-waste proviso. In other words, the idea is that it is merely a fact of the matter that if the no-waste proviso is satisfied, than no person will be prejudiced in any way by anyone else’s appropriation. Naturally, this would follow only in times of abundance. There is some evidence for this reading; in several of the places that Locke mentions the no-prejudice-to-others thesis he does so in the context of denying others a legitimate complaint against another person’s appropriation. For example, Locke writes: “He that had as good left for his Improvement, as was already taken up, needed not complain, ought not to meddle with what is already improved by another’s Labour,” and “we shall find that the Possessions he could make himself upon the measures we have given, would not be very large, nor, even to this day, prejudice the rest of Mankind, or give them reason to complain, or think themselves injured by this Man’s Incroachment . . .” It seems that this is saying ‘if there is enough and as good for others to use, then others need not complain or feel injured’. But it does not follow from this (as Simmons thinks it does) that if there is not enough and as good, then one does have a reason to complain, for that would be committing the logical fallacy of denying the antecedent. Hence, it may just be the case that it is a fact that in times of abundance, when there is always enough and as good, more than any one person can use, no person has a reason to complain of another’s appropriation.

134 See Waldron, *The Right to Private Property*, 211.

135 Locke, II: 34, 291.

136 Locke, II: 36, 293.

The second form of the position – that Locke does not intend to have a no-prejudice-to-others proviso – is to acknowledge that Locke holds such a limit on original acquisition but that, like the no-waste proviso, it is revoked, or rather rendered moot, upon the agreement to valuate money. Again, there is reason to think this is the case. Locke admits that no man has any reason to enlarge his holdings in land or other resources until he can sell the surplus goods he produces for money. In an imagined scenario where no resource could play the role money does, Locke writes, “What reason could any one have there to enlarge his Possessions beyond the use of his Family, and a plentiful supply to its Consumption, either in what their own Industry produced, or they could barter for like perishable, useful Commodities, with others?” Locke continues, “there Men will not be apt to enlarge their Possessions of Land, were it never so rich, never so free for them to take.” And lastly, he writes, “men have agreed to a disproportionate and unequal Possession of the Earth, they having by a tacit and voluntary consent found out a way, how a man may fairly possess more land than he himself can use the product of . . . .” It seems here that Locke says money changes the rules: where before men could appropriate only so much as he could use and where he left enough and as good for others, after, he may appropriate more than he can use and in disproportionate and unequal shares.

None of these interpretations are conclusive, but they do draw into question the role that this so-called Lockean proviso plays in Locke’s own theory of property. The situation is not made any clearer by considering what Locke took to be the initial moral status of world-ownership prior to first appropriation. Again, there are multiple interpretations. The

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138 Locke, II: 48, 301.
139 Ibid.
140 Locke, II: 50, 302.
disagreement arises from several statements that Locke makes, including that God, “has given the Earth to the Children of Men, given it to Mankind in common,” and “But I shall endeavor to shew, how Men might come to have a property in several parts of that which God gave to Mankind in common, and that without any express Compact of the all the Commoners.”141 What is not clear from these statements is what the common gift from God amounts to. It is clear that Locke does not espouse a positive common ownership view since anything that is commonly owned in this way may be taken as one’s own only with the consent of all the owners, and Locke expressly denies the need for consent. However, this leaves open all sorts of other readings including equal parts (or fair share) ownership, or equal opportunity ownership.

Advocates of equal parts or fair share ownership include Hillel Steiner and A. John Simmons, both of whom interpret the common gift from God as, in Simmons terms, a “divisible positive community.” The idea here is that:

[Each] person has a (claim) right to a share of the earth and its products equal to that of every person. Each may take an equal share independent of the decisions of the other commoners; each has property in the sense of a claim on an equal share (but not possession of or a claim on any particular share).142

As evidence for this reading Simmons supposes that if each person were not entitled to a fair share than there would have been no reason to advance moral constraints on the extent of private property acquisition.143 As argued above, however, it is contestable that Locke holds such moral

141 Locke, II: 25, 286.
142 Simmons, The Lockean Theory of Rights, 238.
143 Ibid, 278-98..
constraints, or if he did, whether they still held after the advent of money. The ambiguity of that argument only sheds further doubt on this reading.

There are several places in the Second Treatise where Locke refers to one’s share. For example, Locke writes, “As much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a Property in. What ever is beyond this, is more than his share, and belongs to others.”\(^{144}\) Again, he writes, “But if they [products of nature] perished, in his Possession without their due use; if the Fruits rotted, or the Venison putrified, before he could spend it he offended against the common Law of Nature, and was liable to be punished; he invaded his Neighbour’s share . . .”\(^{145}\) And lastly, “He was only to look that he used them before they spoiled; else he took more than his share, and robb’d others.”\(^{146}\) The problem with interpreting these passages as fair shares or equal shares is that each time the idea of shares is mentioned, it is done so in the context of avoiding waste. According to Locke, everyone has a right to use what is needed for his subsistence. Any person taking more than he can use without waste, violates the no-waste proviso, a proviso that becomes irrelevant after money is used. Hence, a person’s share, if there is one, is what is needed for his survival, but that is not necessarily equal to what others may appropriate using labor and it may not represent what is commonly taken to be “fair.”

A seemingly more appropriate reading of Locke’s “common gift” passage is one of equal opportunity ownership. When land is common, each person has an equal opportunity to become its owner, but only those who actually appropriate it via the correct appropriation-conferring

\(^{144}\) Locke, II: 31, 290. Emphasis is mine.

\(^{145}\) Ibid, II: 37, 295. Again, emphasis is mine.

\(^{146}\) Ibid, II: 46, 300. Emphasis is mine.
action actually become the owner.\footnote{The idea of “mixing one’s labor” has enjoyed some defenses and, equally, its critiques. As I will argue later in this chapter, however, it seems that one’s labor does more than simply “mix” with property; according to Locke, labor also adds value to property. And so Locke writes,}

Locke writes, “His labour hath taken it out of the hands of Nature, where it was common, and belong’d equally to all her Children, and hath thereby appropriated it to himself.”\footnote{Ibid, II: 29, 289.} Before labor is exerted on a resource, it belonged to all, but after one labors on it, the resource becomes the property of the laborer alone. This reading of Locke follows what Simmons calls the ‘negative community’ reading. This kind of community is one where, “all persons are at liberty (morally) to use the world and its products, but none has a protected liberty or exclusive right to anything . . .,”\footnote{Simmons, The Lockeian Theory of Rights, 238.} at least initially. While it seems clear that Locke does not take anyone to have an exclusive right to anything in particular, there is evidence that Locke takes each person to have an exclusive right to access some resources in order to

\begin{quote}
To which let me add, that he who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind: for the provisions serving to the support of human life, produced by one acre of inclosed and cultivated land, are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness lying waste in common. And therefore he that incloses land, and has a greater plenty of the conveniencies of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind: for his labour now supplies him with provisions out of ten acres, which were but the product of an hundred lying in common. I have here rated the improved land very low, in making its product but as ten to one, when it is much nearer an hundred to one . . .
\end{quote}

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Locke, Second Treatise, II:37. Though the labor theory of value has been overturned by economists, the idea is that labor, ingenuity, intelligence, and other various actions performed by humans can reveal the value of an object that at first appears less valuable or worthless.
\end{flushright}
survive. But he does not stipulate what such a right entails or how it may be satisfied, except that it may be satisfied by appropriation or by the charity of others.

Charity, for Locke, is not an act of beneficence since the needy have a right to the surplus goods of another when their life depends on it. So, Locke claims in the *First Treatise*:

But we know God hath not left one Man so to the Mercy of another, that he may starve him if he please: God the Lord and Father of all has given no one of his Children such a Property, in his peculiar Portion of things of this World, but that he has given his needy Brother a Right to the Surplusage of his Goods; so that it cannot justly be denied him, when his pressing Wants call for it. . . . As *Justice* gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity* gives every Man a Title to so much out of another’s Plenty, as will keep him from extream want, where he has no means to subsist otherwise; . . .

It seems plausible from the above arguments that Locke intended his common gift from God to entail only that each person has a right to those resources necessary for his survival, such that if he had no other means of obtaining such goods, he would be entitled to those goods from the excesses of others. This, however, does not amount to a limit on appropriation, but rather, limits the extent or scope of the property rights that people enjoy. The idea that charity is a natural right also shines doubt on the gloss of the Lockean proviso as a necessary condition since if everyone were entitled to some share of natural resources, what need would one have for

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150 Locke, I: 42, 170. Hugo Grotius also maintained that individuals have rights to others’ excess surplus when it is necessary to preserve their lives. See John Salter, “Grotius and Pufendorf on the Right of Necessity,” *History of Political Thought*, 26(2), 2005, 284-302.
charity? Charity is required only when one lacks access to necessary resources and presumes that a person does not already have a right to some.151

The point of this section was to examine the various versions of the constraint on acquisition attributed to Locke. As the above arguments illustrate, there is no clear agreement on which version Locke espoused and what the justification for it would be. However, the argument that seems most compelling is that Locke never intended his statement to be read as a constraint on acquisition per se, especially after money rendered moot the no-waste proviso. The reason this argument seems plausible is that Locke’s primary concern about property – that it protect man’s self-preservation and self-government – does not require each man to appropriate his own property. As long as each man has access to property via exchange his preservation is not threatened. Simmons’ attribution of self-government is relevant but, again, one need not appropriate his own property in order to be autonomous – he need only have competitive access to property. This topic will be broached again in chapter four. For now it will be useful to examine the justifications of the provisos adopted by Locke’s most influential followers: left-wing libertarians and Robert Nozick.

151 In correspondence, Steven Wall suggests that even if each were entitled to a fair share of resources, that is, even if the Lockean proviso was a necessary constraint on appropriation, one could make sense of charity as a safety net against bad luck or poor personal choices. So, for example, it could be the case that if a hurricane wipes out one’s fair share of resources or if one squanders away his share at the races, one would maintain his right to preserve himself, and hence, his right to charity. What Locke would say about the second sort of case, in particular, is not clear. It is probably safe to assume Locke would agree that the person who loses his property to natural disaster deserves charity. But even in these cases if there are ways a person can protect himself, such as by purchasing an insurance policy, and he fails to do so, its not clear that he should be entitled to charity as a matter of enforceable justice. And again, its not clear what view Locke would take in regard to this problem.
II. THE LEFT-LIBERTARIAN PROVISO

Picking up on the more egalitarian tendencies in Locke, the left-libertarians focus on Locke’s assertions of man’s equality as well as Locke’s claim that the world is owned in some common way. There are two kinds of left-libertarian approaches. One takes the view that the assertion of man’s equality and the common claim to the world entail that each person has a claim to equal shares of the extra-personal world.\(^{152}\) The other view takes the same two assertions to ground a right to an equal opportunity for a good life, such that a person with advantageous personal properties would be entitled to less extra-personal resources than someone whose personal characteristics are less than advantageous.\(^{153}\) Roughly speaking, both views advocate a proviso on original acquisition that limits a person’s share of extra-personal resources to whatever portion would realize the favored notion of equality. Michael Otsuka provides a version of the egalitarian proviso that could capture both of these versions: “You may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources.”\(^{154}\) Any acquisition of more than one’s fair share is subject to rent payments; payments which would be used to redistribute to those that have less than their fair share.


\(^{153}\) Peter Vallentyne takes this view, “Left-Libertarians and Global Justice” and so does Michael Otsuka, *Libertarianism without Inequality*.

\(^{154}\) Michael Otsuka, ibid, 24.
It is a common objection to left-libertarian accounts of original appropriation and ownership that they conflict with the ownership rights one has over oneself. Cohen, for example, writes, “There is a tendency in self-ownership to produce inequality, and the only way to nullify that tendency (without expressly abridging self-ownership) is through a regime over external resources which is so rigid that it excludes exercise of independent rights over oneself.” Another more recent objection is that the left-libertarian stance does not rest on coherent foundations since their principles of taxation are justified using arguments in competition with those used to justify their principles of distribution; that is, the criteria with which they judge the justice of taxation are different than the criteria with which they judge the desert of redistributive transfers. While the merits of these objections are interesting, they are beside the point; the left-libertarians and their critics have gone back and forth over these and there are good arguments on both sides. This chapter bypasses these arguments in order to address a more fundamental objection. Namely, that there are reasons to reject the idea that the extra-personal world ought to be owned in some egalitarian sense if we take seriously the value of self-ownership. If this objection can be maintained, then it is possible to avoid the question of whether or not self-ownership is formally compatible with egalitarian world-ownership.


156 Ibid, 105.


There are several reasons that may seem to justify egalitarian claims on world-ownership, but all of them ultimately fail to provide the requisite justification for these claims because they all act to undermine self-ownership. One reason that might be advanced to explain why the world ought to be owned in some egalitarian sense is that no one deserves to be able to appropriate a greater amount of resources just by the arbitrary fact that one got to such property first. Since no one is responsible for the creation of the earthly stuff, no one can have a greater claim to it than any other. The problem with this reason is that it undermines the claim to self-ownership. After all, no one is responsible for his or her natural talents and abilities, and yet natural rights liberals claim that individuals ought, nevertheless, to have an exclusive claim to these talents and abilities.

The second version of the egalitarian proviso seems to rely on this sort of reason to justify the distribution of world-resources in such a way that individuals’ personal talents, combined with their share of world resources, leave them all with the ability to achieve an equal level of welfare. The reason seems to be that no one deserves to be able to use their personal talents and abilities to achieve greater welfare than any other. But if this is the case, it seems that one also does not deserve to be more beautiful than any other; after all, how beautiful one is plays at least some role in one’s welfare, regardless of the resources one has. But the left-libertarians would balk at the idea that we ought to mar the faces of the beautiful people in order to equalize one’s welfare in this area. The same could be said for one’s charm, charisma,

159 How beautiful one is may play a role in how easy it is to achieve a satisfying personal life. Most people are probably familiar with those news shows that demonstrate how differently the correspondent is treated when she dresses in a “fat suit” as opposed to her regular self. People are more likely to assist her, and even to hire her, when she is attractive versus when she is overweight or unattractive. These sorts of considerations – politeness, the ability to find friends or a lover – surely factor into one’s total welfare.
likeableness, etc. Part of most people’s overall welfare includes one’s personal life; people who have the traits just listed are more likely to have a fulfilling personal life than those who lack such traits. Further, the lack of these traits can probably not be made up for by an increase in worldly resources. Hence, in order to make people’s welfare roughly equal, surely it would be necessary to handicap these traits in others or to assist those who lack such traits in the acquisition of them. In short, since one’s welfare will be constitutive of more than just one’s worldly resources, in order to equalize welfare, one would need to equalize non-material or personal factors as well. But the equalization of these personal factors would undermine self-ownership. The left-libertarians would surely reject this aspect of equalization but they would need to explain why it is permissible to equalize material factors, but not non-material ones even though both play a role in one’s total welfare.

The left-libertarians’ rebuttal, however, asserts that coherence between principles governing different factors is unimportant. They write, “If coherence requires that the justification for each of one’s principles appeal to the same set of considerations, this may be correct, but then there is little reason to require coherence.”\(^\text{160}\) Hence, they wish to claim that principles governing the justice of one’s ownership of personal property and principles governing the ownership of extra-personal property may be different. In support of this assertion they offer the view that, “there is a very significant difference in the moral status of agents (self-directed beings with full moral standing) and natural resources (resources that have no moral standing and which were created by no (non-divine) agent).”\(^\text{161}\) They conclude, then, that,

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\(^{161}\) Ibid.
About the former [human agents] they [left-libertarians] maintain that full self-ownership is the most appropriate reflection of the status (e.g. because it explains/ground the intuitive wrongness of various forms of nonconsensual interference with bodily integrity), and about the latter [natural resources] they independently maintain that egalitarian ownership is the most defensible stance.  

Coherence between principles may not be important if there is a significant moral difference between the entities that are to be governed by conflicting principles. But even though it is clear that there is a moral difference between agents and natural resources, such that it is plausible that certain principles that would apply to the ownership of natural resources would not necessarily apply to self-ownership, it is not exactly true that there are no moral reasons that would count against their being distributed in a particular way. To presume otherwise is to presume that natural resources are like manna from heaven in that their availability and usefulness is completely independent of any individual efforts, talents, or creativity. It will be argued later in the section that natural resources are not like manna from heaven in this way and hence there are moral reasons to assign resources to particular people.

If it is true that there are moral reasons to connect specific people with specific resources, the left-libertarians would need to explain why people are permitted to have full ownership rights over their personal properties (even though some of those properties are not ones that one has explicitly chosen or had any control over obtaining) but not over whatever extra-personal property they are able to obtain, on the grounds that one does not choose one’s arrival time (e.g. one does not choose to be either a first-comer or a late-comer) nor does one choose the talents that lead one person to possess more property than another.

162 Ibid.
Another reason that one could advance to explain why natural resources ought to be distributed in an egalitarian way is an appeal to appropriateness. In other words, certain contexts seem to call for certain principles of justice.\(^{163}\) The distribution of jobs, prizes, and other sorts of rewards, for example, seems to call for desert-based principles, whereby the person awarded the job or prize is the person who is most qualified or most deserved. In this sort of case the relevant feature for prize awarding is not the equality of men, but rather the actions they have done that merit them unequal treatment. Again, in the case of distributing gratitude or favor, reciprocity is the proper distributive principle. To distribute gratitude or favor equally is to cheapen the value of gratitude and to do a disservice to one for whom gratitude is seemingly owed. Like desert and reciprocity there are contexts in which egalitarian principles seem to be appropriate principles of distribution.

Some contexts in which egalitarian distributions seem to be appropriate are contexts in which the good to be distributed is not scarce. Equal treatment under the law and equal distributions of natural rights fit this sort of context. Another context in which an egalitarian principle of justice is called for is in a situation whereby individuals face equal burdens. In such cases, these burdens are justified on the grounds that each person is also entitled to equal benefits (i.e. in cooperative ventures for mutual gain). A third context is when the resources to be distributed are like “manna from heaven” in that no one is responsible for their creation and where no person has a greater moral claim to the resources than any other. Since natural resources are scarce, to justify an egalitarian distribution of such resources, on the grounds of appropriateness, one would have to argue that property acquisition is a cooperative venture for

\(^{163}\) For a good discussion of the contexts of justice see David Schmidtz, *The Elements of Justice*, (New York: Cambridge University Press, 2006).
mutual gain or that natural resources are like “manna from heaven.” Property acquisition, however, is not a cooperative venture and many natural resources are not sufficiently similar to “manna from heaven.”

The first case, the case of equal benefits for equal burdens, is usually governed by what is referred to as the principle of fairness. Principles of fairness arise in what H.L.A Hart first described as “a joint enterprise according to rules”\(^{164}\) and Rawls as a “mutually beneficial and just scheme of social cooperation.”\(^{165}\) In these cases fairness requires each person to get a share proportionate to the effort that he contributes. If one contributes equal effort, one ought to get equal reward. But the case of original acquisition is neither a joint enterprise nor a scheme of social cooperation. In fact, original acquisition is both an individual effort and a private enterprise. There is no reason to cooperate with others and agree upon a mutually beneficial outcome because, presumably, only one person performs the requisite action that transforms whatever unowned resource into private property. As Schmidtz notes, equal distribution is appropriate when everyone has arrived at a resource all at once. He writes:

When we arrive all at once, equal shares is a cooperative, mutually advantageous, mutually respectful departure from the status quo (in which none of us yet has a share of the good to be distributed). . . . In particular, in ‘manna from heaven’ cases, when we arrive at the bargaining table at the same time, aiming to divide goods to which no one have made a prior claim, we have a situation where equal shares is, from any perspective, a way of achieving a just distribution.\(^{166}\)


\(^{166}\) David Schmidtz, \textit{The Elements of Justice}, 110.
Original appropriation, though, is not a situation of simultaneous arrival; people arrive at different times and make use of property in different ways. If a person arrives at arable land, tills the soil, and harvests his product, it does not seem that the latecomer can make any reasonable claim on the land. There was no independent reason for the first person to refrain from appropriating the land and using it for his benefit. There is nothing fair or unfair about his actions. Respect of the first come, first serve principle should not be seen as treating people unequally. As Schmidtz pointedly notes, “Nonsimultaneous arrival makes it hard to see your original grab as treatment at all, unequal or otherwise, thus blocking any easy move from a premise that there are unequal shares to a conclusion that there has been unequal treatment.”\textsuperscript{167}

One person’s acquisition of property, in itself, is not a matter of treating any person one way or another. When a person obtains the last available job at a company, for example, he is not treating the person who would have gotten the job, had he not applied, unfairly because his actions are not properly described as treating that person in any way at all. Counterfactuals describing who would have appropriated what good if the first appropriator had not gotten to it first are not relevant to the assessment of the justice of property ownership. For, if someone else has been the first appropriator, it would be he that had rights to the resource and he that had not treated others unfairly. Arriving first may be arbitrary, but that does not make it unfair to anyone else.

It is also not the case that property acquisition should be treated as a “manna from heaven” case. The justification underlying such cases is that, since no one is responsible for the creation of the manna, no one has a claim to a larger share of it or to a share that would make one better off than any other. But supposing for a moment that natural resources were sufficiently

\textsuperscript{167} Ibid, 111.
similar to manna, it would still not be the case that property acquisition would be distributed equally to all people, future as well as present and late-comers as well as first-comers. Suppose there are seven people present when the manna drops from heaven. Justice would have those seven people distribute the manna along some egalitarian metric. But, even in this case, it does not seem to be a moral requirement that those seven people save some for latecomers that may arrive and want some. This is especially true if appropriation is the only way to preserve a good for future generations, to resolve problems of waste or of the “tragedy of the commons.”

Arriving at the “bargaining table” at the same time is required in order to be entitled to an equal share in the “manna from heaven” cases. Hence, even if natural resources ought to be distributed equally because they are like “manna from heaven,” the left-libertarians would not get the egalitarian distribution they desire; only first-comers would be entitled to an equal distribution of the natural resources. Subsequent generations would have no such claims and the original egalitarian distribution would likely be disrupted by voluntary exchanges.

The above discussion is relevant, however, only if natural resources really are like manna from heaven. While it would be difficult to deny that some resources are like manna, such that simultaneous arrival requires the equal distribution of them, most resources are not like manna at all; most resources do not come prepackaged and ready for human consumption. Indeed, most resources require some form of transformation in order to be rendered useful to humans. Further, many resources that are valuable have required discovery, not just of the resource itself, but also discovery of the means by which it is useful. Consider, for example, the most “valuable” – that is, marketable – resources in the modern world: oil, diamonds, natural gasses.

and the like. These resources are hardly ever found lying around and, even if they were, they are not inherently useful. Indeed, the use-value of these objects stems from human ingenuity. The fact that human ingenuity and discovery efforts go into the availability of these resources provides a moral reason in favor of such individuals’ ownership rights over them. As the left-libertarians argued, it was because natural resources were not objects with moral status, having not been created by any non-divine being, that they were subject to an egalitarian distribution.\footnote{\textsuperscript{169}} But if the argument in this paragraph is sound, many natural resources \textit{are} in fact the result of human discovery, transformation, or creation and so the appropriateness of the egalitarian distribution of such resources is questionable.

The idea that the creation, discovery, or transformation of natural resources makes such resources the rightful property of their creator, discoverer, or transformer involves a kind of Lockean story whereby by “mixing one’s labor”, which one owns, with resources which are unowned, one comes to have property rights in such resources. But while the Lockean story suggests some sort of metaphysical magic, the story told here is more normative than metaphysical. If the question is who ought to have rights to what resources, when such resources are previously unowned, then it would seem that the person who transforms, preserves, discovers, creates, or uses such resources originally has a greater claim than any other. To maintain otherwise, one would need to tell some story using other reasons, ones that could normatively outweigh the reasons such actions – creation, discovery, preservation, use, transformation, etc. – provide. None of these actions render previously owned property the right of the actor, but they seem to be reasons we ought to consider weighty when the property is previously unowned.

\textsuperscript{169} See note 156.
Another disanalogy between manna and most natural resources is that while the value of manna for satisfying one’s needs is apparent, most resources are not so transparently valuable. Much of the value of natural resources is revealed only after a person has discovered, created, or transformed the resource into its useful, and therefore valuable, state. This is a problem for the left-libertarians who claim that the world should be divided into equal shares, not of size and shape, but of market value, based on the principles of supply and demand. They seek to redistribute not pieces of the earth for subsequent generations but rather, “the full competitive value (based on supply and demand) of the rights [resources] that one claims.”

The problem with this is that most natural resources do not reveal their competitive value prior to human creation, discovery, or transformation. The competitive value of a resource depends on its supply and demand. The supply of a resource often depends upon human discovery or creation. Many valuable resources cannot simply be found lying around; rather, they require human discovery and labor for their extraction or creation. The demand for a resource depends on the desires and needs individuals have. But in order to know that certain resources can satisfy those desires and needs, it often takes entrepreneurship on the part of individuals. In short, many resources are available only as a result of individual effort. It would seem that such effort makes these resources the property of those that exert the effort. To assume that the value of an object is transparent, rather than revealed by the labor that is used to change the object or by the discovery that this labor can produce goods that satisfy people’s preferences, is to assume that natural resources are like manna from heaven – prepackaged for human consumption. Rather, much work and ingenuity are usually required to transform most natural resources into consumable manna.

In a similar argument, Israel Kirzner avers that a finders-keepers ethic is plausible if we adopt the view that “until a resource has been discovered, it has not, in the sense relevant to the rights of access and common use, existed at all.”171 If this principle is applied to natural resources, most resources do not exist in the world prior to human discovery, creation, or transformation. The market value of these resources is virtually nonexistent until someone discovers the usefulness of such resources for satisfying the preferences of individuals. It was once the case that farmers complained about a sticky black substance that would destroy their crops. This substance had negative market value for the farmers since it would render that land less marketable as arable soil. However, once someone or some people discovered that the same substance could be used to provide motor power, the substance came to be referred to as “black gold” and its competitive value rose exponentially. Hence, the true potential value of an object is revealed only upon the discovery of its use and the labor required for it to perform that use. If these resources can be said to have not existed until human discovery, creation, or transformation, then again there is a moral reason to ascribe ownership rights to the discoverer, creator, or transformer.

Although Kirzner introduces this pertinent feature of the value of natural resources, he does not extend his argument to all resources. In fact, he leaves room for the presence of resources the value of which is not the creation of an entrepreneur. This seems correct; certain resources like air, for instance, require no discovery, creation, or transformation in order to be readily consumable. In other words, the value of certain objects is transparent. In such cases, these resources may be equally distributed, although in the case of air, it is a public good and not

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distributable. This explains why air pollution can be seen as a violation of everyone’s rights since to pollute is to deplete others’ quality of air, that is, the quality of something that all have equal ownership rights in. And this explains why polluters should have to compensate others for the depletion in the amount of clean air, over which all have equal property rights.

Ellen Frankel Paul makes the argument that all resources – in their marketable form – are a result of human discovery. Once again, the discovery is the potential beneficial use (foreseen future preferences or fulfillment of current unsatisfied preferences) of the resource. In her book, *Property Right and Eminent Domain*, Paul provides an extension of Kirzner’s argument when she writes, “I maintain that 100 percent of the value of a good is the work of human creativity.”\(^{172}\) It is probably a mistake to say that resources have zero value prior to human creation or discovery. After all, the value of resources like air, water, and food that can simply be gathered is transparent because they satisfy the very basic preferences people have. However, these resources make up a very small percentage of the resources that humans value; most of the consumable resources have required much more effort and labor to prepare for human consumption. Hence, many natural resources appear, for competitive purposes, worthless before this act of discovery. As Paul writes, “Until some man discovered the utility of such natural elements to satisfy human purposes, purposes that might not have occurred yet to other men, all of these things were so much worthless debris. This creative process applies equally to what we now consider mundane utilities.”\(^{173}\)


\(^{173}\) Ibid.
The rejoinder belonging to the left-libertarians may be that no creation is possible without the existence of the “earthly stuff” and it is the value of that stuff which ought to be distributed equally. But again, most earthly stuff does not have transparent value. Once the value has been revealed, it is usually already owned if one takes human discovery, creation, or transformation to be a difference maker. This difference maker provides a moral reason to award property rights to the person who has provided the difference maker. In order to override this reason one must provide another reason that is weightier than the difference maker. The burden is on the person who wishes to assign property rights to someone other than the discoverer, creator, or transformer of the resources in question. This is a burden the left-libertarians would need to meet and one that they have not met.

III. THE NOZICKIAN PROVISO

Contrary to the left-libertarians, Nozick follows the traditional libertarian strands of Lockean natural right theory, focusing on Locke’s voluntarism, or the idea that all entitlements to property are achieved by voluntary actions: laboring and consensual exchange. As such, his theory of property rights focuses primarily on the principle of transfer. However, he too addresses the justice of original acquisition. Although Nozick does not adopt Locke’s theistic assumptions about the common ownership of the world, that is, though he takes the initial moral status of the extra-personal world to be that of unowned property, he still maintains that, “any adequate theory of justice in acquisition will contain a proviso.”174 His reasoning seems to stem from the evaluation of cases in which there is a monopoly owner of resources that are necessary for another’s survival. These cases are ones in which someone owns the only waterhole in the

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desert or the only island in an area. In the case of the island, Nozick says, “an owner’s property right in the only island in an area does not allow him to order a castaway from a shipwreck off his island as a trespasser . . .”\(^{175}\) In this case, since availing himself of another’s island is necessary for the castaway’s survival, Nozick maintains that there are moral constraints on the owner’s use of his island.

Nozick seems to think the proviso is justified because it is necessary to make sense of our intuitions regarding the justice of these particular cases. As Nozick notes, “A theory of appropriation incorporating the Lockean proviso will handle correctly the cases (objections to the theory lacking the proviso) where someone appropriates the total supply of something necessary for life.”\(^{176}\) Since his intuition in these cases is that one cannot have unrestricted ownership rights of either the only waterhole or of the only island, he concludes with the proviso that, “A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.”\(^{177}\)

According to Nozick, the welfare baseline under which no one may fall by another’s appropriation of property is the welfare of the person in the state of nature, that is, in a state prior to private acquisition. Though such a measurement would be difficult to assess, Nozick suggests that the baseline is low enough that, in most circumstances, the only context in which private appropriation is unjustified is one in which a person is excluded from using a resource that is necessary for his survival. And so he writes, “. . . the baseline for comparison is so low as

\(^{175}\) Ibid, 180.

\(^{176}\) Ibid, 178-9.

\(^{177}\) Ibid, 178.
compared with the productiveness of a society with private appropriation that the question of the Lockean proviso being violated arises only in the case of catastrophe (or a desert-island situation).”

Since in the cases of the waterhole and the island the position of others falls into the category of a catastrophe, a person cannot have property rights in them.

What is different about Nozick’s proviso is that it is supposed to be a moral constraint not just on property acquisition but also on subsequent ownership of one’s property – in particular, on one’s right to exclude others from using one’s property. Nozick locates his proviso as part of the principle of original acquisition, but most of his examples involve limiting later uses of one’s property when by exercising one’s ownership rights, one makes a person worse off than he would have been if the property had remained in the commons. For example, he writes, “Once it is known that someone’s ownership runs afoul of the Lockean proviso, there are stringent limits on what he may do with (what it is increasingly difficult any longer unreservedly to call) ‘his property.’ Thus a person may not appropriate the only water hole in a desert and charge what he will.”

Similarly, even if one’s original appropriation of a water hole is legitimate, if all other water holes subsequently dry up and one’s own is the only remaining waterhole, one may not have full ownership rights over it. Hence, on Nozick’s view, it could be the case that the distribution of property following original acquisition is legitimate with respect to the Lockean proviso, but also the case that a later distribution of property rights runs afoul of the proviso. This is because, as Nozick writes, “Each owner’s title to his holding includes the historical shadow of the Lockean proviso on appropriation.”

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178 Ibid, 181.

179 Ibid. Emphasis is mine.

180 Ibid.

181 Ibid.
any property holdings that leave a person worse off than he would have been if all property remained in the commons, this prohibition extends to later distributions of property as well as the original distribution following one’s initial acquisition.

That the Lockean proviso is a limit on property ownership, rather than merely property acquisition seems right. What seems wrong is how the proviso is formulated. For, it will almost never be the case that a person’s property ownership leaves one worse off than one would have been if that property had been left in the commons. The reason for this is that leaving property in the commons almost always guarantees that the property will be unavailable for future generations. As David Schmitzd has argued, satisfying the Lockean proviso, however it is formulated, almost always requires people to appropriate resources in order to avoid “tragedy of the commons” problems. Since Nozick maintains that future property distributions are constrained by the proviso in the same way that original acquisition is so constrained, to hold as a baseline one’s welfare in the commons is to guarantee that no property distribution can violate the proviso. The reason for this is that the relevant counterfactual is one in which the property in question no longer exists, at least in any useful state, as a result of being left in the commons. Hence, one cannot be made any worse off by another’s ownership of property even if the other excludes one from using it in catastrophic situations. This would not be true, perhaps, of original acquisition, but it would be true of later distributions of property.

And so, while it will almost never be the case that one’s property ownership leaves another worse off than he would have been if that property had been left in the commons, it will almost always be the case that, at some point, a person will face a catastrophe that could be avoided only by the use of property held by another. That is, owning the only waterhole in the

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desert will occur with more frequency than one might imagine and Nozick’s proviso cannot account for the constraint on one’s ownership rights in these cases. And so, if the justification for the proviso was that it could make sense of a series of cases that would count as an objection to any theory of property lacking a proviso, then Nozick’s proviso cannot be justified for it cannot make sense of difficult cases arising from later distributions of property.

IV. THE ARGUMENT FROM AUTONOMY

Although none of the above theorists actually make the argument that autonomy requires an egalitarian distribution of original property rights, one might think it reasonable to suppose that the value of autonomy proscribes something in the way of the distribution of property rights. The reason for this is that autonomy or self-government involves an individual’s ability to realize her life plans, projects, or self-realization. And it is this very concern of self-government that motivates the importance of private property rights. For it is within a sphere of individual sovereignty that a person is most likely to be able to pursue her projects, life plans, or means of self-realization. Given what has just been said, one could argue that concern for individual autonomy could only justify an egalitarian distribution of property rights since such a distribution would give every person an equal opportunity to live autonomously. And so, this section will explore whether the value of self-government justifies something akin to an egalitarian gloss of the Lockean proviso.

Autonomy or self-government should be taken to mean more than just the ability to act without coercion since even the imprisoned person may perform some actions without coercion and one would not describe such a person as capable of self-government, at least not in any real or robust sense. Rather, autonomy should be sensitive not only to internal constraints like
brainwashing, mental deformity, or hypnotism, and to external constraints such as force or manipulation, but also to the constraint inherent in lacking viable options for action. The idea here is that it is not enough that a person is free to act however he wishes if his choice set is only one. In order to act freely, or autonomously, one must have a viable set of options from which to choose. Hence, autonomy, as it is understood here, is the capacity to choose for oneself how one’s life will proceed and the ability to realize one’s life plan through meaningful action.

The capacity to choose for oneself one’s life plan is sometimes thought to require more than negative freedom, that is, the freedom from the various restraints as listed above; it is also thought to require positive freedom, that is, the freedom to act according to reasons or desires that one has independently and rationally formulated and not according to reasons or desires that one has acquired oppressively or even as a result of one’s membership in a particular community. The idea here is that a person is not truly free or autonomous unless he acts according to reasons about which he has deliberated and rationally adopted. This is in contrast to a view that a person is autonomous as long as he is acting without coercion from reasons or desires that are his own, even if he has such reasons or desires as a result of belonging to a particular culture or community, or even if he has failed to deliberate about his reasons. The problem with making this notion of positive freedom a necessary condition of autonomy is that it

183 Joseph Raz writes that, “A person is autonomous only if he has a variety of acceptable options available to him to choose from, and his life became as it is through his choice of some of these options.” The Morality of Freedom, (Oxford, Clarendon Press, 1986), 204. Raz’ conception of autonomy contains three conditions: (1) the mental abilities to make choices and execute them; (2) a set of adequate options; and (3) freedom from coercion and manipulation.

fails to render most people autonomous. Many people seem to make choices, formulate life plans, and execute their projects without coercion, but far fewer people rationally deliberate about all of the reasons they might have to prefer one choice over another, a particular life plan, or various projects. But to say that all of these people fail to be autonomous involves using a concept of autonomy that is far stricter than necessary for the purpose of distributive justice. For such purposes, how one formulates one’s desires and reasons, barring hypnotism or other sort of coercion, is not relevant; what is relevant is that one is not coerced into action by others or coerced as a result of having no other reasonable course of action. The capacity to choose for oneself should, therefore, be satisfied by the absence of both internal and external constraints, including the constraint of having only one no viable options for action.

The second condition – the ability to realize one’s life plan through meaningful action – is sometimes thought to require certain positive goods or services. The reason for this is that if one is entitled to be autonomous, one must also be entitled to the circumstances and conditions under which it is possible for a person to be autonomous. According to certain conceptions of autonomy, one cannot make rational choices between viable options without having one’s basic needs met. That is, this concept of autonomy takes it as a necessary condition of autonomous action that one has adequate access to food, clean water, shelter, healthcare, education, and the like. If autonomy requires that one have adequate access to these goods, then there is some reason to believe that each person is entitled to a certain amount of property the use of which may secure one’s access to these goods. Furthermore, one might think that if one is concerned

185 For a critique of positive freedom as a necessary condition of autonomy see Chandran Kukathas, The Liberal Archipelago, (New York: Oxford University Press, 2003).

that people have an equal opportunity to live autonomous lives, then one would reasonably conclude that people have rights to equal shares of the extra-personal world so that each person has roughly equal options from which to choose her life plan.

Regarding the second issue, it seems safe to say that as in the case of equal respect for people’s right to acquire property, in which such respect does not require that people have equal shares of property, but rather equal opportunities to acquire property, either by original acquisition (if that option is still available) or by transfer and trade, equal respect for individual autonomy does not require that people have an equal range of options for projects or life plans. Rather, what it means is that in order to be autonomous each person must have the opportunity to choose his own life from at least two – and probably more – viable options.\(^{187}\)

Since one’s options are likely to be extremely limited if one does not have access to at least some property, it makes sense to say that without access to any property – either by original acquisition or by transfer and trade – then the person is not autonomous. But this neither means that one must have access to equal shares of property nor that one must access this property by original acquisition. What it does seem to imply, however, is that one can fail to be autonomous as a result of extreme poverty as easily as one fails to be autonomous when coerced into action. The concern for individual autonomy, then, seems to justify some sort of proviso. If considerations of autonomy or self-governance make private property plausible, then private property should not diminish others’ autonomy to the point in which those others have no viable options with which to pursue their projects. The next chapter will discuss the particulars of a

\(^{187}\) The number of viable options, over some minimal amount, does not seem to matter as much as how the set came about. Even if one has several options, if the set is smaller than it otherwise would be as a result of others’ coercive actions, then it will be objectionable. But as long as one has options, it does not matter than one person has less than another if both sets are not the outcome of force or manipulation.
proviso the justification of which stems from a concern for individual self-preservation and self-governance.

V. THE JUSTICE OF ORIGINAL ACQUISITION

The conclusion of the above survey of the various versions of the so-called Lockean proviso has revealed that while there seems to be a need for a proviso as a limit on property ownership, the proviso is neither a limit specifically on acquisition nor should it be read according to either the left-libertarian or Nozickean glosses. The fact that all men are morally equal and that use or access to the extra-personal world is necessary for survival and self-government does not render necessary that everyone’s access to the world be made possible by original acquisition. Indeed, it is impractical to believe that it ought to be. After all, as Schmidtz argues, in order to preserve resources for future generations, private acquisition is required.\footnote{Schmidtz, The Limits of Government, 15-32.}

And, while the left-libertarians are not advocating that we leave resources in the commons for original appropriation by future generations, but rather that each generation get a fair share of the value of these natural resources, there is no justification for such an egalitarian proviso. It is not the case that people need equal shares initially in order to survive or to remain autonomous. People can acquire resources through voluntary transfer and by contracting out their labor in exchange for resources. And there is no other compelling justification for an egalitarian distribution other than that some people find it intuitively appealing. But others find different distributions equally intuitively appealing so there must be other reasons to favor a particular distribution. And there are other reasons to prefer unilateral appropriations of property, for requiring equal shares of resources ignores the role played by individuals in the discovery,
creation, and transformation of such resources – discoveries, creations, and transformations which reveal the true value of these resources. These efforts on the part of individuals provide a moral reason to assign ownership rights to such individuals, reasons which are not easily overridden. In order to assign to one person a resource that another person has discovered or made useful for consumption, one would have to provide reasons that could countermand the plausible claims discovery makes. However, no overriding reasons have been offered that provide the same weight as the original claims.

Yet, despite the conclusion that there is no justification for a proviso specifically limiting original acquisition, there does seem to be justification for moral constraints on how one may use the property that one owns. As both Locke and Nozick note in their discussions on original acquisition, the equality of man and the rights to self-preservation and self-governance may give individuals the right to access the extra-personal world necessary for their survival. What this right entails is the subject of the next chapter. Ownership rights cannot be without limit. The reason for this is that even if someone’s appropriation is just because he has labored upon some property and revealed the true value of it, at a later date it may be the case that another person’s survival or self-government depends upon her use of the property. When that happens, the owner may not have the right to refuse that person access to his property. The next chapter, then, will attempt to delineate the principles upon which one’s rights to one’s property may be limited by the extreme need of others.
CHAPTER IV. THE LIMITS OF PROPERTY RIGHTS AND THE MINIMAL ACCESS
PROVISO

INTRODUCTION

The previous chapter examined the justifications of the so-called Lockean proviso, a constraint on original acquisition. The thought was that unless people would be better off under the current property regime (one that does not satisfy the proviso) than they would be if such a constraint were satisfied, the current distribution of property – and in particular, the existent extreme poverty – would be unjust. The conclusion was that the previous attempts to justify a specific version of the Lockean proviso have failed to make an adequate case for the constraints they prescribed. This conclusion, however, left a kind of moral remainder or lingering worry. The worry, originally introduced by Nozick in *Anarchy, State, and Utopia*, is that if property acquisition were not constrained in any way, a person might appropriate and deny others access to a resource that may be crucial to another’s survival or something equally important. More specifically, Nozick is interested in cases in which there is a monopoly owner of the only resource available to a person in a catastrophic situation.

The kinds of cases Nozick is interested in seem to pose a problem for a theory of unilateral appropriation that is not constrained in any way by the desperate needs of others. One reason for this is that the system of private property ownership – as opposed to joint or common ownership – is plausible only because it is the regime that adequately assigns priority to the value of self-ownership, a concept the legitimacy of which stems from its status as a necessary condition for individuals’ ability to self-govern without others’ interference. And so, if a certain distribution of property were to lead to situations in which other individuals’ lives or ability to
self-govern without interference is threatened through no negligence or fault of their own, this would not bode well for the plausibility of the regime of private property.

Locke may also have foreseen this concern since he mentions that individuals may have a right to charity when they lack the necessary resources for self-preservation. In the First Treatise he writes,

As justice gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him; so charity gives every man a title to so much out of another’s plenty, as will keep him from extreme want, where he has no means to subsist otherwise: and a man can no more justly make use of another’s necessity, to force him to become his vassal, by with-holding that relief, God requires him to afford to the wants of his brother, than he that has more strength can seize upon a weaker, master him to his obedience, and with a dagger at his throat offer him death or slavery.¹⁸⁹

Locke appeals here not just to self-preservation in making charity a matter of right, rather than as merely matter of goodness, but also he appeals to self-government, for he claims that lacking the means to subsist places such people in a position vulnerable to the loss of self-government, facing the choice of either slavery or death. And so if the concern for self-preservation and self-government justify private property, the respect of another’s property rights should not threaten one’s self-preservation or ability to self-govern without interference. But even Locke notes that a person’s subsistence does not require original appropriation of property or particular amounts of property holdings as a matter of right. Instead, a person may secure the requisite means for

¹⁸⁹ John Locke, Two Treatises of Government, I:42.
his subsistence in a variety of ways, in particular through the voluntary exchange of his own labor or, if he cannot labor, through the receipt of charity.

Nozick tries to address the problem, not by the right to charity, but by the use of his proviso; his proviso, however, fails to make later distributions of property unjust even when people are left in these catastrophic situations through no fault of their own. So the problem remains. For even though people do not need to originally appropriate resources in order to maintain their self-preservation or ability to execute their projects, it is still possible that there are people whose minimal access to the resources necessary for their survival is not adequately secured by their own labor or through private and voluntary charity. When such situations occur, the justification for the regime of private property based on unilateral acquisition of unequal shares is challenged. For it seems unjust that people might find themselves in catastrophic positions through no fault of their own without the right to make use of others’ holdings in order to alleviate their situation. If ownership rights morally prohibit a person, who innocently finds herself in such a position, from retaining the value her self-ownership is thought to protect, then there seems to be something faulty with that system of property rights.

This chapter, then, seeks to identify the parameters of a new proviso, the minimal access proviso, which acts as a limit on property rights. This limit should not be understood as an instance of overriding; rather, it should be understood to mean that no property owner has the right to exclude a person in a catastrophic situation, from minimally accessing her property. Such limits may be incurred when a person’s self-preservation or self-governance is threatened through no fault of her own and where her situation can be effectively remedied by the property of others without unduly burdening those others. How such rights will be limited will depend on the situation. Since ownership rights are complex bundles of claims, liberties, and powers, the
limit on one’s ownership rights may differ depending on the situation. In some situations a property owner’s may lack the right to exercise some liberties or claims, like the right to exclude others from using his property or the right to destroy his property. In other cases, it could turn out that the property holder lacks all rights to his possession of certain property. What typical rights incidents one’s ownership claim fails to include in particular situations will depend, in part, upon what is needed by the imperiled person to retain or sustain his life or ability to self-govern.

There have been other attempts to formulate and justify a new kind of proviso like the one that will be offered in this chapter. This chapter will examine these attempts in the course of justifying the minimal access proviso. Section one of this chapter explores several cases introduced by Nozick and Eric Mack in order to flesh out what features, if any, make these cases objectionable, that is, make them a challenge to a system of unilateral property rights without a proviso.

Section two introduces the conditions of the minimal access proviso. The conditions include that the imperiled person must be in such a dire situation through no fault of her own, that the owner whose property is required to remove the person from the imperiled situation is not in turn in any risk of being placed in a dire situation, and that the use of the owner’s property is both necessary and sufficient for removing the imperiled person from her dire situation. Section two also explains why such conditions are justified by the same sort of considerations that would justify the minimal access proviso.

Section three offers a justification for the constraint on ownership rights. The reason for such justification is that the constraint on ownership rights based on intuition alone is rather ad hoc and cannot resolve the cases in which individuals’ intuitions differ. The justification for the
constraint of ownership rights stems from the very justification for the sort of property rights that natural rights liberalism endorses. What this means is that the minimal access proviso will depend on what sort of justification one gives for the unilateral acquisition of private property. Though such justification is only hinted at in this dissertation, this section explores the nature of one justification prevalent within natural rights liberalism, namely the idea of self-government or autonomy.

Section four discusses a potential objection to the minimal access proviso which concerns the scope of the constraint on property. This objection is that if the justification of private property also justifies certain constraints on ownership rights, then it is unclear why it does not justify greater constraints so as to make people’s ownership rights more equal. The idea here is that if natural rights liberal ownership rights allow for constraints such as the minimal access proviso, the very notion of such rights is undermined to the extent that it becomes a slippery slope leading to egalitarian ownership rights and all around redistribution of property. This section, then, address the so-called limit on the limit of ownership rights. It argues that, while the justification of unilateral private property acquisitions and the holding of unequal shares does admit of a constraint on such rights, the constraint is limited to the minimal access proviso by the same considerations.

The final section of this chapter raises the primary concern of this dissertation, which is whether global poverty is unjust under the principles of justice advocated by natural rights liberalism. The minimal access proviso would seem to make this answer affirmative since it is quite obvious that there are some people who face dire conditions through no fault of their own. This section discusses whether such people meet the other conditions of the minimal access proviso. The conclusion of this chapter is that the minimal access proviso renders some amount
of global poverty unjust since some, if not most, of the global poor are denied minimal access to the resources necessary for their survival and self-governance.

I. WATERHOLES, ISLANDS, AND CAGES

This section will consider a series of examples in order to determine what sorts of cases pose problems for natural rights liberal property rights not constrained in any way by the needs of others. It will also examine what about the cases makes them objectionable, that is, makes them challenge the justice of unconstrained property rights in natural resources. The waterhole-in-the-desert is the quintessential case in that it highlights precisely the need for some constraint on property ownership.

**Waterhole in the Desert:** Adam arrives at the only waterhole in the desert several miles ahead of others who will also come to it and appropriates it all. Zelda arrives one hour later in desperate need of water and Adam denies her access.\(^{190}\)

Most people share the intuition that Adam’s denial of water to Zelda is unjust. What is less commonly shared is the reason why Adam’s denial is unjust, as opposed to just hard-hearted or uncharitable. It could be that what makes this case unjust is that Adam only arrived hours before Zelda and did not perform any actions that revealed the true value of the water; after all, the true value of the water to desperately thirsty people is already apparent. Consideration of another example shows that there is more to the story than just the lapsed time between one’s appropriation of a good and the encounter of one in need.

\(^{190}\) Robert Nozick, *Anarchy, State, and Utopia*, 179n.
**Adam’s Island I:** Adam has sailed to an island that has heretofore been unexplored. In fact, no one but Adam knows about the island. Adam appropriates the whole island but does not make many changes since food, water, and material comforts are easy to obtain. Some years later Zelda, a victim of a shipwreck begins to swim towards Adam’s island. Adam sees her and denies her access to his island. Zelda drowns.\(^{191}\)

As in the waterhole case, many people would agree that Adam treats Zelda unjustly by denying her access to his island. And the reason for this judgment cannot have anything to do with the short period of time within which Adam had ownership rights in his island for, in this example, it is presumed that Adam has lived there for years without encountering another person. It could, however, still be the case that it is because Adam has not done anything to reveal the true value of the island that he treats Zelda unjustly. Consideration of another example explores whether this is the case.

**Adam’s Island II:** Adam purchases materials and builds himself an island in a remote part of the sea. The entire island is built by Adam’s talents and materials that he purchased from another. Adam appropriates the entire island, plants trees, builds huts, farms the land, and collects rain water. Some years later Zelda, the shipwreck victim, attempts to swim to Adam’s island and come ashore. Adam denies her access and Zelda drowns.\(^{192}\)

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\(^{192}\) Ibid, 193.
It is at this point that intuitions regarding the justice of Adam’s denial diverge. Some people might deny that Adam’s denial is unjust on the grounds that Zelda is not worse off than she would have been if Adam has not appropriated the island; after all, Adam’s island would not have existed. Eric Mack takes this approach; he writes, “Adam’s action and character leave much to be desired,” but, he adds that Adam does not wrong Zelda because, “Zelda ends up no worse off then she would have been had Adam never existed or had he never shared this particular stage with Zelda.”\textsuperscript{193} Nozick also takes this approach in the case of the waterhole when he argues that someone’s possession of the only waterhole may not violate others’ rights, even if that person denies them access, if a person has taken efforts to preserve the waterhole against tragedies of the commons or other natural processes that diminish the availability of a resource. He writes, “The situation would be different if his waterhole didn’t dry up, due to special precautions he took to prevent this.”\textsuperscript{194} What makes this explanation so plausible and lends support to the intuition that Adam does not treat Zelda unjustly in Adam’s Island II is that the existence of the needed resource, in this case Adam’s Island, is entirely due to Adam’s exercise of his self-owned talents. In Nozick’s case, the fact that the resource is still valuable for consumption is also due to the owner’s exercise of his self-owned talents and abilities. But the fact that Zelda is no worse off than she might have been if Adam did not exist is not a relevant reason for the evaluation of Adam’s Island II. To see this consider the next example.

\textsuperscript{193} Ibid.

\textsuperscript{194} Robert Nozick, \textit{Anarchy, State, and Utopia}, 180n.
**Adam’s Cage:** Adam purchases the materials to build an impenetrable cage that he then uses to encage Zelda. Zelda asks to be released, but Adam refuses. Zelda’s request, however, is irrelevant in the following sense: Zelda is a quadriplegic with a terminal disease that will kill her only one hour later. Hence, Zelda is not worse off than she would have been had Adam existed and not encaged her.

It seems reasonable to conclude that most people will find Adam’s refusal to release Zelda unjust. And most people will conclude this even though Zelda is not worse off than she might otherwise have been if Adam had not encaged her. And so, it cannot be the consideration of this counterfactual that explains people’s intuitions in Adam’s Island II. But in order to rule out one potential objection to this case, it is important to consider another example. For, someone could object that what makes this case unjust is that Adam encages Zelda, not that he refuses her access to a resource that she needs for her survival.

**Adam’s Cage II:** Adam uses his self-created impenetrable cage to enclose the only food – an apple tree – on an unowned island the only two inhabitants of which are himself and Zelda. Zelda tries to access some of the apples that are on the tree only to find them encased in Adam’s plastic. Zelda asks Adam to allow her to pick some apples, but Adam refuses. Zelda dies of starvation. As it turns out, though, Zelda is unknowingly, fatally allergic to apples and if Adam had not refused her access, Zelda would have eaten the apple and died anyway.
In this case Zelda is no worse off than she would have been had Adam not appropriated the only food on the island. Yet, it also seems that Adam treats her unjustly by appropriating all of a necessary resource and then denying the starving Zelda access to it. Just because she is not actually worse off as a result does not seem to change the evaluation of this case. If this is plausible, then there are two possible responses to the intuitions in the Adam’s Island II case: first, the intuitions could be capturing some other feature in the cases, which make Adam’s actions in Adam’s Island I unjust while holding his actions in Adam’s Island II morally permissible (some feature other than the counterfactual); or second, the intuition could be unfounded, that is, Adam’s denial in Adam’s Island II could be unjust, as it is in Adam’s Island I.

If one gives up the counterfactual as the difference maker between the Adam’s Island cases, one could still claim that there is a morally relevant difference between appropriations based solely on the first come, first serve principle and appropriations based on the principle that one owns what one creates. In other words, one could argue that when a resource is appropriated even though the appropriator has not done anything to reveal the true value of the resource, his ownership rights in such a resource are less robust than if the resource is appropriated and the appropriator has taken measures either to preserve the value of the resource or to reveal its value. In Adam’s Island I Adam does nothing to reveal the value of the island, he was simply the first person to arrive at it and appropriate it. In Adam’s Island II, however, Adam reveals the true value of the materials he uses to build the island by creating a refuge in the middle of the sea. Hence, one could argue that it is this difference that makes Adam’s rights more robust in the second case and what gives him the right to exclude the desperate Zelda from accessing his island.
This move can plausibly be avoided if one considers another example. This next example is designed to illustrate the difference between one’s self-ownership and one’s property ownership in order to drive a wedge between the idea that because one creates or reveals the value of a resource that one’s ownership of the resource is akin to one’s self-ownership. In the last chapter it was argued that because one creates or reveals the value of a resource this is a weighty reason to assign ownership rights to the creator or discoverer. And it was argued that in order to counter this argument one would need to provide weightier reasons. If one’s intuitions are different between Adam’s Island II and the next case, it will be the case that there is at least some weightier reason to render one’s world-ownership rights less robust than one’s self-ownership rights.

**Adam’s Island III:** Adam has appropriated an unowned island and has lived on it for some years. On this island he has neither improved it or done anything to reveal its value; he has, however, lived on it, gathered food on it, and enjoyed its comforts. Zelda, the innocent shipwreck victim spots Adam’s island in the distance and know she does not have the energy to reach the shore before drowning. She calls for Adam’s help. Adam hears her request but does nothing to help Zelda. Zelda drowns.¹⁹⁵

While there will be some dissenters, it is perhaps reasonable to conclude that many people will not find Adam’s inaction unjust in the case above. The reason for this is that many liberals maintain that no one has the right to others’ assistance. It is entirely reasonable for these liberals to conclude that while Adam’s is not virtuous, while his character is flawed, he does not treat

¹⁹⁵ This example is adapted from Eric Mack’s *Case 2* in “The Self-Ownership Proviso,” 193.
Zelda unjustly. Most liberals do not recognize enforceable Samaritan rights or duties on the grounds that to do so would violate people’s self-ownership rights or rights against interference. But many of these same liberals would find Adam’s denial in Adam’s Island II unjust for in that case Adam needed to do nothing to assist Zelda, he needed only to refrain from blocking her access to his island. In other words, his self-ownership rights are not challenged in Adam’s Island II whereas they would be in Adam’s Island III. If people’s intuitions come apart in these cases, then one cannot argue that what makes Adam’s denial in Adam’s Island II morally permissible is that his property rights over the island are akin to his self-ownership rights. It may be true that his property rights are weighty as a result of his self-ownership rights, but they are not as robust as his self-ownership rights.196

It is important to note, however, that Mack does not acknowledge a difference in intuitions regarding Adam’s Islands II and III. But his reasoning stems from his reliance on the questionable relevance of the counterfactual. Yet, even Mack acknowledges that there are cases of unjust treatment that do not make a person worse off than she otherwise would have been if the perpetrator of the treatment had not existed, but these cases are supposed to be ones in which the wrongness of the action performed is uncontroversial, as in the case of false imprisonment. Adam’s Cage II, however, is not a case the wrongness of which is uncontroversial and yet, in that case, it seems that Adam does treat Zelda unjustly by denying her access to the apples

196 Fred D Miller argues for a principle of parity regarding personal property and extra-personal property in “The Natural Right to Private Property,” in Tibor Machan [ed.] The Libertarian Reader, (Rowman and Littlefield, 1982). His argument is based on the assumption that the same principles of justice ought to govern both property types. On his account, if extra-personal property is less robust, so must personal property be so. I think this is wrong if extra-personal property is not logically, but rather, normatively derivative from self-ownership rights.
(which unknowingly would have killed her). Mack should agree, it seems, since he offers the following case:

**Adam’s Cage III:** Adam builds a contraption that has the following use: whenever Zelda tries to reach an unowned object the device is activated and propels the object beyond Zelda’s grasp. Zelda cannot reach any objects necessary for her survival and starves.¹⁹⁷

Mack acknowledges that Adam’s action in this case treats Zelda unjustly. Furthermore, even though in this case the counterfactual would hold, that is, Zelda is made worse off than she would have been if Adam had not existed or built this contraption, Mack’s judgment ought to be the same if Zelda were unknowingly, fatally allergic to all these objects. If this is indeed true then Mack would have to offer another explanation for his claim that there is no relevant moral difference between Adam’s Islands II and III.

If the previous avenues taken to explain the moral difference between Adam’s Islands I and II are dead ends, then the second response to the intuition in Adam’s Island II seems to look more promising. In other words, it seems that the intuition that Adam’s denial is not unjust in Adam Island II is unfounded. The above discussion has revealed that while Adam’s Island II is not as uncontroversial as Adam’s Island I, the evaluation is the same in both cases; in both cases Adam treats Zelda unjustly.

So far, it has been claimed that Adam treats Zelda unjustly by denying her access to his island both in cases in which he builds the island from scratch and in cases in which he simply arrives at the island first. But nothing yet has been identified as the injustice-making feature in these cases. In order to further explore this issue, it is helpful to consider a case in which

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Adam’s refusal to allow Zelda access to his property is *not* unjust. By looking at such a case it will be easier to pin down the injustice-making feature.

**Adam’s Island IV:** Adam has appropriated an unowned island and has lived on it for some years. Zelda, the innocent shipwreck victim, spots two islands in the distance: Adam’s and another island that is unowned and less hospitable than Adam’s. Adam’s island is closer but she can reach both with some effort. By time she is within 100 feet of Adam’s Island she has terrible muscle cramps but can still barely make the unowned island. She asks Adam to let her come ashore but Adam refuses. Zelda struggles, almost drowning, but reaches the unowned island.

Many people would share the intuition in this case that, like Adam’s Island III, Adam’s denial is mean-spirited and perhaps vicious, but not unjust. This intuition seems to stem from the belief that no one has the right to property in order to make life easier, in order not to struggle, or in order to have the same quality of life as another. What makes this case different from Adam’s Island II is that Zelda’s self-preservation or ability to self-govern is not threatened by Adam’s denial. She has more than one option to choose from; she can violate Adam’s property rights, she can offer something to Adam in exchange for access to his island, or she can swim to the other island. Hence, she can continue to act freely even though her choice set does not include the option of accessing Adam’s island without payment, exchange, or retribution. One’s ability to self-govern is not threatened by a smaller option set; it is threatened by having no acceptable options. Acceptable options are options that allow one to formulate projects in accordance with one’s life plan, even if one would prefer better projects and a more fulfilling life plan. Those
who find Adam’s denial in Adam’s Island IV morally permissible will agree that there is a morally relevant difference between conditions in which a person is denied access to a resource necessary for her life or ability to self-govern and conditions in which she is denied access to a resource that she would prefer to use to sustain her life and ability to self-govern. It is the former situation that the minimal access proviso protects against, rather than the latter.

II. CONDITIONS OF THE MINIMAL ACCESS PROVISO

Before proceeding to the kind of reasons that might warrant or justify the minimal access proviso, this section will outline the conditions of the proviso. It is not enough to say that people lack the right to exclude individuals from minimally accessing their property when such access is necessary for the individual’s survival and continued ability to self-govern. It also matters how the imperiled person arrived at such a position and what the conditions of the property owner are like, for, if not having the right to exclude another person from accessing his property places the property owner in conditions similar to the imperiled person, the property owner will have the right to deny the imperiled person access. Whether or not the property owner has rights to exclude a person’s access, if the owner is threatened with less than peril, is unclear and will be discussed below. Furthermore, the property owner will not have the right to exclude an imperiled person from accessing his property only when the access is both necessary and sufficient for rescuing the imperiled person from his plight.\(^{198}\) If no amount of property can remove the

\(^{198}\) Note that if there is more than one owned island in the vicinity, neither property owner has the right to deny access to the drowning Zelda if access will indeed save her. It is not that \textit{this} particular property owner does not have the right to deny Zelda access, it is rather that \textit{any} property owner lacks such a right when someone is faultlessly in Zelda’s position.
imperiled person from his plight, then property owners will have the right to deny such a person access. To see the force of these conditions, a series of examples will be outlined.

The first condition of the minimal access proviso is that the person in the imperiled state must be in such a situation through no fault of her own. That is, she must have taken all reasonable precautions against finding herself in such a situation. If she has not taken such precautions the property owner has the right to exclude her from accessing his holdings.

Consider the next example involving the shipwrecked Zelda:

**Zelda I:** Zelda routinely gets drunk on cruise ships and also regularly falls off the side. Sometimes the passengers on these cruise ships see her and help her re-board the ship. Sometimes, however, Zelda must swim to the nearest island or landmass for safety. This time, when Zelda gets drunk and falls off the cruise ship, none of the passengers see her and so she proceeds to swim towards an island that happens to be the private property of Adam. Zelda tries to swim ashore and Adam denies her access.

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199 Adding this condition may seem to challenge the judgment made in the case of Adam’s Cage II. For in that case, since Zelda is fatally allergic to the apples, allowing her access does not sufficiently remove her from her peril. But, that would be a wrong way to understand the condition. For in Adam’s Cage II, Zelda is in peril of starving. Having access to the apples would sufficiently remove her from the peril of starving. It would not save her from the peril of her allergies, of which she is unaware. And so, in Adam’s Cage II the sufficiency condition holds and Adam’s denial is unjust.

200 The following cases are adapted from the scenarios Loren Lomasky outlines, using hikers, in “Compensation and the Bounds of Rights,” in John W. Chapman, *Nomos XXXIII: Compensatory Justice.*
If this case it seems reasonable to say that, like the situation in Adam’s Island IV, Adam’s denial in Zelda I may be mean or vicious, but not unjust. Perhaps a merciful person would aid Zelda, even though in some very important sense Zelda did this to herself, but justice does not require people to be merciful. Justice requires only that people’s rights are respected. Unlike in Adam’s Island I and II, where Zelda was an innocent victim of a shipwreck, in Zelda I she is hardly innocent. When a person is fully aware of the riskiness of her actions and decides to take those actions anyway, without taking the necessary precautions, she forfeits any rights she might otherwise have had to minimally access the resources necessary to remedy her situation. While Zelda I faces the same perilous situation as Zelda in Adam’s Island I and II, morally, her situation is different; in Zelda I she tries to shift what should have been her responsibility onto another. Since she is responsible for her situation, and her lack of access is her own fault, it seems reasonable to conclude that she must bear the costs of her situation.

The second condition of the minimal access proviso is that granting minimal access to the imperiled person must not be likely to place the property owner in a situation sufficiently similar to the one the facing the imperiled person. How similar the situation of the property owner must be before his denial is permissible is less clear. To see this, consider a variation of Zelda I.

**Zelda II:** Zelda, an innocent shipwreck victim, swims towards an island already owned by Adam. The island is barely big enough to sustain Adam; it has barely enough food to keep Adam alive on a day to day basis and has a very limited water supply. When Zelda reaches the island and tries to swim ashore, Adam denies her access. Adam knows that if Zelda were to come ashore, they would both be imperiled due to the lack of adequate resources.
Many people would agree that Adam’s denial is not unjust on the grounds if he were not to have the right to exclude Zelda, both he and Zelda would be in similarly imperiled situations. Since Adam is the owner of the island, he is assigned moral precedence over Zelda in the use of its resources, especially when they are sufficient for only one person.

The second condition tends to get controversial the more the property owner’s position diverges from that of the imperiled person. If Zelda II were changed so that Adam’s island had more than the resources he required for subsistence, but not enough to have a decent quality of life if shared, some might intuit that Adam may justly deny Zelda minimal access; others will hold the opposite view. If Adam’s island, however, contained abundance and Adam could live quite richly even if Zelda had the right to minimally access a certain amount of his resources, those that are necessary for her subsistence and self-governance, it seems no one but the most fanatic of natural rights liberals would judge that Adam’s denial to Zelda is morally permissible.

What this shows is that there is no clear or strict line beyond which Adam treats Zelda unjustly by denying her access to his island, but there are certainly cases that fall on one side or the other.

The final condition that must obtain in order for a property owner to lack the right to exclude an imperiled person from minimally accessing his property is that the imperiled person must be able to effectively alleviate her situation by such access. That is, minimal access to privately owned property must be both necessary and sufficient to alleviate one’s imperiled situation. It seems reasonable to conclude that one’s property rights contain the right to exclude imperiled persons from accessing one’s property if there are other alternatives that do not involve the non-contractual use of owned property or if doing so can be foreseen to be ineffective. To see the force of this condition, consider yet another variation of Zelda.
**Zelda III:** Zelda, a shipwreck victim, swims towards one of two islands she sees in the distance. When she arrives at this island she discovers that it is the private property of Adam. She asks to come ashore but Adam denies her access. Adam explains to Zelda that the second island is also privately owned but is accessible to anyone for a price. One can obtain access to the island by the swipe of a credit card or by a billing option. The price is higher than Zelda would like to pay but it is not unreasonable and she can safely reach its shores.

In this case, Adam’s denial is not unjust. Zelda has a right to access the necessary resources, but she does not have the right to *free* access if she has the means to pay. Zelda has a viable alternative, the choice of which would maintain her self-preservation and self-governance. As long as the asking price for the alternative would not leave her just as imperiled, Zelda does not have the right to access Adam’s island. What this example shows is that whether or not a property owner has the right to exclude a given person from accessing his property depends on that property being necessary to avoid the person’s perilous situation and not just preferable to that person. If the other island was owned by another person who, like Adam, did not offer access to his island for a fee, then both Adam and this island owner would lack the right to exclude Zelda from their islands. This may mean that Zelda must spend part of her time on Adam’s island and part of her time on the other one while awaiting rescue or transportation to the mainland, or it may mean that she spends all her time on Adam’s island but that the other island owner must compensate Adam for his share of the burden. Either way, both would lack the right to exclude Zelda if she had no viable alternatives.
To see that the access must also be sufficient to avoid the perilous situation in order for a property owner to lack exclusion rights, consider yet another Zelda case.

**Zelda IV:** Zelda, the innocent shipwreck victim, spots an island on the distance and attempts to swim ashore. By the time she reaches Adam’s island she is in such bad shape that it would require more resources than Adam has on his island to relieve Zelda’s situation. Zelda asks permission to come ashore and to have minimal access to the resources she needs. He does not have the resources she needs and, thus, Zelda would only waste the resources Adam has if she were to come ashore; hence, Adam denies her access.  

In this case it seems that, although the situation is tragic, Zelda does not have the right to access Adam’s island. One may not use other people’s property if one knows that doing so will not alleviate one’s perilous situation. If such access were permitted, it would have the effect of burdening property owners without benefiting anyone. This should count against any claim that a person has the enforceable right to prolong the inevitable. Naturally, in the ‘real world’ one does not always know that the remedy will be ineffective so one will sometimes get it wrong. But when one is fairly certain that minimal access to the needed resources has a significant probability of being ineffectual, the property owner has the right to refuse access to his resources.

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201 In order to make this case different from Zelda II suppose that the total use of Adam’s resources would not threaten Adam since he could take a boat to the mainland for extra supplies. But he cannot take Zelda safely or return quickly enough to save Zelda; however, Adam would not be imperiled if Zelda wasted his resources.
Now it is possible to formulate clearly the content of the minimal access proviso: a property owner does not have the right to deny minimal access to a person whose survival or self-governance is threatened, through no fault of her own, when access to his property is both necessary and sufficient to relieve her situation and when the costs faced by the property owner do not exceed what can be reasonably expected. By saying that the property owner lacks such a right incident means that each other person has a right to a minimal access of resources in the extra-personal world when the conditions have been met. Further, the property owner does not lose a right incident when another meets the conditions of the minimal access proviso; rather, the property owner never had the right in the first place. Lastly, what “minimal access” entails will depend upon the circumstance. It could be the case that the property owner lacks the right to refuse sale of a resource to an imperiled person, but it could also be the case that the property owner lacks the right to exclude the imperiled person from free access to his resources. Again, just how minimal the minimal access must be will depend on the circumstances of the situation.

Before getting to the objections that are bound to arise over the formulation of this proviso, the justification for the proviso will be explored. That is the task of the next section.

III. THE JUSTIFICATION OF THE PROVISO

It is sometimes thought that natural rights liberal property rights are maximally robust; that is, that they contain all the rights incidents included in the liberal conception of ownership. In fact, a common criticism of such theories of property rights is that they are too robust to be morally defensible, that their robustness comes at the price of being indefensible. But this is not true; natural rights liberal property rights are robust, but they are also limited by a proviso that considers the minimal needs of others in perilous conditions. Locke included a right to charity,
but his right did not specify the conditions under which charity might be owed. In other words, he did not specify whether or not a person who squandered his money and took advantage of his need to avoid work or responsibility was still entitled to charity. In this sense, his principle required too much for robust theories of property rights. Nozick employed the notion of his proviso to capture the idea that property rights are limited by the needs of others. It was argued in chapter three that Nozick’s proviso does not accurately capture the right intuitions since the further one moves in time from original acquisition, the less likely it will be that anyone’s property acquisition or ownership makes someone worse off than he would have been if the property had remained in the commons. In other words, Nozick’s proviso requires too little and cannot account for the wrongness of Adam’s denial in many of the cases above. Eric Mack also formulates a proviso limiting property rights in certain circumstances, but his circumstances are also too restrictive for the same reason: that he wrongly relies on the counterfactual comparison. The minimal access proviso, on the other hand, captures more than both Nozick’s and Mack’s Lockean provisos by not relying on the use of the counterfactual comparison. Rather, it focuses on the situation faced by the imperiled person and considers relevant how the person came to be in such a situation. By focusing on how a person came to be imperiled, it also maintains the robustness of property rights, a robustness that is characteristic of natural rights liberal theories. And so, while natural rights liberalism is often credited with having indefensible and unintuitive theories of property rights, most natural rights liberals – beginning, perhaps, with Locke, but certainly with Nozick – have included limitations on property rights that arise under certain circumstances.

The plausibility of the minimal access proviso can rely heavily on intuition but, as intuitions are bound to differ, there is another reason to accept the minimal access proviso as a
constraint on property rights. What justifies the minimal access proviso from the perspective of natural rights liberalism is that the very justification of having private property rights also requires that they are limited in this way. In other words, what makes private property rights so plausible is the same reason that makes the minimal access proviso plausible. To see this, consider the following formal argument:

1. It is morally right to treat oneself and others in a way that respects each person’s life and his ability to self-govern.

2. Therefore, individuals have the right to self-preservation and self-governance.

3. Because individuals are, whether in part or in whole, physical beings and conduct their lives in a physical world, they can have the right of self-preservation and self-governance only if they have the right to own their own bodies, talents, and abilities.

4. Therefore, it is right to assign individuals ownership rights in their bodies, talents, and abilities; in other words, it is morally right to assign individuals self-ownership rights.

5. Individuals self-govern by pursuing projects and life plans that they have formulated in accordance with their values.

6. Projects and life plans almost invariably require the use of extra-personal resources.

7. Therefore, it is right for individuals to acquire private property rights over natural resources.

8. The revealed value of such resources is often the result of individuals’ exercise of their self-owned labor and talents.

9. Therefore, there is reason to assign ownership rights of particular resources to particular people when the value of such resources is revealed by those people’s use, effort, creativity, discovery, or transformation.
10. There will sometimes be cases in which access to another’s property is necessary to preserve one’s life or one’s ability to self-govern.

11. These cases challenge the justification of private property rights.

12. In these cases property owners do not have the right to exclude such people from minimally using or accessing their property in various ways.

13. The justification of property rights thereby provides a reason to limit those rights in circumstances in which the distribution of property rights does not further that justification.

The first statement, for the purposes of the argument here, is taken as basic. If it requires further justification, then that justification is beyond the scope of this dissertation. It does not, however, seem controversial to claim that people are entitled to have their life and ability to self-govern respected by others. The second statement is a correlation of the first since to say that a person has a right to something is akin to saying that it is right to treat that person in the way specified by the right. The controversy, if there is any, arises from the third statement. The idea here is that one’s self-preservation and self-governance depend in part on one having rights over oneself.

G.A. Cohen has challenged the idea that self-governance or autonomy requires the right of self-ownership. He writes,

[A]t least in a world of people with different measures of talent, self-ownership is hostile to autonomy, for, in such a world, the self-seeking authorized by self-ownership generates propertyless proletarians whose life prospects are too
confined for them to enjoy the control of a substantial kind over their own lives that answers to the idea of autonomy.  

Cohen may be right to disavow self-ownership if accepting it led to propertyless proletarians who lacked control over their own lives. Cohen mistakenly thinks that self-ownership says something so strong about property ownership that any limits on one’s property rights would be a violation of the property owner’s self-ownership. But this is not necessarily true. Rather, it is the separate concern for self-governance, a minimal condition of which is having self-ownership rights, that renders property rights less than maximally robust. And so, Cohen assigns to self-ownership a role that it does not actually play. Self-ownership rights may diminish a person's set of options in that they disallow any forced transfers of body parts and any forced assistance, that is, they preclude enforceable Samaritan rights. But they do not disallow limits on property rights for those whose autonomy or choice set is severely threatened through no fault of their own. So, if Cohen’s objection is not relevant, it is plausible to claim that to be truly self-governing a person must at least have rights over her self such that no one else may interfere with her body parts, talents, or abilities.

Assuming that the move to statement four is plausible, then neither premise five nor six is problematic since both are taken to be relatively uncontroversial factual claims. The seventh statement, like the fourth, is more controversial. However, if individuals self-govern by pursuing projects and projects involve the use of resources in the extra-personal world, then it seems plausible to believe that having a right to self-govern entails having a right to the conditions under which self-governance is possible. This includes having self-ownership rights but it also

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seems to include having access to at least some minimal amount of natural resources. If this is true, then premise seven is not really very controversial.

Premise eight is taken as a normative claim, a claim that was argued for in chapter three. The ninth premise states that the normative fact stated in eight provides a strong reason to assign ownership rights to individuals who perform the sort of actions mentioned in eight. This reason could, in theory, be outweighed by other reasons, but, as it was argued in chapter three, none of the reasons offered by liberal egalitarians seem to succeed. The only compelling reason that outweighs the considerations mentioned in premise eight seems to be that no person should lack minimal access to resources necessary to sustain his life or his self-governance, which is what the minimal access proviso protects. Premise ten is a statement of fact and describes the kind of situation that triggers the proviso. The eleventh and twelfth premises provide the rationale for the proviso. Since private property rights are plausible because they are a necessary condition for people’s ability to self-govern, if the distribution of property rights leaves some people unable to self-govern, then there is something wrong with that distribution. In such cases, if there were no limit on property rights that allowed such people to access the resources necessary to be self-governing beings, then the justification of private property rights will have broken down. This leads to the final conclusion that the justification of property rights also provides a justification to limit those rights in certain circumstances.

Though the argument above makes no mention of the conditions of the limit on property rights, it would seem to follow that, if one faces a perilous situation because of some negligence on one’s own part, the limit is not triggered. The reason for this is that included in the liberal notion of ownership is some responsibility for what happens to what one owns or for how it is used. Further, part of having the freedom to choose projects and life plans is having the freedom
to choose projects well or badly. If one chooses a bad project and faces dire conditions as a result, one is responsible for one’s own situation and cannot then interrupt another’s projects in order to remedy his own mistakes. The condition under which the justification of property rights breaks down is when the system of property rights does not perform the role it is intended to perform, which is to enhance individuals’ ability to self-govern. But it is not to bail out individuals who have used their property rights badly and are left in dire straits as a result. With such rights comes responsibility for one’s own welfare.\(^{203}\)

Furthermore, while the argument does not explicitly claim that the cost to the rights holder must not be unduly burdensome, it would seem to make room for this condition. The reason is that the person in dire straits is justified in remediying his situation – that is, of accessing the property necessary to preserve his life or self-governance – because the justification of property rights, which are intended to enhance individuals’ ability to be self-governing, has broken down. But one does not avoid the breakdown by unduly hampering another person’s ability to pursue his projects. Instead, one may only remedy his situation without unduly hampering another’s.

Lastly, the final condition – that the remedy must be both necessary and sufficient – can also be deduced given the line of argument employed above. The idea behind the proviso is that

\(^{203}\) There is a concern here that a person is almost never at fault for the projects she chooses, whether good ones or bad ones. If she is not responsible for her character traits, or her upbringing, or if she chooses unfortunate projects as a result of bad luck, it would seem that she cannot be held responsible for her dire situation when it is the result of this bad luck, bad genetics, or bad upbringing. The notion of responsibility used in this dissertation, however, does not take into consideration these types of concerns. Rather, on this account, one can avoid responsibility only when her situation is the result of force, either by nature or by some other person or organization. A full rejection of the consideration of luck on personal responsibility is beyond the scope of this dissertation.
no moral theory should permit innocent people from having to choose between death or slavery and violating other people’s property rights. It should not be a violation of property rights to access property necessary for one’s survival or self-governance. But if a person can live or continue to self-govern, even if not as easily, without accessing others’ property rights, then he will not be permitted to access them. Similarly, if a person cannot live or self-govern even if he obtains access to others’ property rights, then it is reasonable to conclude that he does not have the right to worsen the condition of the property owner without thereby benefiting himself or anyone else. What reason could one give in support of a moral theory that allows individuals to lesson other people’s welfare without a corresponding welfare increase for another? Not even consequentialist theories permit this kind of act.

So, the justification for the minimal access proviso is that such a proviso takes seriously the normative reasons individuals have to endorse or respect the system of property rights advocated by natural rights liberalism. What makes property rights so plausible and appealing are precisely the same reasons that make the minimal access proviso equally plausible and appealing.

**IV. THE LIMITS ON THE LIMIT**

There are at least two foreseeable objections that can be raised against the minimal access proviso and any other proviso that employs the sort of justification that was outlined in the section above. The first objection is that there is no reason for the proviso to be limited to dire situations. In other words, the idea is that if concern for project pursuit or self-governance limits the property rights of individuals when people find themselves in perilous situations, why does it not also limit the property rights of individuals when those same people find themselves in bad
situations, or merely in situations worse than their peers? Another way to express this objection is that it is unclear why there is a limit on the limit or, rather, a limit on the amount of access a person who is worse-off than another is entitled to. If concern for individuals’ ability to self-govern both justifies private property rights and limits those rights when such people find themselves in perilous situations, then it is not obvious why it does not also limit property rights in situations where their self-governance would be enhanced (that is, by having a larger and better quality choice set) by accessing others’ property in various ways. And this is especially true if the property to be accessed is owned by someone with vast property holdings. For the egalitarian, in particular, the objection might be that if concern for individual self-governance is really what justifies private property, then it would also seem to justify a distribution of private property that would maximize the minimum amount of options any given person has. This concern poses a problem for the minimal access proviso. This section, then, will attempt to justify a limit on the limit of property rights. In short, this section will attempt to justify the condition that requires a person to be in dire straits – where one is threatened with the loss of the particular value that justifies having private property rights in the first place, either self-preservation or self-governance – in order to have the right to access others’ property.

One possible response to this objection is a consequentialist argument that considers the negative repercussions that would result from expanding people’s access rights to cover situations in which such people are only slightly inconvenienced or when doing so would maximize the minimal option set a person faces. According to this argument, a wider scope of

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permissible access to others’ property would result in a negative blowback to those who are the worst off in terms of the costs they face in dire situations. The reason for this is that if property owners knew that individuals could permissibly access their property, not only in cases in which such individuals face perilous conditions, but also in those cases in which individuals are merely inconvenienced or worse off relative to the property owner, property owners would be less likely to make their property hospitable or accessible. So, for example, in the Adam’s Island cases, if Zelda were permitted to come ashore on Adam’s island because she had a cramp and did not want to swim the rest of the way to her own island or if Adam’s island were nicer or more hospitable than her own, Adam would have the incentive to make his island inaccessible by camouflaging it so that it may go unnoticed or by letting it go so that it is no better than Zelda’s own island. If Adam knew he would not be permitted to enjoy his island’s luxuries uninhibited, he may stop producing those luxuries. This rational response by property owners would have negative consequences for those who are truly imperiled because the supply of available property would be likely to decrease. In other words, the permissibility of access in less extreme cases is likely to lead to fewer opportunities for relief in the actual extreme cases. Hence, the wider the scope of permissible property access the more difficult it is likely to become for those actually in need. The negative externality of widening the scope beyond extreme cases is that such extreme cases become even more extreme by the decrease of viable remedies. Limiting permissible access to extreme cases avoids the blowback since they are presumably relatively rare.

What is interesting is that one actually sees this type of negative externality occur with tax collection. It turns out empirically that sometimes when the government lowers the rate of taxation, it is able to collect more total revenue. And the cited reason for this is that when one is expected to pay a lower rate of taxes, one is less likely to engage in evasion or avoidance behavior. This idea is captured by the Laffer curve – or the model that represents the optimal rate of taxation beyond which the increase in revenue is insignificant.
This sort of response, however, is problematic for, while it certainly works against very robust limits on property rights, it does not exclude all limits on property rights beyond the most desperate cases. For even if at some point this negative externality is likely to arise, it is not likely that *all* egalitarian expansions of the limit of property rights would produce the negative externality. Rawls’ difference principle, for example, requires maximizing the position of the worst off, but it is designed precisely to avoid this sort of externality. Rawls writes, “All social values – liberty and opportunity, income and wealth, and the social bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.” Rawls would agree that the limit on property rights should stop at the most dire cases only if by stopping there it would be to everyone’s advantage. But it would be difficult to argue that, by expanding the limit even slightly beyond the most dire cases, property owners would react in such a way that would make everyone worse off, both the property owner and the people in need. And so, in order to justify limiting the limit on property rights to the most dire cases, some other response to this objection is required.

Another possible response, then, is to return to what justifies private property rights in the first place. There are two sorts of justifications, there is the justification for the system of private property rights (as opposed to some other regime) and there is the justification for particular property holdings. What justifies the system of private property rights is that such a system enhances individuals’ ability to pursue their projects and self-govern better than any other system of property rights. But what justifies the system of private property is not the same thing that justifies any particular holdings. What justifies particular holdings is either that a person has

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206 I thank Steven Wall and Jeffrey Moriarty for bringing this to my attention.

appropriated unowned property and in doing so revealed the value of that object in a way that others had not yet done or that one received the object from a person who had appropriated it in that way. If the having of property is important in that it enhances a person’s ability to self-govern, then the fact that person A has and uses \( x \) in the pursuit of her projects and that person B has and uses \( y \) in the pursuit of his projects, makes \( x \) the property of A and \( y \) the property of B as long as such property was not originally possessed and used by some other person C without C’s having voluntarily transferred it to either A or B. And so, while the possession of any particular piece of property may be arbitrary, the fact that one does have and uses that property may not be arbitrary.\(^{208}\) And so, if it is not arbitrary that people have rights to what they have, as long as what they have was either previously unowned or obtained through voluntary transfer, then to limit these rights one must offer compelling reasons why such peoples’ projects must be truncated or private spheres of liberty must be infringed upon. The only compelling reason one could have for limiting people’s property claims would be if another person’s ability to pursue his projects or his ability to self-govern is threatened by the system of property that gives those others the claims they have. For, it is protection from this sort of threat that makes private property rights, not particular holdings, so plausible. And so, while the same justification for property rights provides a reason to limit those property rights, the justification for particular holdings of property right limits that limit to the protection of life and self-governance. It does not protect people from basic need, inconvenience, or inequality in holdings.

The second objection that one could have to the minimal access proviso comes from the opposite camp. The first objection is one likely to be lobbied by liberal egalitarians, but the second one is more likely to come from the natural rights liberal camp. The natural rights liberal

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\(^{208}\) Loren Lomasky argues in this way in *Persons, Rights, and the Moral Community*, 129-135.
might worry that the acceptance of the minimal access proviso would undermine all property rights, since there are always people in dire need, and presumably through no fault of their own. The worry would be that there is no way to draw a meaningful line so as to protect the status of property rights. But a line has been drawn. The set of people in need is quite large, indeed, and the set of people in need through no fault of their own is smaller, but still substantial. The line is drawn, however, only at minimal access. People in dire conditions are only entitled to those resources that are necessary and sufficient to bring them above the threshold of minimal self-governance and survival; they are not entitled to anything more robust, and they certainly are not entitled to equality in holdings. In the following chapters it will be argued that what is necessary and sufficient to bring such people above the minimal access threshold is often not going to be wealth transfers but rather changes to the institutions under which many of such people live.

Further, the people who fall under the minimal access proviso are only likely to be people who live in conditions where there are no private insurance markets or where such insurance is unavailable to these people. Most poor in the long-standing liberal democratic countries would not fall below the minimal access threshold since they almost surely have sufficient choice sets to be self-governing; but even if some of such people should find themselves in dire straits, in all but the life-boat cases, they would most certainly be akin to Zelda I in that they would be responsible for not having taken any precautions against misfortune. And so, it is not only wastrels who can legitimately be denied access, but also those who take risks without the willingness to also take responsibility if some misfortune should befall them. The people who do fall below the minimal access threshold are more likely to be those who live under institutions that do not promote political, social, and economic freedom, as will be discussed in the next

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209 I want to thank Ellen Frankel Paul for pointing this objection out to me.
chapter. They are also likely to live in societies in which insurance against misfortune is either unavailable or prohibitively expensive.

Hence, it seems that while certain sub-sets of natural rights liberals would balk at any incursions into private property rights, it would be indefensible to uphold a system of property rights without a limit that considers the dire needs of others. While this does render private property rights less than maximally robust, given what the minimal access proviso requires and given what sorts of people fall under the threshold, private property rights remain very much intact and still quite robust.

V. DOES THE FAILURE TO SATISFY THE MINIMAL ACCES PROVISO RENDER GLOBAL POVERTY UNJUST?

As of the latest statistics on poverty, about 1 billion people live below the World Bank’s poverty line of one dollar a day. Even more than that – about 2.8 billion people – live on less than two dollars a day. Given these numbers is not surprising that 50,000 people a day die of poverty related causes. These facts reveal that the situation of the global poor satisfies at least the first condition of having minimal access rights – that is, their situation is perilous. It is not a situation in which people are merely uncomfortable or worse off relative to others; the lives of the global poor, and their ability to pursue projects and self-govern, is challenged on a daily basis.

Furthermore, while there are certainly some cases of personal fault or negligence, as a general rule, most people face these problems without fault. The original state of mankind was one of poverty; some have managed to rise above such poverty and even to achieve a level of affluence that could only have been dreamed of a century ago. But others have been left behind. Perhaps the reasons for this have to do with geography, as many of the world’s poor live in
places that have been, until recently, fairly isolated. Perhaps the reasons are related to disease, famine, or natural disaster. Or perhaps the reasons are institutional, a result of laws or customs. The most likely explanation for such persistent poverty is that it stems from a combination of reasons, including these three. Nevertheless, barring individual cases, such reasons are unlikely to be the result of individual negligence or fault.

Similarly, it is probably true that the situation of the global poor could be remedied without unduly burdening property owners. According to Jeffrey Sachs, ending world poverty would require the rich world to transfer wealth amounting to only seven tenths of a percent of total GNP (Gross National Product) per year.  This amount is miniscule compared with the four percent of GDP (Gross Domestic Product) the United States alone spends on its military activities. Furthermore, it is an amount that some countries in the rich world are already, perhaps painlessly, meeting. And so, Sachs concludes that the rich world could surely afford it. Nevertheless, one might agree with Sachs and still question whether it is really wealth transfers that are required to satisfy the minimal access proviso.

Notice that in the cases discussed in this chapter, none of them offered monetary remedies. In the case of the waterhole, the appropriate remedy for the dire situation was to make the water available, either for purchase or, if that is not possible, gratis, to those who need it.

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211 Comparing the percent of GNP to GDP, for the purposes here, is like comparing apples to apples. Results in terms of percent of GDP are preferable by most economists today, but some people still use GNP.

212 These countries are Denmark, Luxembourg, Netherlands, Norway, and Sweden. Five other countries – Belgium, Finland, France, Ireland, and the United Kingdom – have already committed to reaching the 0.7 percent goal within the next few years.
Similarly, in the Adam’s Island cases the proper remedy for Zelda’s perilous condition in each was permission to come ashore and use whatever resources she would require to remain alive and self-governing. Monetary solutions are not always appropriate. And, there may be some reason to think that monetary transfers are not appropriate in the case of the global poor. But in order to find out whether it would be appropriate, it is necessary to explore the causes of global poverty or, more accurately, the causes for which the global poor have been unable to escape their perilous conditions. Only once those causes have been explored will a promising remedy emerge. And so, even if Official Development Aid in the amount of seven tenths of a percent of GNP is not unduly burdensome to the developed world’s taxpayers, it is not clear whether it is either necessary or sufficient to remove the burden.

What is necessary and sufficient will depend on what is required to remove the global poor from their perilous situation. After all, it could be the case that there is nothing anyone can do that would effectively remove this burden from the global poor. Though possible, it is probably unlikely that this is actually the case. What is now necessary to explore are the causes of global poverty so that particular resolutions can be more easily identified. The following chapters take up some of these issues.
CHAPTER V. INSTITUTIONAL INJUSTICE

INTRODUCTION

The reasons poverty continues to persist are complex. Certainly, some of the reasons can be attributed to environmental, geographical, and epidemiological factors. But these factors do not fully explain the phenomena of persistent global poverty. Furthermore, such factors do not explain why two countries with similar climates, geographical patterns, and natural resources – North and South Korea, Zimbabwe and Botswana, the Southwestern United States and Mexico – face widely disparate economic conditions. It is now widely accepted that, to a great extent, persistent poverty is due to individual country’s internal economic and political institutions.\(^{213}\) Institutions shape the lives and opportunities of individuals by providing the so-called “rules of the game,” which govern individuals’ interactions with each other and with their government. As such, these rules play a crucial role in determining individual welfare. The purpose of this chapter is to investigate the institutional sources of global poverty.

If various institutions violate the self-ownership and world-ownership rights of individuals, then these institutions are unjust, and this is especially true if these rights violations perpetuate poverty. Another reason to look at institutions is that whether or not the state of the global poor meets the conditions of the minimal access proviso will depend on the factors that

are perpetuating poverty. And so, if institutions play a role in the existence of extreme poverty, it is important to know what that role is. Furthermore, by knowing which institutions perpetuate poverty by violating rights or by failing to satisfy the minimal access proviso, it will be easier to determine which solutions will be required and effective.

To begin, section one of this chapter explores these institutional – rather than natural or environmental – causes of systemic poverty. Section one explores the now conventional wisdom that institutions matter for economic growth. Such institutions factor into how well one is able to use his self-owned resources, both personal and extra-personal, in order to further his projects and general wellbeing.

Section two addresses an objection raised by Pogge regarding explanations that attribute the cause or perpetuation of poverty to local institutions and governments; the kind of explanation he calls explanatory nationalism. Explanatory nationalism is the view “that world poverty today can be fully explained in terms of national and local factors.”214 Pogge thinks globalization plays a much more, if not the, prominent role in the impoverishment of the global poor.215 As such, he thinks that blaming poverty on the developing world’s governments, which enforce and prop up these institutional failures, ignores the role that the global community and the governments of the developed world play. The argument presented in this section is that, while it would be dishonest to ignore the role of the developed world and the global community in perpetuating poverty, many of the aggravators of such poverty are, in fact, local. It is important to separate out the local causes of poverty from those of the global community and its


215 Pogge shares this camp with Jeffrey Sachs; see *The End of Poverty* and William Easterly’s review, “The Big Push Déjà Vu.”
developed world members. In other words, by recognizing the national causes of global poverty, it will be easier to determine which global and developed world policies and practices perpetuate poverty. By ignoring the role of national governments, Pogge falls into the opposite trap – that of explanatory globalism. Explanatory globalism can be defined as thinking that world poverty can be fully explained in terms of global factors. Both explanatory nationalism and globalism, on their own, are wrong.

Section three, finally, addresses the ways in which the global institutional order is harming the poor, that is, how the global economy is violating the rights of the poor or exacerbating circumstances that cause the minimal access proviso to remain unsatisfied. Section three also points out the causes of poverty that are, if not purely, than at least in large part, due to local or national factors. It is important not to exculpate the global community, but it is also important not to let local governments and communities escape their responsibilities and blame. The hope is that by better recognizing where the global institutional regime is unjust, it will be easier to assess the possibility of a solution.

I. WHY SOME COUNTRIES ARE RICH AND OTHERS ARE POOR

There are at least a dozen or more popular theories that purport to explain why the West grew rich, why natural resources are a curse, or why geographical, environmental, or epidemiological factors have led some to affluence and others to misery.\(^{216}\) The fact of the

matter may be that all of these theories are true, but only tell part of the story. Poverty is a complicated phenomenon, and it is likely that it is the result of several factors working simultaneously. Furthermore, these explanations may all play an important role in the explanation of why one country adopted one set of institutions and why another adopted a set quite different from the first. By comparing the sets of countries that share similar natural features but have very different economic and social environments, what seems to determine one’s ability to transform one’s labor and resources into wealth is how one is able to interact with others and with one’s environment, and this in turn depends in large part on the “rules of the game” or institutions. As Douglass North explains in *Institutions, Institutional Change and Economic Performance*, “The evolution of institutions that create a hospitable environment for cooperative solutions to complex exchange provides for economic growth.”\(^{217}\) But he is quick to add that not all institutional arrangements are equally productive, for some institutions can induce economic stagnation or even decline.\(^{218}\) The primary reason institutions affect – either for the better or for the worse – economic performance in a society is that “institutions define and limit the set of choices of individuals.”\(^{219}\) Since economic growth requires that people have the ability to harness resources – both personal and extra-personal – and rearrange them in ways that make such resources more valuable, the opportunities they will have for both harnessing resources and for the rearrangement of such resources will depend on what choices they have available and the costs they face in the execution of those choice sets. All institutions impose constraints and costs on human behavior. The question is which constraints enhance economic growth and individual wellbeing and which hinder such advances.


\(^{218}\) Ibid.

\(^{219}\) Ibid, 4.
That social institutions will affect the wellbeing of individual lives is relatively uncontroversial. If an institutional structure prohibits women from owning property, for example, widowed and spinster women are likely to either end up in poverty or to rely on the mercy of family or charity. Similarly, if an institutional structure mandates, even informally, that people of a certain caste hold only specified low income jobs, then that class of persons will never be able to rise above that level of welfare. Perhaps somewhat less obviously, if corruption is so rampant that labor licenses, land, and government positions are given to political allies and friends, denying everyone else the equal opportunity to pursue these employment opportunities, then those who are denied these means of employment will often not live above subsistence. This will be particularly true in countries that have a large public sector. And so, it should be fairly obvious that the rules – both formal and informal, – policies, and the distribution of justice under which people live matter for people’s ability to further their lives and to pursue their projects. They are not the only things that matter; geography and other environmental factors may prove to be further challenges, but institutions are largely a matter of human design – whether intentional or not – whereas natural facts are largely beyond human control. As such, individuals, and, in particular, those in powerful organizations that maintain and uphold these institutions – namely governments and powerful lobby groups – can be held responsible for the institutions they promote and uphold.

Several times now it has been said that the natural condition of mankind is one of poverty. The world is neither particularly cooperative to human needs nor akin to manna from heaven. That is, natural resources do not come pre-packaged and ready for human consumption. Indeed, individuals need to transform much of the natural resources that are found into things that people can use to make their lives better. So the question is not really what causes poverty
per se, but rather why poverty persists in some places and not in others. One explanation is that some people are naturally more talented and hence, more capable of manipulating the world to serve their needs and purposes. To some extent this is true; but this is an individual difference, not a racial or geographical one. This might explain why some individual people are richer than others, but not why whole populations of people are so. Another explanation is that some people are still poor because the rich simply have not done enough to help them out. This may also be true, but it certainly does not explain how it was possible for some societies to become affluent without the aid of others. And so, lack of aid from the wealthy cannot totally explain the continued poverty. A more likely explanation for why some countries have remained poor is that the political elite have adopted institutions that thwart productive growth behavior.

Since this dissertation is concerned with the institutional injustices that violate rights and not with other non-enforceable moral failings individuals might exhibit, it will not be concerned that people are still poor because the rich have not done enough to help. It will also not be concerned with the various environmental and epidemiological problems that keep people impoverished, like famine, drought, inclement weather, and disease. Rather, this dissertation is concerned with the policies and institutional arrangements that violate rights, and in particular those that also keep people in poverty. What this means is that these people are denied the ability, by the violation of their self-ownership and world-ownership rights (including the minimal access proviso), to make their lives go better.

This chapter, then, will examine some of the practices that societies and governments may engage in that both violate the rights of individuals and perpetuate the poverty that exists. Unproductive institutions, that is, institutions that perpetuate poverty, are those that will tend toward redistributive, rather than productive, activities, monopolistic, rather than competitive,
industries, and restrictive, rather than expansive, opportunities. Not all of these unproductive institutional practices involve injustices, for the lack of trust among certain ethnic groups certainly limits, rather than extends, these people’s opportunities. But basing one’s trust on ethnic identity does not violate anyone’s rights. There are, however, plenty of practices that do violate rights, which include insecurity in property rights, kleptocracy, corruption, exclusion, by coercive means, of castes, races, sexes, or political opponents, from economic, political, and social institutions, promotion of violent social or political conflict, and restrictions on trade or entrepreneurial activity. To see that these activities violate rights consider that the right to acquire property through voluntary exchange can be unjustly truncated by laws limiting who may engage in productive opportunities either through heavy regulation, cronyism, or outright exclusion. The right against interference with one’s extra-personal property is challenged by the lack of respect shown to property rights and kleptocratic practices. Lastly, the right against interference with one’s personal property can be infringed upon by violent conflicts, wars, and exclusionary tactics or laws.

Observing some of the poorest countries in the world will reveal that these practices are quite rampant. Consider the case of Zimbabwe: In 1960, before its independence, the per capita income was 2,277 U.S. dollars. By the time it became independent, in 1980, this income had risen to 2,810 U.S. dollars. After 27 years under the power of President Robert Mugabe,

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220 Ibid, 9.
222 Ibid.
however, Zimbabweans have a per capita income of just 2,100 U.S. dollars. These figures do not tell the whole story since the majority of the income falls into a few hands, while the rest of the population lives on far less than 2,100 U.S. dollars. In fact, 68 percent of the population fall below the poverty line. As one would expect, if the theory about the institutional sources of continued poverty are correct, Zimbabwe would exhibit several, if not all, of the practices mentioned in the previous paragraph. And indeed it does.

In 2000, Robert Mugabe initiated a land redistribution plan, originally started several years after he took office, which became so chaotic and violent that all the productive farmers, most of whom were white, were either evicted from their land or fled the country, leading to agricultural and economic collapse. There is no question that at least some of the redistributed land was acquired unjustly by the white farmers or their ancestors, but there is also no question

224 Ibid.
225 Ibid. Also Martin Meredith, Our Votes, Our Guns: Robert Mugabe and the Tragedy of Zimbabwe, (New York: Public Affairs, 2002). In Robert Mugabe’s presidential address following his reelection sham in 2002, he says,

http://www.zimfa.gov.zw/speeches/president/pres0003.htm However, according to the Center for Global Development, droughts are regional and would affect everyone in that region. But the drop in agricultural production in Zimbabwe was not associated with a corresponding drop in production of its neighbors, Malawi and Zambia. This indicates a cause other than weather.
that some of those property claims were legitimate. The land redistribution plan is an example of the insecure protection of property rights. Even if some of the land claims were illegitimate, respect for property rights requires formal procedures for adjudicating disputes.

Zimbabwe’s institutions also provide the incentive to engage in kleptocracy. The country has received 1.9 billion U.S. dollars in foreign aid in the last ten years alone, but little of this can be seen in the functioning of the economy. In fact, quite the opposite seems to be occurring, since Zimbabwe has experienced negative growth, between -4.1 and -6.5 percent, annually since at least 2000. Where has all that money gone? The answer is probably complicated but almost certainly includes Swiss bank accounts, political patronage, and Mercedes Benzes. The economy shows little signs of having benefited by this money. Inflation is up to 8000 percent (100,000 percent according to some estimates) and 80 percent of the population is unemployed. In the same vein, Zimbabwe is ranked 117th out of 160 countries on the list of corruption, number one being the least corrupt and 160 the most. Land, government jobs, and other goods are distributed primarily to members of ZANU-PF (Zimbabwe African National Union–Patriotic Front), the ruling party headed by Mugabe himself. Dissenters are largely excluded from this distribution when they are not killed or imprisoned. In short, the economy and political freedom of Zimbabwe are experiencing what might be called a fast free-fall.

Considered in whole, Zimbabwe engages in all of the practices on the list. And it is not alone. Nearly all persistently poor countries exhibit the same pattern and practices to some degree or another. In contrast, however, Botswana – a landlocked African country with one of


228 Ibid.

229 NationMaster.com
the highest rates of HIV per population at 37 percent\textsuperscript{230} and an ample supply of natural resources\textsuperscript{231} – has the reputation for the best institutions in Africa and has a per capita GDP of 10,900 U.S. dollars, putting it in the range of South Africa, Chile, and Malaysia as a middle income country. Even though per capita income can be misleading in resource rich countries because, in general, much of the wealth is held by a small part of the population, in Botswana only 30 percent of the population live below the poverty line, unlike in Zimbabwe where the number is around two thirds.\textsuperscript{232} Similarly, Botswana is ranked only number 35 out of 160 on the corruption list, 160 being the most corrupt.\textsuperscript{233}

Comparing these two otherwise very similar countries highlights the correlation between bad institutions – the failure to protect property rights, kleptocracy and other modes of corruption, exclusionary policies, violent conflicts, etc. – and poverty. Figure 1 shows this correlation using economic freedom scores as a proxy for good or bad institutions. While there is probably no question that poverty affects the kinds of institutions a country upholds, it is also the case that the institutions one upholds affect the existence of poverty and wealth. After all, every country was at one time poor and not all of them remained that way. So poverty is not the deciding factor for the kinds of institutions a country adopts. In contrast, however, the kinds of institutions a country adopts may indeed be a deciding factor in determining whether that country escapes poverty or remains trapped. And so, while it may be difficult in poor countries to “get the institutions right,” it may be the only chance they have to permanently escape poverty.

\textsuperscript{230} CIA World Factbook – Botswana.
\textsuperscript{231} See chapter 6 on the issue of natural resources and the role they play on the welfare on a society.
\textsuperscript{232} CIA World Factbook – Botswana.
\textsuperscript{233} NationMaster.com; corruption index.
The Economic Freedom Index measures the degree of economic freedom is five major areas: (1) Size of Government: Expenditures, Taxes, and Enterprises; (2) Legal Structure and Security of Property Rights; (3) Access to Sound Money; (4) Freedom to Trade Internationally; and (5) Regulation of Credit, Labor, and Business. Area one measures the extent of government involvement in the distribution and production of goods and services. The second area measures the extent to which courts are fair and unbiased and whether they enforce contracts and voluntary transfers of property. Area three is a measure of inflation and the freedom to purchase foreign currency. The fourth area measures the extent of trade barriers and the costs of compliance; it also measures black market exchange rates. Lastly, the fifth area measures the extent of regulation in the credit, labor, and business sectors; regulation in the credit sector could reduce competition by restricting foreign ownership of banks, labor regulations include minimum wages, regulations on hiring and firing, and business regulations involve price controls, high costs of doing or starting a business, extra-legal payments, or licensing controls. This index is only a proxy for good institutions because it does not include measures of political freedom; however, with few exceptions, economic freedom and political freedom generally coexist. www.freetheworld.com/release.html
II. EXPLANATORY NATIONALISM VERSUS EXPLANATORY GLOBALISM

Thomas Pogge objects to any explanation of global poverty that assigns prominent blame to local or national institutions and the elites that uphold them, calling it explanatory nationalism. As he sees it, explanatory nationalism makes the following kind of false claim:

The global economic order plays a marginal role in the perpetuation of extensive and severe poverty worldwide. This poverty is substantially caused not by global, systemic factors, but – in the countries where it occurs – by their flawed national economic regimes and by their corrupt and incompetent elites, both of which impede national economic growth and a fairer distribution of the national product.235

Although the explanation for persistent poverty offered in the previous section did not argue that the global community plays only a marginal role, it did assign a large part of the blame to local and national institutions and actors. As a result, the explanation offered in the previous section is subject to Pogge’s characterization above. Pogge goes on to add that, although it is true that national factors perpetuate the poverty that many people face, this fact is in need of explanation – one that, in many instances, leads back to the global community. He writes, “But this analysis [that local factors perpetuate poverty] is nevertheless ultimately unsatisfactory, because it portrays the corrupt social institutions and corrupt elites prevalent in the poor countries as an exogenous fact: as a fact that explains, but does not itself stand in need of explanation.”236

The explanation of these corrupt social institutions and elites, Pogge believes, can be traced to the

235 Pogge, World Poverty and Human Rights, 110.

236 Ibid, 112.
global economic system. As such, Pogge holds the global system in large part responsible for the poverty that exists.

It is hard not to agree with Pogge that the global system bears some responsibility for the global poor’s inability to escape poverty, but not to the extent Pogge would imagine. After all, there have been examples of poor countries that have managed to remove themselves from poverty even as they face the same global institutional order as others do. And they have done this by exercising the kinds of policies that are in direct contrast to the ones mentioned earlier. The Asian Tigers – Japan, Hong Kong, Singapore, Malaysia, South Korea, Taiwan, and now China and India – have managed to do this, facing the same global institutions as the others. And so, when faced with the same incentives and global policies, not all political rulers have succumbed to theft and pillaging. Because of this, the local elites cannot escape their burden of responsibility.

Although he acknowledges some responsibility can be placed on national elites and that the situation of the global poor is due in part to flaws in the local political and economic institutions, Pogge, nevertheless, resorts to a kind of explanatory globalism. He writes, “these national policies and institutions are indeed often quite bad; but the fact that they are can be traced to global policies and institutions.” And so, while he acknowledges that national policies and institutions are a problem, he holds the global community responsible even for that fact. For Pogge, then, all of the blame for the world’s poverty can be heaped on the shoulders of the global elite and their supporters.

One of the reasons Pogge thinks all the blame can be heaped upon the global community is that, as he understands the problem, if the global community changed its policies, this would

237 Ibid, 143.
be sufficient to eradicate poverty. Similarly, if the local elite would change their policies, that
too would be sufficient to eradicate poverty. And so, while both are held equally responsible for
remedying the situation, only one of the changes is necessary to eradicate poverty. Pogge writes,

> It is true that I would not count the affluent countries as causing severe poverty if
> the poor-country elites fulfilled their duties of justice so that severe poverty is
> avoided worldwide. But it is equally true that . . . I would not count the poor-
country elites as causing severe poverty if the affluent countries fulfilled their
duties of justice so that severe poverty is avoided worldwide.\(^{238}\)

This does not seem right, however, since while the global system may enable some of these
unjust local and national practices, it does not enable all of them. North Korea can be seen as a
counterexample. North Korea has largely exiled itself from the global system and yet it practices
all of the poverty perpetuating institutional policies earlier mentioned. If the affluent countries
were to eradicate all of the current poverty in North Korea by a massive global wealth transfer, it
could not absolve the government of Kim Jong Il of all responsibility, particularly when it seems
unlikely that wealth transfers would make more than a slight difference in people’s overall
welfare if they continued to live under Kim’s rule. The eradication of poverty is not a one-shot
phenomenon; it is an on-going process. If it is not the case that poverty could be eradicated just
by changing global policies, then responsibility should not be heaped onto any one set of
shoulders and should, rather, be allocated where it is due.

Pogge defends his claim regarding this symmetrical blame by imagining that global
poverty is analogous to the following situation. He says, “Consider two factories releasing
effluent into one river. Each factory’s chemicals, by themselves, are harmless to the downstream

\(^{238}\) Pogge, “Severe poverty as a Violation of Negative Duties,” 63.
population. But mixed together they are highly toxic and kill many. Given symmetrical placement of the fully informed factory owners, we must hold both of them responsible or neither." There is one sense in which Pogge’s example is analogous to the case of global poverty. This sense is that poverty is the result of more than one cause. Hence, it is probably true that if the unjust global policies changed, poverty would be reduced to some extent just as if one factory stopped polluting the downstream population would not be harmed as much. But Pogge claims that each factory’s chemicals are harmless by themselves, and it would be very difficult to argue that, in the case of global poverty, the policies of local governments are harmless. Similarly, if local governments were entirely rights respecting, that would not also mean that unjust global policies were harmless. Even if it were true that the flaws in the regional political and economic institutions would not be enough to impoverish the people living under them, which is highly doubtful, it still would not follow that no blame should be assigned to the elites that uphold them for the unjust actions they perpetrate. And the same thing should be said for the global institutions that violate individual rights.

Pogge foresees the kind of response given above. His rebuttal is that the global community could avoid responsibility only if global poverty were analogous to the following situation in which, instead of there being two factories symmetrically located, one factory is upstream and the other is midstream from the population. He writes that in order to avoid blame it would have to be the case that, “while the conduct of the midstream agent would cause some harm no matter how the upstream agent behaves, the conduct of the upstream agent would cause

\[239\] Ibid.
no harm if the midstream agent behaved in a harm-avoiding way." And drawing the conclusion from this about the global order, it would have to be the case that,

[T]he global institutional order is such that severe poverty would be avoided completely if the poor countries had just institutional schemes and policies. But the converse is not true. As currently designed, their domestic institutional schemes and policies foreseeably give rise to some avoidable severe poverty, no matter how the global institutional order may be designed.241

Pogge argues that this is not the actual case; in other words, he argues that the global institutional order (the upstream agent) is not merely exacerbating the harms done by the local institutional order (the midstream agent); rather, Pogge claims that the injustices supported by the global institutional order are the cause of injustices in the local institutional order.242

While it is probably true that some global policies do more than merely facilitate unjust policies at the local level, it most certainly cannot be true that unjust policies on the global level cause the unjust policies at the local level. Pogge uses the example of arms sales. While it is surely the case that selling arms to some countries enables the corrupt leaders and political elites in those countries to remain in power, but this does not cause those leaders to use those arms in illegitimate ways. Many countries have access to arms but do not use them to maintain unjust policies or to remain in power. His objection can only be against selling arms to countries with corrupt or flawed institutions, but then those countries’ situations cannot have been caused by those sales. Rather, the situations can only be exacerbated by them. For it is doubtful that Pogge

240 Ibid, 64.

241 Ibid.

242 See Pogge’s discussion of the arms trade and borrowing privileges as support for this claim. Ibid, 65.
believes all arms sales to be unjust. They are only unjust when sold to unjust regimes; but then
the sales cannot have caused those unjust regimes. This would be true for borrowing privileges
as well. Assuming that Pogge does not think all borrowing privileges are suspect, but only the
ones awarded to illegitimate governments, then having those privileges cannot have been what
caused those governments to become illegitimate. Such privileges could only exacerbate the
problem.

It is not even the case that if such countries lacked the power to purchase arms or lacked
borrowing privileges, that the governments would suddenly change and introduce just policies.
It is not the case that North Korea, Cuba, or Zimbabwe enjoys borrowing privileges and no truly
democratic country sells them arms, and yet they have not improved their policies. In fact, the
contrary seems to be true. The more isolated such countries become from the global community,
the more unjust they seem to be. The more a country participates in the global community, the
less likely it is to be unjust. And so, Pogge’s argument that the global institutional order causes
the injustice to be found in local institutional orders does not withstand scrutiny.

This fact, however, does not mean that explanatory nationalism is true; rather, it means
that the causes of poverty are complex. There is enough blame to go around so there is no need
to say that all the blame is on national policies or that it all falls on the global institutional order
and its individual members. It is more helpful to understand just what policies of each violate
rights and contribute to the continued existence of extreme poverty. The next section tries to
look at the various policies that violate individual rights as protected by natural rights liberalism,
and tries to parse out which of these the global institutional order is responsible for and which
are the responsibility of local governments and institutions.
III. GLOBAL INSTITUTIONAL INJUSTICES

In his book, *The End of Poverty: Economic Possibilities for Our Time*, Jeffrey Sachs identifies at least six ways in which a household’s income – and by analogy a country’s income – could decline or fail to prosper. These are the lack of savings, the inability to trade, technological reversal or stagnation, natural resource decline, adverse productivity shocks (largely environmental or epidemiological), and population growth. Each of these ways could be the result of bad luck or accident. Although the deprivation caused by luck should be a concern in some way, it is not the subject of this dissertation. Instead, it is important to examine in what way these factors are aggravated by the policies and institutions supported and created by human will. In particular, this section will examine the ways in which these factors are aggravated either by the global institutional order or individual, national policies.

*Savings*

The lack of savings is not only endemic to poverty, it is constitutive of it. If one is poor, one generally does not have savings and if one does not have savings (either in cash or capital) one is generally poor. So, this can be seen as an extension of the issue of poverty and, unless potential savings are being systematically stolen, this problem is largely not one of human will or aggravated by global policies. There are, however, several ways in which savings may be adversely affected by national institutions. Savings can be adversely affected by the kinds of incentives institutions promulgate. Savings can be in the form of either cash or capital. But in order to invest in cash savings, one must be able to expect that their investment will be safe and will retain its value. In many poor economies neither of these expectations can be assured.

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243 Jeffrey Sachs, *The End of Poverty*. 
Rampant inflation often devalues currency and, thus, makes present consumption more sensible than saving for the future; when inflation is common, one cannot be sure what future purchasing power one’s current savings may hold. Inflation could make investments in capital safer than cash savings, but only if one has reason to expect a return on one’s capital investments. Often this strategy, however, can be averted by bad policies and institutions, such as the nationalization of industries, heavy taxation, or violent conflicts, all of which are likely to impede returns. So, even though a lack of savings is largely a consequence of poverty, the lack of proper institutions can aggravate the problem by removing the incentive to save.

Another problem might be that, while people do have savings, those savings are held abroad and hence, are not being used to fund investment in one’s own country. This tendency, known as capital flight, is the result of institutions that make the country a bad credit risk. If one has reasons to believe inflation will devalue the currency and thus, one’s savings, or that capital investments are likely to be nationalized, heavily taxed, or regulated in such a way as to negate all possible returns on investment, one is likely to invest savings in more credit worthy endeavors. One estimate, for example, puts two thirds of all Uganda’s wealth in 1986 – prior to making several productive institutional reforms – in investments outside of the country.\textsuperscript{244} So, the point is that even if poor countries have savings, this money tends not to remain inside the country for local investment. All this is due to the unproductive economic and political institutions that countries maintain, particularly the monetary policies they adopt.

\textsuperscript{244} Paul Collier, \textit{The Bottom Billion}, 92.
Trade

Adam Smith, writing in the 18th century, is famous for pointing out the unique benefits that can be achieved through trade. By dividing labor between many people and even many countries, individuals and countries can produce more by specializing in one thing and trading with others than they could by producing by themselves all the goods they need.245 Trade is, by definition, always consists of mutually beneficial exchange and is necessary to move beyond mere subsistence. But, in order to reap the full benefits of trade, it must not be hindered or artificially limited in scope. The more division of labor – the more specialization – the better consumers will be, because each thing will be produced most efficiently and cheaply.246 One achieves the most benefits from trade when one has greater access to, not only the capital goods needed to produce one’s product, but also access to the market for one’s goods. Since access to both goods and markets greatly depends on the institutional structure one faces, it is in this area that both national and global policies can do a lot of harm.

In order to profit from trade, one must first have clear property rights, not only over the thing to be traded, but also over the capital needed to produce the thing in question. The primary form of capital that one has ownership rights in is one’s self – this is one’s human capital. Self-ownership is crucial because it gives each person at least one form of capital that is necessary for trade and, hence, for bettering one’s life. Beyond oneself, one must have clear property rights over the extra-personal resources that one uses to produce the thing traded. When one trades


246 While trade is always beneficial for everyone, free trade, however, may not be. The reason for this is that the freer the trade is, the more competitive the production of goods becomes. Those who are not competitive tend to lose out to those who are. Hence, not everyone, especially the less competitive producer, benefits from free trade.
one’s labor for a salary, one only needs to have property rights over one’s self; but when one trades manufactured or agricultural products, one must have clear property rights, not only over one’s self, but over the land, factory, seeds, fertilizer, or other means of production. That does not mean that one must own these goods outright, but one must have enforceable contracts or other means that clearly state who has legal rights over which goods to trade. Hence, not only does trade require clear property rights, but it also requires the protection of those rights. As was noted in the case of Zimbabwe, agricultural production collapsed when the land redistribution plans were enacted. Those who had invested in the knowledge and capital of agricultural production were dislocated and deprived of their rights. Further, as Hernando De Soto in *The Mystery of Capital* identifies, one prominent source of poverty in South America is the lack of property rights over much of the land and resources that the poor control. Without those rights these people are unable to trade or borrow on those resources for other means of production or consumption.

The governments of the countries who do not protect or recognize property rights are primarily responsible for this failure. However, the global community is not innocent. One of the biggest failures in terms of rights violations that the members of the global community perpetrate is the purchase of resources from whoever *de facto* controls them. Those engaged in such trade are rarely concerned about who has rights to these goods before buying them. In many cases, such resources have been obtained by displacing people from their land, without compensation, or by outright theft. But, as even the law acknowledges, purchasing stolen property does not relieve one of the responsibility of returning it, particularly if one is aware that such goods are stolen. Common practices of purchasing natural resources – oil, diamonds,

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natural gasses, etc. – from state-owned enterprises or large private corporations without ensuring that those enterprises are legitimately owned is surely a violation of the rights of those from whom the resources have been stolen.\textsuperscript{248}

It was argued in chapter three that, despite some claims to the contrary, no person has a natural right to a fair share of natural resources. But that does not mean that those who currently hold the natural resources have them by right. Often times, this is glaringly obvious. And yet, not much is done by the international community to ensure these practices do not continue, though there have been some positive changes in that direction. In 2000, under pressure from the global community and NGOs, the diamond industry instituted a certification process known as the Kimberly Process Certification System the goal of which is to inform buyers that the diamonds they purchase are not involved in the funding of any conflict or obtained by slave labor.\textsuperscript{249} This movement has decreased the sale of conflict diamonds to 1 percent of the market. Yet the success of this movement has been limited to diamonds. The individual members of the global community continue to purchase other such goods without validating the sellers’ rights to sell it. This practice thereby legitimizes the stolen goods and legitimizes the thieves’ right to hold and sell them.

Another necessary component to trade is market access. Market access can be impeded by many factors, including some that are not the result of human design, like geographical impediments and the poor basic infrastructure (that is, when these have not been paid for but never received), but there are other obstacles to market access that are the result of unjust

\textsuperscript{248} This is not to say that all state-run enterprises are illegitimate, but it is also clear that some are when, for example, such industries have been nationalized without compensation or when control of such resources has been obtained by force or theft.

\textsuperscript{249} \url{www.diamondfacts.org}. 
policies. Among these are barriers to trade like subsidies to one’s competitors, monopoly rights, regulations or licenses to enter the market, and import and export tariffs. While these activities are certainly perpetuated by national governments to favor some producers in a certain industry over others (subsidies, price controls, etc), the violation of rights to voluntary transfer are largely perpetuated by members of the international community.

According to the principles of justice upheld by natural rights liberalism, no trade barriers are justified unless voluntarily agreed upon by individual traders. However, the current system of tariffs and other barriers upheld by the WTO through the influence and power of the developed countries is an even more pressing injustice. The amount of poverty perpetuated by these unjust barriers – estimated at billions of dollars per year – is phenomenal. These barriers are not only a violation of one’s ownership rights but are also a large contributor to the perpetuation of global poverty.

On a similar note, not only is one’s market access to capital and consumption goods and services unjustly truncated by trade barriers, but one’s market access to labor is unjustly truncated by immigration laws – further barriers to trade on human capital. Such laws violate property rights in that they limit individuals’ ability to voluntarily contract with others for goods and services. Outsourcing has alleviated some of these barriers since it allows employers to hire

250 Even if it is the case that not all taxes on trade count as a violation of the principle of voluntary transfer, tariffs and quotas surely would since the sole purpose of these taxes is to benefit one group at the expense of another. Insofar as the taxes are waged against all producers of a certain good, they may not violate this principle.

251 One study by the World Bank estimates that an amount of 300 billion dollars, two thirds of which would result from agricultural reform alone, is lost as a result of tariffs, subsidies, and other domestic support programs. Kym Anderson and Will Martin, Agricultural Trade Reform and the Doha Development Agenda, (New York: Palgrave Macmillan, 2005).
workers outside of their national boundaries to provide goods and services at a distance. But it certainly limits individuals’ abilities to trade in human capital, especially in certain fields like agriculture and other non-technological service sectors.

Another necessary factor in one’s ability to trade is environmental in a particular sense. This involves the social and political climate within which exchange is possible, in particular it involves the stability of one’s environment. Even if one’s self-ownership or resource ownership is not threatened or violated – which it so often is – if violent conflict is an imminent threat, one will face incentives to engage in non-productive activities like protection as opposed to profitable, productive activities like trade. While other sources of instability, like monetary chaos, are predominantly caused by the irresponsibility of central banks and national governments, violent conflicts can be caused by all sorts of reasons not all of which can be blamed on formal institutional failures, not to mention global institutional failures or rights violations. Nevertheless, there is at least one way in which the members of the global community can be held responsible for some of these property violations and the social instability that result from violence. This is by global arms trade. By some estimates, the U.S. engages in 39 percent of the arms sales in the world.\footnote{Richard Grimmett, “Conventional Arms Transfers to Developing Nations: 1999-2006,” Congressional Research Service report for Congress, \url{http://www.fas.org/sgp/crs/weapons/RL34187.pdf}.} While much of these are benign – as much as weapons can be benign – and sold to legitimate countries in Europe and Asia, at least some amount of these sales go to illegitimate institutions – institutions that use their police and military power to keep themselves in power, despite stealing money and resources from their citizenry and perpetrating violence on dissenters. Much of the violent conflicts in Africa have been fueled by foreign produced weapons. Voluntary exchange is a right that producers enjoy,
but selling arms to a criminal, especially when the use of such arms is unjust and can be foreseen to be so, does not absolve the producer from partial responsibility.

*Technological Reversal or Stagnation, Natural Resource Decline, Adverse Productivity Shock (natural disaster and disease), and Population Growth*

Like the lack of savings, the remaining ways in which a household or community can become or remain poor are often coextensive with poverty itself. After all, one may lose technological advantage if one does not have money to reinvest in new technology or if one cannot afford to maintain current technology. And one can also lose technological advantage if older generations die prematurely before they are able to teach the new generation the necessary skills. While these factors are a matter of concern, they are largely not the fault of political and social institutions either national or global, except where they result from poverty that is caused or perpetuated by unjust institutions.

There is a way, however, in which institutional failure may cause or aggravate the decline in natural resources. The decline in natural resources could be the result of not protecting or enforcing property rights. In many of the world’s poor countries there are no property rights in fishing or forestry. Hence, water and forests face tragedy of the commons problems. Without the conservation and improvement incentives enhanced by private property rights, one would expect that over-fishing and deforestation would plague countries that depend on lumber or fish for export.  

While this is largely not a matter of violating rights it is a case in which people

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may be better off if some institutional rules governing the property rights in these industries existed and were enforced.

Debt

There is one way in which a household’s or country’s income could decrease, thereby aggravating poverty, that Sachs does not explicitly mention but which he assigns significant importance to throughout his book – that is debt. A country or household could borrow money on the grounds that its investment would garner returns that could then be used to pay back the debt. Sometimes even well intentioned plans have a way of going awry. Sometimes this is a matter of bad luck. Sachs mentions the case of the farming population of Sauri, Kenya where only one quarter of the farmers use fertilizers. The remaining farmers claim that they had used fertilizers in the past but had stopped due to the rising price. In response to the suggestion of a system of credit for fertilizer, Sachs records that, “a single failed crop season, an untimely episode of malaria or some other calamity can push a household that has taken on debt into a spiral of unending indebtedness and destitution.”

The point is that taking on credit is risky when one’s investments are subject to factors beyond one’s control – particularly bad luck. Bad luck can make credit a source of poverty. But even if luck is ignored, there is a more important issue regarding debt that involves the institutional failings of the global community. This issue is in regard to the practices of the World Bank and IMF.


The borrowing privileges granted by the World Bank and IMF to illegitimate governments are unjust practices that aggravate the poverty in those countries. For, in many cases such borrowing burdens future generations with debt repayments for money that went into personal bank accounts or into military spending to maintain illegitimate power. The fact that many developing world governments are burdened with debt payments on loans made to illegitimate heads of state is certainly unjust – not only to the people who are expected to pay the money back but also to those whose money was loaned to these illegitimate regimes. This injustice is purely the responsibility of the global community.

CONCLUSION

This chapter has discussed the ways in which the global institutional order is implicated in the reproduction of poverty. This chapter has argued that insofar as the global community is responsible for some extent of the poverty that exists, by promoting and upholding policies that violate rights, it has a duty to change these policies. Rather than supporting the thesis of explanatory nationalism, this chapter has argued that both the local governments and the global institutional order are implicated in the violation of rights and the perpetuation of poverty. But their harms are not symmetric; it is not the case that if the global institutional order was completely just, global poverty would not exist. And it is probably not the case, though more likely, that if local institutions were to become completely just, global poverty would be eradicated. Instead, both affect the existence of global poverty and insofar as their policies violate the rights that individuals have, both are responsible, but only for their own burden. The policies that specifically implicate the members of the global community are: purchases of natural resources without authenticating their legitimacy, various trade barriers, immigration
barriers, arms sales to illegitimate governments, and global borrowing privileges to illegitimate
governments. These policies, in practice, not only tend to violate the self-ownership and
property rights of individuals, but they also tend to aggravate the extent of global poverty that
exists. The next chapter will address one potential solution that has been called on to remedy
these injustices – global redistribution or foreign aid.
CHAPTER VI. GLOBAL REDISTRIBUTION AND FOREIGN AID

INTRODUCTION

One possible solution or remedy to the injustices that cause poverty – either by the failure to satisfy the minimal access proviso or by rights-violating policies – is to instantiate a system of global redistribution or to increase the amount and scope of foreign aid. Pogge suggests this in support of what he terms a Global Resource Dividend, a tax on natural resources paid for by the purchasers of those resources and redistributed to those who use or consume a disproportionately small amount of these resources. The details of his proposal are unimportant. The important question, and one that this chapter will address, is whether such a tax is an appropriate or effective response to poverty and, in particular, to the poverty that results from the violation of natural rights liberal principles.

Section one of this chapter surveys the literature on the effectiveness of aid for promoting growth and the reduction of poverty. The reason the effectiveness of foreign aid matters is that, unless it is effective, forced transfers from property holders to those in need will not be just. One of the conditions of the minimal access proviso, for instance, is that property rights are only limited in cases in which access to the property will effectively remove imperiled people from the conditions in which they faultlessly find themselves. As the vast literature details, however, foreign aid suffers from several negative unintended consequences, including the subsidization of government corruption and incompetence, the reduction of export diversification due to what is known as the “Dutch Disease,” and the hindrance of emergent democratic governments. This section concludes that, because of these negative consequences, foreign aid is not effective, and thus cannot be required by the minimal access proviso.

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255 Thomas Pogge, World Poverty and Human Rights, specifically chapter 8.
Section two outlines the similarities between foreign aid and global redistribution. “Foreign aid” is used to refer to wealth transfers between governments or between supranational institutions and governments the sole purpose of which is to foster economic growth. “Global redistribution,” on the other hand, is used to refer to a system of taxation and redistribution of wealth from richer persons to poorer persons or between richer countries and poorer countries the purpose of which is to satisfy people’s property rights. This section argues that there are enough similarities between the two to conclude, by analogy, that global redistribution is also unlikely to be effective and, therefore, not permissibly employed to satisfy the minimal access proviso.

Section three takes a different turn, which is to suppose that the efficacy of aid is irrelevant, and to ask whether or not global redistribution is the appropriate response to the violations of the natural rights liberal principles outlined in the earlier chapters. This section argues that since most of the rights violations involve unjust policies, with the exception of violations to the minimal access proviso, the appropriate remedy is institutional change rather than global redistribution. While that may be uninteresting, this section also argues that certain institutional changes may be particularly effective and appropriate for remedying the present violations of the minimal access proviso. There is a case to be made that many people’s minimal access rights are not satisfied as a result of the poor quality of the institutional arrangements under which they live. If this is true, there is not much that others can do to remedy the problem except change their own behavior – behavior which acts to buttress or support the unjust institutional arrangements. Changes in global institutional policies may be the only effective way to satisfy people’s minimal access rights.
The conclusion of this chapter is that global redistribution, like foreign aid, is unlikely remedy the rights violations that perpetuate global poverty. The real problem associated with poverty seems not to be the lack of money or capital, but rather the lack of wealth producing institutions – both formal and informal – in the countries within which most of the global poor live. Since institutional change is hard to achieve even by utilizing internal forces or mechanisms, it is close to impossible to achieve change by external means. Hence, the only thing that the global community can do to help the global poor is to do the things it already should be doing – changing the institutions and policies that violate rights over which and to the extent that each has control. What those institutional changes amount to will be discussed in the final chapter of this dissertation.

I. THE FAILURE OF FOREIGN AID

Several studies show that foreign aid has had little, or even a negative, effect on a country’s economic growth rate.\textsuperscript{256} (See Figure 2) What this indicates for the purposes of this

dissertation is that foreign aid would be ineffective as a means of securing minimal access rights for those who currently lack such access. The purpose of this section is to understand why foreign aid is not effective in helping the world’s poor.

![Affect of Aid on Growth](image)

As one writer so aptly puts it, “The history of aid is a history of unintended consequences.” A few of those unintended consequences are: (1) subsidizing bad, corrupt, or simply inefficient governments; (2) impeding export diversification, a.k.a. the Dutch Disease;

and (3) hampering the emergence of democracy. Each of these unintended, negative consequences will be discussed separately in the sub-sections below.

I.i. Subsidizing Bad Governments

Foreign aid can hinder the adoption of necessary economic reforms that are crucial for sustainable poverty reduction, instead of promoting economic growth and the alleviation of long-term poverty. Theoretically, the reasons for this are not surprising; institutional change is hard and economic reform can be painful, especially for those who benefit from the status quo. Hence, even governments that are sincere in their efforts to alleviate poverty sometimes face insurmountable challenges to economic reform. As Dani Rodrik notes, “Reform requires austere policies which respect budget constraints. It also precludes compromising with the narrow, special interest groups which have been the beneficiaries of the deleterious policies of the past.”

And so, it may come as no surprise that economic reform is unpopular even though the reforms, in theory, are designed to benefit the general public. But those who would not benefit, namely rent-seekers and political elite, benefit from market controls, trade restrictions, distorted price mechanisms, and nationalized or monopolized services. And so, Rodrik adds, “Good economics does often turn out to be good politics, but only eventually. Policies that work do become popular, but the time lag can be long enough for the relationship not to be exploitable

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259 Rent-seeking involves using resources in pursuit of redistributive, rather than productive ends; in other words, it involves wasting resources to secure future wealth transfers. It is contrary to productive activity which uses resources to produce some more valuable goods. With rent-seeking the resources used to secure transfers are simply wasted resources.
by would-be reformers.”\textsuperscript{260} In the meantime, bad economics can also be politically popular, especially when there are those who benefit from the bad economic policies. And, if those that benefit happen also to be those who hold the power, the relationship can become a vicious cycle.

Foreign aid allows the recipient governments to continue functioning without making politically unpopular, but necessary, reforms. Likewise, foreign aid provides a constant source of revenue that would otherwise need to be collected from taxation of the citizens. As Stephen Knack writes, “By providing an alternative source of revenues, aid can relieve pressure on recipient governments to establish the efficient policies and institutions necessary for attracting private capital.”\textsuperscript{261} If a government has the choice to either make difficult institutional reforms or avoid those reforms by getting revenue elsewhere – like through foreign aid – any government would choose the latter. And so, foreign aid has the unintended consequence of subsidizing inefficient policies and hindering the process of necessary – but painful – reform.

Besides foreign capital investment, one way a government generates revenue is through taxation. Citizens, however, face little incentive to fund the government when the quality of the services provided is poor. In general, people would prefer not to pay taxes unless they believe that they will receive a return on their money in the form of public goods, like education, healthcare, or the equitable administration of justice. However, in many poorer countries these

\textsuperscript{260} Ibid, 10.

services are provided badly, when they are provided at all. In response to the Millennium Development Goals, foreign funding has poured into services like education and healthcare, but the result has not been better education or better access to healthcare. Instead, it has meant more schools, teachers, and hospitals. But schools and teachers are not enough to guarantee quality education where the incentives are not there either to educate or to be educated. As Easterly asks, what incentive does one have to get educated if, upon finishing, there are no jobs from which to use their investment?\textsuperscript{262} Similarly, why would teachers educate if they are not paid enough or if there are no repercussions for the failure to teach? What money is spent on education or healthcare still does not provide the right incentives for quality provision. And so, citizens lack the incentive to pay taxes for these badly provided services. Hence, the government would need to reform the institutions that create the wrong incentives in the provision and use of public goods in order to motivate people to pay taxes rather than evade.

The difficulties above would be faced even by those governments that sincerely wished to promote institutional reform, but foreign aid also has the negative unintended consequence of weakening the quality of government. In other words, the amount of foreign aid a country receives tends to make it less likely that the recipient government will desire reform. Foreign aid weakens the government and makes power a worthy prize. As a result, it induces rent-seeking behavior, and by expanding the public sector, creates more state jobs and involves the state in investments that could be provided privately.\textsuperscript{263} Foreign aid can increase conflict in a country by


making the role of the presidency or other government office more valuable. If the government controls the distribution of aid, then it is rational for everyone, particularly if there are conflicting groups within a society, to want to be in power. More importantly, however, foreign aid shifts the members of society away from productive activities and towards redistributive activities as the returns on political connections increase. These incentives tend to increase the size of the public sector and the role it plays in manufacturing and industry. And so, while foreign aid makes institutional reform hard even for sincere advocates of change, it also makes the appearance of such individuals less likely as the quality of governance weakens.

Furthermore, there is a more fundamental way that foreign aid can subsidize bad governments. This is by supplying those governments with the wherewithal to remain in power in terms of military spending and patronage. Not only can aid hinder economic reforms but it can supply bad governments the military means with which to remain in power. And this does not necessarily mean that foreign aid is ever directly used to fund the military or to purchase arms, though that may be the case; rather, foreign aid may provide the resources with which the government may discharge its other obligations, thereby freeing up other resources with which to

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University Press, 2007). The last two focus on natural resources, in particular oil, but there is a way in which foreign aid is similar to natural resources, in that it is prize (a rent) enjoyed only by those in power.

264 While there are no studies of which I am aware that demonstrate the relationship between receipt of foreign aid and violent conflict, there are several studies that indicate the relationship between natural resources, particularly oil, and violent conflict. Again, understanding both natural resources and foreign aid as rents to be enjoyed by whoever is in control, there is some similarity between the two. See Michael L. Ross, “What Do We Know About Natural Resources and Civil War,” Journal of Peace Research, 41(3), 337-56 and Ibrahim Elbadawi and Nicholas Sambanis, “Why Are There So Many Civil Wars in Africa,” Journal of African Economies, 9(3), Oct. 2002, 244-269.

fund its military activities. Hence, foreign aid can both directly and indirectly provide the means with which to keep corrupt or incompetent governments in power.

I.ii. Impeding Export Diversification

Another unintended consequence of foreign aid is that it can have the same effect as the discovery of natural resources can have on an economy; that is, it can give rise to what is known as Dutch Disease. “Dutch Disease” is a phrase used to describe the effect that a sudden influx of resources can have on export industries. In essence, a rapid influx of capital can cause the loss of competitiveness in other tradable industries. The reason for this is that the money pouring into the economy can affect the exchange rate and make the local currency more expensive relative to other currencies. When this happens, both local industry and exports lose their competitiveness in the local and global economy. Since it can become cheaper for other countries to purchase traditionally imported goods locally and cheaper to purchase exports from other places, globally, the non-booming industries tend to be outcompeted and disappear. One may think that this would not be a problem if a country has a comparative advantage in producing the booming good, but when that boom is the result of foreign aid, the result is that productive activity is replaced with redistributive activity, a positive sum enterprise is replaced with a zero-sum one.

If foreign aid does negatively affect the export industry in the recipient country, given that a country’s economic wellbeing appears to be strongly tied to its ability to export goods, foreign aid can actually decrease the economic wellbeing of a country.266

The problem of Dutch Disease is not benign even when it is the result of natural resources, like oil, diamonds, or natural gas. The problem is that natural resources are either not permanent or, even when relatively robust, are subject to price volatility. The question of whether or not a resource is permanent or temporary matters even though both can have the same adverse effect on other exporting industries. When temporary, the resources can wreak short-term havoc on an economy that will after have to rebuild its exporting industry when the resource is depleted. When permanent, however, the country tends to become dependent on the wealth generated from the resource in question. This dependency is problematic because of the price volatility common in commodities trading. Volatility in wealth can also cause problems within an economy, which in turn can cause political problems and social unrest. Hence, Dutch Disease is very relevant for all countries that experience windfall resources from a particular industry or export.  

Working Papers Series, No. 11657, 2006. The last reference shows empirically that, in fact, increases in aid correspond to decreases in exporting manufacturing industries. Aid does not affect the export of oil or other natural resources, but these industries themselves also have a negative impact on other exports. See also T. Bauer, “Foreign Aid: Abiding Issues,” 47-49.

One may think, then, that all influxes of foreign capital, such as remittance payments and FDI (foreign direct investment) would face the same problems. Empirical research shows that, indeed, remittances do show this tendency. See Claudio Loser et al., “The Macro-Economic Impact of Remittances in Latin America – Dutch Disease or Latin Cure?” Inter-American Dialogue Working Paper and Pablo A. Acosta et al., “Remittances and the Dutch Disease,” Federal Reserve Bank of Atlanta Working Paper, April 2007. Also, “The Remittance Curse,” Foreign Policy Magazine, July/August 2008. But, this tendency can be mitigated by the spending habits of those that receive the remittances. Consuming imports or saving may lesson the degree of Dutch Disease. Furthermore, as the exchange rate increases, remittances tend to decrease as the value of the foreign currency relative to the local
Foreign aid behaves much like natural resources in this regard. If aid is temporary, as it sometimes is after natural disasters (humanitarian aid), it can still have a negative impact on the economy of a recipient country. The reason for this negative effect is that, while humanitarian aid may be necessary in order to save lives, it can harm competing businesses. If food, for example, is given to a country, local food producers can be put out of business when they can no longer compete with ‘free’ food. The same thing can happen to other local producers.\(^{268}\)

Leaving humanitarian aid aside, quasi-permanent foreign aid receipts can have the same effect as other influxes of capital – like natural resources or remittance payments. Again, the problem with this is that if foreign aid causes export industries to lose their competitiveness, a country becomes increasingly dependent on the aid, rather than less dependent as one would hope would result from an influx of capital. Conclusions of an empirical study by Rajan and Subramanian report that there is indeed an adverse effect of aid on competitiveness, which negatively affects the growth of labor intensive industries and exports. This is done, they report, by overvaluing the exchange rate.\(^{269}\) The worst part about this is, as they maintain, that labor intensive sectors grow more slowly in countries that receive aid.\(^{270}\) About this they write, “This should be a source of concern for those who see aid as an instrument to reduce inequality, for labor intensive

\[^{268}\text{Humanitarian Aid is a moral dilemma for this reason. While no one wants to sit by and do nothing while people are in desperate need, new solutions need to be engineered that can still help people without harming local producers. What sorts of solutions will be promising is vastly important but beyond the scope here.}\]

\[^{269}\text{Rajan and Subramanian, ibid, 32-3.}\]

\[^{270}\text{Ibid.}\]
sectors are the ones that can absorb the poor and landless who leave agriculture.”

Supposing their results are correct, this means that not only does foreign aid negatively impact other industries crucial for growth, but it can also negatively impact the chance that the very poorest people could have to raise out of poverty. The very industries the inflow of capital harms — the labor intensive ones — are the ones that are most likely to hire unskilled labor and hence, are the best hope for some people to escape poverty.

I.iii. Impeding the Emergence of Democracy

The third unintended consequence of foreign aid is that it “impedes the emergence of a mutually beneficial relationship between the government and its citizens.” This consequence is related to the other two problems mentioned earlier in that it provides a government with revenue other than that of taxation. Because foreign aid, like natural resources, provides a steady flow of revenue for the government, the government is freed from the need to turn to its citizens for revenue in the form of taxes. Because of this, there is less accountability on the part of the government to its citizens and less incentive for rigorous oversight by the citizens on the actions of the government. Rather than be held accountable to its citizens, the government only needs to satisfy the aid agencies from which it receives its revenue. Bertin Martens calls this feature the “broken feedback loop.”

Usually in the citizen-government relationship, the principal-agent relationship can provide an imperfect model for thinking about the way the government and the citizens interact.

271 Ibid.


According to this relationship, the citizens are the principals, while the government – or rather the politicians – is the agent of the citizens. Because the government is supposed to be accountable to the citizens, government agents can be metaphorically fired – that is, voted out of office – if they do not serve the needs of the citizens. This principal-agent relationship, in order to be a conceivable model of the relationship between the citizen and the state, only works in democracies where citizens can actually have some effect on the actions or policies of government agents. In the case in which government revenue is comprised largely of foreign aid, rather than taxation, the principals that the government is accountable to are not the citizens, but rather the donor countries from which it gets its revenue. Since the donor countries get this aid money from taxing their citizens, the people to whom the recipient government would be accountable are the citizens in the donor countries, who have little or no means with which to hold such countries accountable. Furthermore, since the citizens in the recipient country are not required to finance the government, they are unlikely to have sufficient incentives to oversee the actions of the government. Citizens cannot challenge the government by threatening to cut off its revenue and so the development of a mutually beneficial relationship between the citizens and state lacks the incentives to get started. Hence, democracy tends to be either staged or nonexistent.

It is sometimes thought that foreign aid can promote democracy by providing technical assistance in the electoral process or by encouraging a free press and the strengthening of the judicial process by means of conditional aid. These theories also claim that aid can promote democracy by increasing education and by raising incomes. These theories have been challenged by the argument presented in this chapter and by much of the empirical evidence that has been conducted in this area. This chapter has argued that aid neither raises incomes nor
necessarily improves education. Furthermore, aid conditionality is imperfect for two reasons: the first is that in order for conditionality to be effective it requires monitoring to ensure accountability and the second is that the incentives to perform the requisite conditional actions are missing.

Regarding the first issue, the best people to monitor the government are the citizens themselves but when foreign aid funds the government, the government does not need to be accountable to the citizens, as they do not hold the purse strings. Instead those who do – the citizens of the donor countries – are too distant to be aware of what is going on. The second issue brings up a general problem about conditionality that is best summed up by Bertin Martens when he quotes a third party as saying, “Why would a donor pay a recipient to do something that is anyway in his own interest? And if it is not in his interest, why would the recipient do it anyway?” 274 This quote sums up the problem pointedly – if democratic reform is in the governments’ interest, they would do it even without the prodding of the donors. And if it is not in a government’s interest to become more democratic then no amount of conditions will make the government sincerely reform. Instead, reform may often be staged in order for the government to continue receiving money and, in general, no one holds the government accountable for actual reform. When this theory is cashed out in empirical data, the results, if correct, show that aid has no effect on the promotion of democracy. 275

If this argument is right, then aid can, in fact, have a detrimental effect on the emergence of democracy. Since the level of democracy is generally a reflection of the extent to which

274 Ibid, 9.

individual rights are protected within a country, aid can have a negative impact on the protection of individual rights, including property rights.

Conclusion

And so, if economic growth is a way of getting people out of poverty and if it is a way of promoting the satisfaction of people’s minimal access rights, then foreign aid is not a solution to promoting those rights nor is it a solution to reduce global poverty. Although it may initially seem like a promising solution to these problems, foreign aid has a number of detrimental unintended consequences that undermine its effectiveness. But not only can aid be ineffective as a means to escape from poverty, it can also make such an escape more difficult by hindering economic reform by serving as a subsidy for bad policies or incompetent governments, by atrophying the export sectors and destroying labor-intensive industries that could provide employment for unskilled laborers, and by impeding the emergence of a mutually beneficial relationship between the citizen and the state by removing the incentives the government would have for economic reform. The question now is: if aid does this, will global redistribution be the same?

II. WOULD WELFARE TRANSFERS OR GLOBAL REDISTRIBUTION SUFFER THE SAME FATE AS FOREIGN AID?

Global redistribution, insofar as the wealth transfers are made between governments, is likely to face many of the same challenges systemic to foreign aid. The purpose of this section is to outline those similarities. This section will also address one possible difference between foreign aid and global redistribution that has to do with the ends each serve. If people’s rights can be violated simply because they lack minimal access to resources necessary to reach or
exceed the minimum threshold, as was argued earlier, then wealth transfers may be useful even if they fail to produce economic growth. Dependency may not be seen as such a problem when the choice is between life and abject poverty or death.

What makes global redistribution or wealth transfers analogous to aid is that, since there is no global taxation and redistribution mechanism, such wealth transfers are likely to take place between governments, rather than between individuals. As such, the transfers will be subject to the recipient government’s oversight. Because of this, if the recipient government is corrupt or incompetent, wealth transfers are likely to act as subsidies for those governments to remain in power, rather than as payments to those who have the greatest claim on the funds, namely the global poor. Some have offered a solution to this problem by considering the measure of inequality prevalent in a given country. If the Gini coefficient – the measure of a county’s income distribution – is low, in which a coefficient of zero indicates a completely egalitarian distribution, then one can be more secure in the knowledge that the money will reach individuals more equitably. This, however, is more likely to be an effective aid strategy than for global redistribution. The problem with considering the measure of inequality is that the poorest countries generally also have the highest inequality. Hence, those who most need the money, the very poor, would be excluded from such transfers by the level of inequality prevalent in their countries. This may be an effective strategy for aid allocation because the purpose of aid is economic growth and overall poverty reduction. But if the purpose of global redistribution is to prevent specific individuals from falling below the minimal access threshold, then using a

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measure of inequality to allocate transfers will not be sufficient to prevent all of these harms. Some may be prevented, but certainly not all, and perhaps not even the worst cases. The higher the inequality, the more likely the welfare transfer will be used as a subsidy for inefficiency and the more likely such transfer will be regressive (a transfer from less wealthy tax payers to more wealthy recipients) rather than progressive (money moving from the more wealthy to the less wealthy).\textsuperscript{277}

Since any inflows of capital can affect the exchange rate in a given country, which in turn can make export industries less competitive, global redistribution, like foreign aid, can cause Dutch Disease. One might think that this phenomenon is not so bad, especially when one considers that Foreign Direct Investment (FDI) and remittances from emigrant workers can produce the same effect. But unlike FDI, which brings industry to a country and thereby replaces the industries out-competed by the higher currency value, global redistribution is not a source of industry. It does not create jobs nor does it produce anything directly. Hence, unlike FDI, if global redistribution atrophies export industries, people become increasingly dependent on zero-sum transfers. Furthermore, the people who become the most dependent are those who would lose the most from the negative impact capital inflows may have on the labor-intensive industries – namely, the least skilled and most poor. Hence, just as healing a wound does not occur simply by putting a band-aid on it, alleviating poverty does not occur by making people dependent on welfare transfers. If poverty alleviation means people are able to become self-sufficient, then welfare transfers will be unlikely to further the end of poverty. This is not to say that welfare transfers cannot provide successful relief – they can work very well as a band-aids – but they are band-aids that barely cover the wound and make it harder to heal.

\textsuperscript{277} Ibid.
Lastly, global redistribution, like foreign aid, can impede the democratic process if it subsidies governments and makes them less reliant on the taxation of citizens. Since the money would come from richer countries whose taxpayers will be unlikely to keep tabs on the recipient government’s distribution of that money, the recipient country faces the same incentives they do regarding foreign aid – which is to do as little as one can get away with while still receiving the transfers. And since the poor have little control over the government’s actions, and since they do not pay for the government’s activities, the poor are also unlikely to be able to influence the government. And so, global transfers designed to satisfy people’s minimal access rights will also be ineffective; it is unlikely to improve the lot of the poor if the poor lack any voice in the distribution of benefits and burdens in their own country, a voice that is further silenced by global redistribution between governments.

In the introduction to this section a difference between foreign aid and global redistribution was introduced; this difference can be revealed in the separate ends they are each designed to achieve. The end of global redistribution is to satisfy people’s rightful claims to certain minimal amounts of property, as opposed to the goal of foreign aid, which is economic growth and poverty alleviation. Hence, the objection to global redistribution - that it fails to alleviate poverty and only makes people more dependent on future transfers - cannot really count against global redistribution, as it can against foreign aid. The idea is that if a person has a right to minimally access property then the right will be satisfied even if there are some negative consequences that result. But if part of those negative consequences actually made global redistribution less likely to be effective, that is, if they rendered insufficient the ability of wealth transfers to remove individuals from dire situations, then there would be no moral duty to global redistribute on the grounds of the minimal access proviso. There is the concern that the
percentage of those transfers actually reaching the intended targets – those whose position
renders them beneath the minimal access threshold – is minimized by these negative
consequences. Impeding democracy and subsidizing incompetent governments make it less
likely both that individuals’ minimal access rights will be satisfied and that the same people will
be able to escape such predicament in the future. Democracy and honest government, together,
provide a better recipe for satisfying one’s minimal access rights and for alleviating the situation
that triggers such rights.

For the sake of completeness, it is important to address the possibility that wealth
transfers from the developed world to individuals, rather than governments, in the developing
world may avoid most of these unintended consequences and would, hence, provide a better
means of satisfying the minimal access proviso. If it would be administratively possible to make
these sorts of transfers, there may be some case for them. Like foreign aid and remittances, there
could be some sort of currency valuation problems that result from the flow of money into the
economy, but the effect may be mediated by individual spending, saving, and investment
choices. Unlike foreign aid, however, individual wealth transfers would avoid behaving as a
subsidy for bad governments and they may even promote the emergence of democracy since
governments would need to appeal to the citizens to fund its operations.

The problem associated with individual transfers, like foreign aid, is largely the problem
of dependence. According to the minimal access proviso, in order to have a moral right to
“access” others’ property, such access must be sufficient to move the person beyond the minimal
access threshold. Individual wealth transfers could bring individuals beyond the threshold, but
this would often be only temporary relief. There is generally a strong tendency towards
dependency, especially when the underlying causes of one’s poverty are not changed. While this may often have to suffice as a solution to one’s imminent threats, it is certainly not a long-term solution for the alleviation of poverty. The problem of dependency, which is partly the result of the resilience of the underlying institutional problems, is one reason that wealth transfers are not the most appropriate response to the problem of global poverty or the most successful solution for gaining minimal access.

III. THE APPROPRIATENESS OF GLOBAL REDISTRIBUTION

There is reason to believe that even if global redistribution would effectively reach those who have minimal access claims, it would not be the appropriate response to such claims. Chapter five argued that many institutions – both formal and informal – contribute to poverty in very important ways. Everyone in the world has access to some resources – namely their own physical powers and labor. But the ability to transform those resources into welfare requires particular institutions like the rule of law, the protection of property rights, sound monetary policy, and relative social and political stability. Acquiring those institutions is the real solution.

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279 I ignore here children and the severely disabled for the purposes of argument. In fact, one of the most important points Hernando de Soto makes in his book, The Mystery of Capital, is that the poor do not actually lack wealth or resources; they lack opportunities to use those resources and wealth in ways that further their welfare. The lack of these opportunities is most likely the result of inefficient or unjust institutional rules and policies.
for achieving sustainable poverty alleviation. And so the proper remedy to global poverty is institutional change.

It was mentioned earlier that institutional change is difficult at best and nearly impossible at worst, particularly from those on the “outside.”²⁸⁰ While this may be true, it does not mean that there is nothing that one can do to facilitate the process. For one thing, one can reduce or radically change the industry of foreign aid, which includes the World Bank, IMF, and individual countries’ aid programs. This may seem radical and it definitely goes against the conclusion made by Bono and Jeffrey Sachs, but if the argument in this chapter has been correct, institutional change is thwarted by foreign aid when it acts as a form of subsidy on the current government and supporting institutions. And so, internal institutional change is unlikely to get off the ground as long as the current institutions are generating sufficient monetary support.

Internal change is crucial; however, there are institutional changes the global community can, and ought, to make. Most of these changes have already been recommended in the course of this dissertation. The final chapter will further flesh out the demands imposed on the global community by liberal cosmopolitan justice in the tradition of natural rights liberalism. Until

²⁸⁰ The fact that institutional change from the outside is close to impossible does not mean that outside governments have not tried and continue to try. It is rather to point out that most of these attempts have been disastrous. Iraq is a good example, but there are less radical cases. Most of the institutional change attempted in Africa by structural adjustment loans, foreign advisors, and big plans drafted by Western intellectuals have all failed to produce any significant changes. There is a large amount of literature on the process of institutional change and most of the more recent findings concur that institutional change is most successful as bottom-up, grassroots phenomena and is not the result of master plans and top-down legislation. For example see Dani Rodrik, One Economics, Many Recipes, chapter six, William Easterly, The White Man’s Burden: Why the West’s Efforts to Aid the Rest Have Done So Much Ill and So Little Good, (New York: The Penguin Group, 2006), and particularly Douglass North, Understanding the Process of Economic Change, (Princeton, NJ: Princeton University Press, 2005).
these changes have been made, no amount of foreign aid or global redistribution will alleviate the situation of the global poor.
CHAPTER VII. REAL REMEDIES

INTRODUCTION

This dissertation has argued that the global institutional order, which contains extensive poverty, is unjust in certain ways. Unlike the theory offered by Thomas Pogge in *World Poverty and Human Rights*, this dissertation has argued that world poverty is not unjust because history has wrongly rendered some people rich and others poor, and it is not unjust because people are denied their fair share of the world’s natural resources. The claim that there is such a thing as one’s morally enforceable “fair share” is unsubstantiated. The injustice of world poverty unjustly stems from the sorts of institutions that are upheld by force; institutions that violate people’s natural rights as conceived by natural rights liberalism. One of those rights is the right to minimal access, which follows from the sorts of justifications natural rights liberalism must rely on for the moral establishment of private property rights. Such minimal access rights, as identified by the minimal access proviso, protect individuals from remaining in dire conditions through no fault of their own by the lack of access to resources necessary to maintain their status as rights holders. Such rights, however, are not unconditional; in order to permissibly access the property rights of others, either through redistributive taxation or otherwise, it must be the case that doing so is both necessary and sufficient to secure minimal access for the person in the dire condition. And secondly, permissible violations of others’ property rights must not overly burden the property owner whose rights are protected by the same concerns that give rise to the minimal access proviso.

The last chapter argued that global redistribution is neither necessary nor sufficient to remedy the dire conditions faced by the global poor. The argument for this drew attention to the
ineffectiveness of wealth transfers to alleviate poverty as a result of the negative unintended consequences such wealth transfers give rise to. Global redistribution may not only be insufficient to alleviate poverty, it may also be unnecessary. The purpose of this chapter is to discuss real remedies to the problems faced by those who live in extreme poverty. If the primary source of continued poverty is the institutions under which the global poor live – institutions enforced both by local or national elites and the global community – than the real solutions will pertain to changing these institutions. There are obviously too many policies to adequately discuss in one chapter and so this chapter will address two major policy changes: the liberalization of trade and immigration flows.

Section one addresses the liberalization of trade. The problem with trade barriers is twofold: the first is that they violate the right of voluntary transfer by artificially and coercively altering the terms of trade; the second is that they deny the global poor the access to resources necessary for their survival.

Section two addresses the complementary issue of immigration. Like the barrier to free movement of capital and goods, the barrier to free movement of human capital, that is, individual people, is symmetrically problematic. First, it coercively and artificially truncates the market for mutually beneficial trade in labor. Second, and more importantly, it thwarts the most plausible route the global poor may have to achieve minimal access to resources necessary for their survival and self-governance.

I. FREE TRADE, NOT AID

The liberalization of trade involves the lowering or outright removal of barriers to unencumbered mutually beneficial exchange. There are two reasons why the global community
should take trade liberalization seriously. The first reason is that all such barriers distort the
distribution of benefits and burdens. Unlike sales tax or other sorts of across-the-board coercive
measures involved with the exchange of goods and services, trade barriers like tariffs, quotas,
subsidies, and import and export licenses all involve benefiting certain groups by shifting the
costs onto others. Hence, these sorts of barriers violate both the right to unencumbered,
voluntary property transfers and the right against moral balancing, that is, against sacrificing one
person’s legitimate interests in order to benefit another’s.

Each sort of trade barrier distorts the market in a different way. Tariffs, for example, are
taxes on imports the purpose of which is to make domestic goods more competitive relative to
foreign imports. As such, these taxes act to benefit domestic producers at the expense of foreign
producers. Quotas, in contrast, are caps on the number of imports that can legally enter the
market. The purpose of quotas is, again, to make domestic goods more competitive, since supply
and demand will raise the price of the imported good and its domestic counterparts. Subsidies
are wealth transfers given to domestic producers, the result of which is to make those producers
more competitive by lowering the market price of the domestically produced good.\footnote{281} This is in
contrast to tariffs and quotas, which artificially raise the price of the imported good. Import and
export licenses permit only those with such licenses to import or export their goods. The result
of these licenses is that the supply of the good is arbitrarily restricted to those who are able to

\footnote{281 Subsidies have sometimes been used to curb the production of certain goods in order to artificially keep the price
of such goods higher than it would otherwise be. This is done when, for example, there are too many producers in a
particular market for each individual producer to make a profit. Without the subsidy this would cause the least
efficient producers to go out of business. With these subsidies, however, no one is forced to leave the market and all
make enough profit to continue production.}
obtain the license. In all cases, these trade barriers act to benefit domestic producers at the expense of foreign producers.

It is not only foreign producers, however, who are worse off as a result of trade barriers; the cost of production is also shifted from the domestic producers onto consumers, whose access to lower priced goods is thereby limited. By making domestic producers competitive relative to foreign producers, it reduces the availability of foreign imports. Often this means that consumers not only pay more for goods, but they sometimes may more for goods of lesser quality. According to some estimates, the gains to the global economy of trade liberalization would be 254 billion U.S. dollars per year. In order to justify this sort of coercive wealth transfer then, it would have to be the case that the transfers are made to those who lack access to necessary resources. This is obviously not the case, however, since these transfers are made to the producers of these goods, most of which are hardly poor. And so, this shift of costs from some people onto others violates the rights of those who are made to bear the burden. Further, it unjustly interrupts voluntary transfers of goods between people who have the right to contract with each other regarding their preferable terms of trade.

The fact that trade barriers are unjust according to the principles of natural rights liberalism is probably not very surprising and, as such, not very interesting. What is interesting, however, is the further claim that trade liberalization provides an opportunity for the global poor to secure minimal access to resources necessary for their survival and self-governance, an opportunity that is more likely to be successful than global redistribution. There are at least two reasons why this is interesting: the first is that if trade liberalization really does help the global poor to secure access to necessary resources, it would represent a sustainable way to satisfy the

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minimal access proviso. For, if people can secure their own welfare just by having access to
greater markets, such people are less likely to continuously fall below the minimal access
threshold. In contrast, global redistribution, which does not alter the underlying causes of
poverty, is more likely to cause dependency, rather than self-sufficiency. The second reason
why it would be interesting if trade liberalization led to poverty alleviation is that there is some
controversy about whether or not the benefits from trade liberalization actually accrue to the
global poor. It is sometimes thought that when it comes to free trade, “the rich get richer and the
poor get poorer.” Such a claim has been the catalyst for renewed interest in industrial policy in
the developing world and for “fair trade” policies in both.

I.i. Does Trade Benefit the Global Poor?

The benefits of free trade, or rather the harms of trade barriers, have been well
documented at least since the time of Adam Smith. In the Wealth of Nations, Smith writes, “To
give monopoly of the home-market to the produce of domestic industry, in any particular art or
manufacture, is in some measure to direct private people in what manner they ought to employ
their capitals, and must, in almost all cases, be either a useless or hurtful regulation.” Smith
continues, “if the produce of domestic can be brought there as cheap as that of foreign industry,
then regulation is evidently useless. If it cannot, it must generally be hurtful.” The point
Smith is making, and one echoed later by David Ricardo, is that one hurts oneself when one
produces domestically something he could buy for less internationally. As Smith points out, “If
a foreign country can supply us with a commodity cheaper than we ourselves can make it, better

284 Ibid.
buy it off them with some part of the produce of our own industry, employed in a way in which we have some advantage.” Trade barriers make domestic production cost the same or less than foreign production, but only by artificially altering the terms of trade. As such, it represents a loss to the economy.

While all this is true in theory, some people doubt whether this works so perfectly in practice. After all, the theory of comparative advantage assumes perfect mobility of labor markets and the absence of other market failures. As a result, critics of trade liberalization argue that since market failures are more prevalent in developing countries, there is little reason to believe that the liberalization of trade will actually lead to benefits, especially for the poor. And so, Dani Rodrik writes, “Essentially, there is no convincing evidence that trade

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liberalization is predictably associated with economic growth.” As a result, he argues that, “There is an alternative account of economic development . . . . This is an account that questions the centrality of trade and trade policy and emphasizes instead the critical role of domestic institutional innovations that often depart from prevailing orthodoxy.” These domestic innovations require industrial policies like protecting new markets, subsidies for research and development, and export subsidies. Joseph Stiglitz argues for a similar conclusion by focusing on the sorts of market failures prevalent in developing countries, failures that make trade liberalization less than beneficial. These failures include the non-fluidity of the labor market, the existence of imperfect markets for risk, and the inequality of benefits associated with trade liberalization.

These arguments, however, focus on whether or not developing countries should liberalize their trade. While this is important, the primary question addressed in this chapter is whether or not the developed world should liberalize their markets and whether or not such liberalization is likely to alleviate global poverty. In response to this question, both Stiglitz and Rodrik agree with the conventional wisdom that trade liberalization would be mutually beneficial, though they disagree about the extent. Rodrik writes that, “It would be hard to identify any poor country whose development prospects are seriously blocked by restrictions on

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288 Dani Rodrik, One Economics, Many Recipes, 214.

289 Ibid, 99-152.


291 Ibid.
market access abroad.”\textsuperscript{292} In contrast, Stiglitz writes that, “[his proposal] distributes new market access progressively, ensuring that the largest gains accrue to the smallest and poorest countries, and it distributes liberalization obligations progressively, requiring that the largest and richest countries liberalize most.”\textsuperscript{293}

Despite these two famous skeptics of trade liberalization, much of the economic literature on the subject agrees that the liberalization of trade, both in the developed world and in the developing world, would lead to significant improvements in economic growth and poverty alleviation.\textsuperscript{294} Figure 3.1 below shows the correlation between economic freedom, used as a proxy for trade openness, and growth. As the figure shows, the more economically free a country is, the more likely it is to experience economic growth. Figure 3.2 shows the correlation, taking into consideration just trade freedom. While figure 3.2 shows less of a correlation than figure 3.1, the correlation still appears.

\textsuperscript{292} Dani Rodrik, \textit{One Economic, Many Recipes}, 222.

\textsuperscript{293} Stiglitz and Charlton, \textit{Fair Trade For All}, 102.

\textsuperscript{294} See n. 280. As an aside, Rodrik and Rodriguez do not argue that protectionism is good for a society. Instead, they argue that trade liberalization is not sufficient to produce growth and poverty alleviation. No one, however, is arguing that trade policies by themselves can do this, even if all other harmful policies remain the same. Rather, the argument is that trade liberalization is an important step in the process of poverty alleviation. This aside is pointed out in Arvind Panagiraya, “Miracles and Debacles: Do Free Trade Skeptics Have a Case?” 39.
figure 3.1 Economic Freedom Statistics came from Heritage Foundation index of Economic Freedom 2008 and the Real Growth Rate Statistics came from nationmaster.com

figure 3.2 Trade Freedom Score came from Heritage Foundation Index of Economic Freedom 2008 and Annual Economic Growth came from nationmaster.com

These figures are in accordance with the results found in the economic literature. And in fact, contrary to Rodrik and Stiglitz, most of the gains from trade liberalization seem to come
from the liberalization of trade in the developing countries themselves. Dan Ben-David and Michael Loewy, for example, find that, “The more open an economy, the greater the competitive pressures on it, and the greater the need for it to incorporate foreign knowledge into its production processes to be able to compete with foreign firms.”295 This knowledge, they conclude, spurs economic growth. Their empirical findings are that there is a positive growth effect on all liberalizing countries as a result of this diffusion of knowledge. Further, they argue that liberalization of trade with the wealthy countries is likely to have the greatest growth effects. They write, “If wealthy countries are also the countries with the greatest stocks of knowledge, then the elimination of tariffs on these countries’ trade will have the greatest growth effects.”296 This conclusion focuses on the rewards to be gained from the developing countries if they were to lower their trade barriers with respect to the wealthy countries. Similarly, Jeffrey Sachs and Andrew Warner find that the lack of wealth convergence between the wealthy and poor countries results from the fact that the poor countries have largely adopted protectionist policies, rather than opening themselves up to the world.297 In contrast, they also find that, “poor countries tend to grow faster than richer countries, as long as the poor and rich countries are linked together by international trade.”298 That growth, they argue, is in excess of 2 percent, which is on average faster than the growth experienced by developed countries.299

296 Ibid, 166.
298 Ibid, 35.
299 Ibid, 45. It is important to note that none of their empirical results test the effects of trade independently, but rather they measure trade with other economic reforms that occur concurrently. This should not be seen as detracting from the argument made here, but rather as strengthening it. If trade reform is generally accompanied by
Both Ben-David and Loewy, and Sachs and Warner conclude that developing countries should liberalize their trade. But what about the developed countries: do agricultural subsidies and other non-tariff barriers harm the global poor? Would the removal of such barriers make the poor better off? One of the reasons that discussions of trade liberalization focus so much on agriculture is that, which the exception of a few industries, developed countries already practice fairly liberal trade policies. The problem with what few barriers still remain is that these barriers target goods that developing countries have a comparative advantage in producing. Many Southeast Asian countries, for example, have scarce land resources but abundant human capital; thus, labor intensive goods can be produced relatively cheaply in these countries. Similarly, in Africa, where land is abundant, agriculture can be produced cheaply relative to developed countries where land is scarcer. Hence, the fact that developed countries maintain subsidies on agriculture and quotas and tariffs on certain manufactured goods seems particularly indefensible. According to Kym Anderson and Ernesto Valenzuela, “While developing other reforms characteristic of a healthy economy, this is a point in favor of trade liberalization. It is also important to note that their results are more precise than the one’s used in Figure 3.2. The data from The Heritage Foundation’s Index of Economic Freedom used to calculate Trade Freedom include only the absence of tariff and non-tariff trade barriers, whereas Sachs and Warner include five criteria. These criteria include the measure of tariffs and non-tariff trade barriers but also include a measure for the black market premium, which is a measure of foreign exchange control, a form of import control; state monopolies on exports; and whether or not a country is a socialist economic system, which determines to what extent it uses central planning to maintain a closed economy. For an argument about the differential benefits of trade liberalization in sub-Saharan Africa see, Kym Anderson, Will Martin, and Dominique van der Mensbrugghe, “Would Multilateral Trade Reform Help Sub-Saharan Africans?” World Bank Policy Research Working Paper 3616, June 2005. According to the empirical results of this study, full merchandise trade liberalization would result in a decrease by 32 million the number of people living in
country farmers contribute less than 3 percent of global GDP, they account for 43 percent of
global employment, 64 percent of global agriculture value added, and a similarly large share of
global poverty as measured by earnings of less than $1 a day.”\(^{301}\) And so, if the reduction of
developed countries’ farm subsidies could raise the incomes of farm workers in developing
countries, this could go a long way towards reducing the amount of poverty that exists.
According to their empirical results, Anderson and Valenzuela argue that by removing all
agricultural barriers the incomes of farmers increase: “the averages are 12 percent higher in Latin
America, 10 percent higher in East Asia (excluding Korea and Taiwan which, with Hong Kong
and Singapore, we classify as high income), 3 percent higher in Sub-Saharan Africa, and less
than 2 percent higher in the three other . . . regions.”\(^{302}\) Even though these results take into
consideration the removal of all trade barriers in agriculture, even of those in the developing
countries themselves, Anderson and Valenzuela conclude that their results show, “it is clear that
most of that gain to developing country farmers would come from the removal of agricultural
tariffs and subsidies in high-income countries.”\(^{303}\) If these results are true, then, whether or not
developing countries liberalize their trade with each other and with the developed world, the
developing world would still benefit from the removal of trade barriers, particularly agricultural
subsidies, in the developed world.

\(^{301}\) Kym Anderson and Ernesto Valenzuela, “Do Global Trade Distortions Still Harm Developing Country
Farmers?” 1.

\(^{302}\) Ibid, 11. The three other regions are Eastern Europe, South Asia including Bangladesh and India, and the Middle
East.

\(^{303}\) Ibid.
I.ii. Objections: Increased Inequality and the Race to the Bottom

Even if there is a general agreement that trade liberalization fosters growth in the developing world, there is still some worry that, “a rising tide does not raise all ships.” The worry is that while some people will become better off as a result of liberalization, others, especially the poorest, may become worse off. It is sometimes assumed to be common knowledge that globalization results in “the rich getting richer, and the poor getting poorer.”

One particular worry is that while trade liberalization in agriculture, for example, may benefit some developing countries, particularly those that are net exporters of food, it harms those countries that are net importers of food products. The reason is that the subsidization of agriculture exported from the developed world keeps the prices of such goods low. Since some developing countries import most of their food, removal of these subsidies is likely to raise the global price of food, thus harming these developing countries. According to this argument, since trade liberalization by the developed countries benefits some countries, while harming others, there is nothing to recommend it.

There are two responses to this worry. The first is that it is not obviously true that trade liberalization would harm those developing countries that are net importers of foodstuffs. In fact, the study conducted by Anderson and Valenzuela found that “Net farm incomes in all developing regions, even those that are net food importers and those receiving preferential access to protected markets in high-income countries, would be boosted by such a reform.”\(^{304}\) The second response is that even if trade liberalization necessarily leads to “winners” and “losers” one should still prefer liberalization to protection. As Jagdish Bhagwati argues,

\(^{304}\) Ibid.
While the central tendency is for freer trade to dominate less free trade in creating prosperity, there are bound to be occasional downsides: in this instance, poverty may be accentuated. Clearly then we need adjustment assistance programs to take care of these adverse effects when they arise. Again, to reject freer trade because of occasional adverse effects is to hurt your cause of reducing poverty.\footnote{Jagdish Bhagwati, \textit{Free Trade Today}, (Princeton, NJ: Princeton University Press, 2002), 90. See also \textit{A Stream of Windows: Unsettling Reflections on Trade, Immigration, and Democracy}, (Cambridge, MA: MIT Press, 1998), \textit{The Wind of the Hundred Days: How Washington Mismanaged Globalization}, (Cambridge, MA: Cambridge University Press, 2002) and \textit{In Defense of Globalization}, (New York: Oxford University Press, 2004) both also by Bhagwati.}

Bhagwati’s recommendation – that is, of adjustment assistance programs – includes things like social welfare or other forms of aid for the “losers” to help them transition into the new economy without the protected sectors or the lower prices. Whether or not such social welfare is a good idea, free trade is still to be preferred if it produces overall growth even if it also produces some “losers.”

Nevertheless, even if there are better ways of countering the losses some people may experience as a result of liberalizing the market in goods and services, it is simply not the case that the globalization phenomenon, and with it the liberalization of trade, has hurt the global poor as a group. Indeed, the contrary has occurred. Despite the cries that inequality is increasing and that “the rich are getting richer and the poor poorer” quite the opposite is actually happening. According to Surjit Bhalla, the received wisdom is false and that instead of divergence in the world economy there is more and more convergence.\footnote{Surjit S. Bhalla, \textit{Imagine There’s No Country}, (Washington, D.C.: Institute for International Economics, 2002). See also Dan Ben-David and Michael Loewy, “Free Trade, Growth, and Convergence,” and Jeffrey Sachs and}
his research. These charts compare apples to apples, that is, incomes in the same percentile, as opposed to apples and oranges, comparing Bill Gates, for example, to the global poor. The figures show that in both the 20th percentile and in the 50th percentile, in most regions, the average incomes in that percentile have come closer to closing the gap with the average United State’s income in that percentile. As Bhalla concludes his empirical research, he writes, “No matter what statistic is used, the revealed truth is that we have just witnessed the 20 best years in world history – and doubly certainly the 20 best years in the history of poor people. Yet this is not the perception of many, if not most, of the participants in the global debate on globalization.” These participants include non-governmental organizations, the media, and academics. So, what explains this mistaken perception about the effects of trade liberalization and globalization in general?

Andrew Warner, “Economic Reform and the Process of Global Integration.” All three find that convergence, rather than divergence, is the norm when countries are open to trade.

307 The only non-convergence was observed in Sub-Saharan Africa but, as Bhalla writes, “one does not need complicated convergence calculations to tell us that development has not occurred there,” 191.

figures 4.1 and 4.2 The Income Ratio indicates how many times greater than the region’s average income in that percentile was the U.S.’s average income in that same percentile. This data came directly from Surjit Bhalla, *Imagine There’s No Country*, 192.

Part of the explanation is that there are still hundreds of millions of people living at below one dollar a day. In a world of increasing affluence, this is hard to swallow and hard to explain. This dissertation has tried to explain part of this phenomenon by drawing attention to the role institutions play in the wealth and poverty of nations. Many of the world’s poorest people live in
countries with the worst institutions. But another reason people mistakenly believe that the poor are getting poorer while the rich are getting richer is that even when people’s quality of life around the world is improving, this improvement is not always revealed in their relative incomes. Around the world, however, the poor have greater access to technology and communications, hardier and greater-yielding types of rice and grain, and more opportunities for jobs beyond the farm. Mobile phone use in the developing world has increased dramatically. In Africa alone, the number of subscribers has increased from 15 million in the year 2000 to over 135 million in 2005, far surpassing the number of landlines on the continent. India has 6 million new subscribers per month, leading to estimates that by 2010 half of India’s population will have broad access to telecommunication. There are 3 billion mobile phone subscribers in the world and 59 percent of these are in the developing world.\(^{309}\) Similarly, caloric intake has increased, infant mortality has decreased, and average life expectancy is greater than ever before in history.\(^{310}\) The point is that the face and the fate of the global poor – including the extreme poor – is changing and for the better.

None of this is to deny that poverty is still severe and serious and that people do still needlessly suffer as a result of it, but it is to claim that the process of globalization, and with it greater trade liberalization, has improved the lives of many people who still live in poverty and will continue to do so in the future. The face of poverty is different; now poverty is not a matter of fate, but largely a matter of human choice. Part of this includes choices made by individual countries in the developed world – in particular, the continued enforcement of trade barriers. But part of the explanation for poverty continues to be choices made by individual governments and


elite in the developing world. Insofar as global trade liberalization will make individuals better off, it also increases their chances to affect economic and political reform in their own countries. Despite claims that rising tides do not raise all ships, the evidence indicates the contrary.

Another major objection to the policy of free trade is that it causes a “race to the bottom,” not in terms of wealth but in terms of environmental and labor standards. And so, the claim is that free trade induces, or rather fails to protect against, greater environmental degradation, the worsening of labor conditions, and an increase in the use of child labor. According to Alvin Klevorick, the argument for “the race to the bottom” can be summarized in the following way:

It is that to attract mobile resources, especially firms, governments will choose policies – for example, environmental standards, occupational health and safety standards, competition policy – that entail suboptimal requirements, which afford their citizens too little protection – whether from environmental hazards, unsafe or unhealthy working conditions, or cartel behavior. The idea is that to make its country a hospitable location in which to do business, a government would establish lax standards to be imposed upon those it wishes to draw.311

In other words, the idea is that a suboptimal state of affairs results from countries competing for a scarce supply of mobile capital. Each country wants to outbid the other by making its standards more conducive to the profit of these mobile firms; and this outbidding leads to increased burdens on the citizens of the competing countries. And just as each firm has the incentive to conduct business in an area offering the lowest tax rates, so, the argument concludes,

do businesses have the incentive to conduct business in the most environmentally lax environments; that is, environments that do not tax businesses in proportion to their environmental footprint or do not enforce laws against certain types of pollution and labor standards. And so the argument goes, in order to have free trade, there must be a harmonization of social standards regarding environmental and labor conditions. Otherwise, free trade with nations that engage in this behavior will reward the behavior and harm the nation’s citizens.

Remarkably, though theoretically this seems a plausible outcome, the empirical evidence indicates that this does not in fact generally occur. Figure 5 illustrates the relationship between urban air pollution and foreign direct investment in China. As the figure shows, when foreign direct investment increases, pollution decreases. And there are several reasons for this: (1) Companies care about their reputations; (2) Governments have other ways of attracting companies, such as via tax incentives; and (3) The costs involved with environmental protection are minimal since most companies have already internalized such costs as a result of doing business in the more developed countries – environments with stricter environmental regulations. According to this argument, countries use economic, rather than environmental or labor,

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313 The same thing was shown to be the case in Mexico City, Mexico and Sao Paulo, Brazil in David Wheeler, “Racing to the Bottom? Foreign Investment and Air Pollution in Developing Countries,” World Bank Policy Research Working Paper, 2524, January 2001.
incentives to attract firms. These are more likely to appeal to multinational corporations that face competition from other, similar firms. Consumers care about companies’ environmental records and so, competitively, it does not pay for a company to cut costs by relaxing their environmental standards when consumers could turn to their competitors, who may have a better record on the environment or on labor conditions. Lastly, once companies internalize the costs of environmental damage – learning how to dump chemicals safely, to reduce emissions, etc. – in the developed world, moving to the developing world will not significantly reduce their costs of doing business; these costs have often already been minimalized by the most efficient measures used in countries with higher standards. And so, the cost benefit analysis does not come out in favor of relaxing one’s standards.

As far as the issue of child labor is concerned, reputation would be a relevant factor in curbing firms’ use of it, but it seems to be a mistake to object to the use of such labor in developing countries. While everyone would prefer that children go to school rather than work, parents do not forego their children’s education in favor of work because they are cruel or because they do not know any better. Often times, their children either work or the family starves. To enforce laws against this or even to frown on companies who use such labor does not help anyone, least of which the poor. As countries get richer, the incidence of child labor declines; as households get richer, parents face greater incentives to forego extra income in exchange for education. It is absurd to be more concerned with child labor than with premature death due to poverty, which may be the result of losing the supplemental income children earn. And a similar thing can be said about certain labor standards. In developing countries the alternative to low-paying jobs is not high-paying jobs; it is no jobs at all.

In short, the objection that free trade is not a means of lifting people out of poverty seems unconvincing. Insofar as trade does increase the overall welfare of the developing world, it goes further than foreign aid or global redistribution towards satisfying the minimal access proviso and resolving the dire situation faced by the global poor. And so, all countries have a duty of justice to liberalize their trade, but the wealthy countries are particularly burdened to do so since their policies not only violate their own citizens’ rights to free, voluntary exchange, but also exacerbate the global poverty that exists.

II. FREE MOVEMENT OF PEOPLE

The section above argued that free trade was necessary both in order to respect the property rights that people have and to provide access to the world market, access that is likely to
provide an opportunity for at least some of the world’s poor to escape dire poverty. That such access can be accomplished without limiting others’ property rights is a reason to favor it over foreign aid. But the real reason to favor free trade over foreign aid is its potential to help eradicate extreme poverty in at least some cases and, hence, to reduce the number of situations in which people’s minimal access rights are denied. This section addresses the free movement of people as opposed to capital and goods. Yet, these sections are not really so distinct. For, if it is a violation of people’s property rights to limit their ability to trade with others on terms each find mutually acceptable, it is also a violation of their property rights to restrict their ability to trade in labor and services.

Like the previous section, it is probably unsurprising that natural rights liberal theories of property rights endorse more open immigration policies. The reason for this is that property rights are considered individual unless contractually owned otherwise. Since the role of the government is only to protect the rights that people have (and, perhaps, to supply public goods), the government could only justly enforce border restrictions if doing so was necessary to protect the rights of individual citizens. In some cases, border restrictions do serve the purpose of protection. When, for instance, immigration officials screen for criminal backgrounds or prevent terrorists from entering the country they are acting well within their powers. The fact, however, that Garcia wants to hire Jones does not violate anyone’s rights, even if Jones lives on the opposite side of a political boundary. Similarly, if Lee wishes to rent his apartment to Smith, he does not obviously violate anyone’s rights even if Smith must immigrate into Lee’s juridical territory in order to occupy the apartment. Restrictions on these sorts of transactions seem beyond the scope of the government’s rightful power.
The justifications offered in defense of border restrictions are numerous and varied, but all of them are unjustifiable if one takes seriously the freedom of individuals to conduct their own affairs without interference as long as they refrain from violating others’ rights. One sort of justification that can be given is that political boundaries do more than just demarcate where one set of laws end and another begin; rather, political boundaries are sometimes given the same normative weight as property boundaries. In other words, it is sometimes presumed that sovereignty is like a property right that a state enjoys over a given territory. In many ways this idea coheres with the sorts of limits that are usual placed, by the state, on individual property rights. So, for instance, an individual may not take his physical land and secede from the state. An individual who wishes to leave the state may only sell his property, presumably, to another citizen or foreign resident that the state deems fit. Whether or not these common practices are justified is beyond the scope here. For even if it were the case that sovereignty could be seen as a sort of property right that states enjoy, the minimal access proviso would mandate that economic refugees, those who flee their homelands due to economic strife, be permitted access to the opportunities necessary to make their lives better. This sort of access could be satisfied by immigration.

The reason for this is that economic refugees meet the conditions of having minimal access rights. First, if the reasons for continued poverty outlined in chapter five are true, the majority of these refugees would be in dire circumstances as a result of the institutions under which they live, institutions that deny them the opportunity to achieve self-governing and self-sustainable lives, for which they cannot be faulted. And so, the first condition is likely to be met by many people attempting to immigrate as economic refugees. One objection to this condition is that those who are most likely to immigrate are hardly the worst off in any society. In order to
immigrate and find work in another country one must be at least physically fit and have the resources necessary to make the physical move. Furthermore, in some rich countries, like the United States, for example, most potential immigrants are from Latin America, mainly Mexico. While Mexico is surely poor by American standards, Mexicans are certainly not the worst off in terms of global poverty.\(^ {314} \)

The response to this objection is that even if most potential immigrants are physically fit and have the resources to make travel arrangements, this does not mean that they enjoy even minimal access to resource necessary for sustainable self-governance in their own country. It is probably an uncontroversial fact that people do not enjoy moving, especially when moving means leaving one’s family, friends, culture, and the only ways of life that one knows. That millions of people desire to do this anyway can be taken as a testament to the kinds of conditions they face at home. Similarly, many immigrants attempt to come into a wealthy country in order to find employment that will allow them the means to support their families back in their home countries. Hundreds of thousands of people migrate as guest workers to Malaysia and Singapore each year, despite the second-class status with which they are treated, in order to send money home to support their families.\(^ {315} \) Sometimes fathers do not see their children for five or ten years at a time in order to afford schooling and other opportunities for those children. It is pretty safe to say that if so many people are willing to suffer these hardships in order to immigrate into another country, the situations they face in their native countries are worse. Because of this, it is also pretty safe to assume, then, that the situations they face are ones in which they do not see


many chances for securing the resources necessary for self-preservation and self-governance in their native lands.

It is sometimes also argued that the second condition cannot be met. That condition is that access to property in another’s possession must not unduly burden that other. And so some have argued that less restrictive immigration policies would unduly burden the liberal institutions in much of the wealthy countries.\(^{316}\) There are two ways in which the liberal democracies could be burdened by immigration. The first is that permissible access to a country could threaten the welfare policies supported by the taxation of those citizens. The idea is that if too many economic refugees entered a particular society, the welfare system could be taxed beyond sustainability. If the welfare system could not withstand such an influx of people, the argument goes, the situation of the country would be akin to the case of Zelda II detailed in chapter four in which Adam was justly permitted to deny Zelda access to his island on the grounds that he would be imperiled as a result. In other words, these critics could argue that if the influx of immigrants would tax the welfare system too heavily, those who currently make use of the system would be harmed and imperiled in much the same way that the potential immigrants are. Since the intuition in Zelda II was that Adam could permissibly deny Zelda access when doing so was necessary for him to avoid similar peril, countries too may deny access to potential immigrants, even economic refugees, if it is necessary in order to avoid peril.

This concern is only valid, however, if two conditions are met. The first condition is that it must be the case that people are really entitled to the system of welfare in the first place. Part

of what could make people entitled to the welfare system is that, without it, they too would be imperiled. This first condition, though, is probably not the case. There is a distinct difference between poverty in the developed world and the poverty faced by much of the extreme poor. But even if welfare is an entitlement for some other reason, it does not justify denying economic refugees access to the developed world; it may only justify denying them access to the welfare system. This leads to the second condition; the concern that immigrants would threaten important liberal institutions if allowed to enter in greater numbers is, perhaps, valid if it would be unjust to allot welfare to citizens but deny it to immigrants. In other words, if it would be unjust to provide free education and healthcare to citizens, but deny it to immigrants, then there may be a valid concern that allowing greater numbers of immigrants would tax the welfare system too substantially.

There are two reasons not to accept the validity of this condition. First, it does not seem to be unjust to deny immigrants benefits that citizens receive. To see this, recall the case of Zelda in chapter four in which Adam has enough basic necessities on his island for both he and Zelda to enjoy, but only has enough comforts for one person – namely, himself. According to the minimal access proviso, while the imperiled person is entitled to the resources necessary for her continued survival and ability to self-govern (that is, enough so that Adam cannot make her his slave or servant), she is not entitled to greater comforts whether or not Adam has more than enough to share. And so, as in the case of Adam and Zelda, developed world countries may permissibly deny immigrants access to free education and healthcare, but they are not justified in denying such immigrants access to enter the country or the labor market.

The second reason not to accept the validity of this condition is that it is not obviously the case that increased immigration would actually tax the welfare system. Several studies have
shown that, while many immigrants do utilize the welfare system, their use of it is lower than the average citizen. These studies also show that immigrants contribute to the welfare system through the payment of taxes. These same studies show that most immigrants have at least one member of their household who is employed. According to one source, two thirds of illegal immigrants in the United States pay income taxes and contribute to Medicare and Social Security. Further, all illegal immigrants pay sales and property taxes, either directly or indirectly through rent. If this is the contribution of illegal immigrants, one might imagine legal immigrants contribute even more. Similarly, immigrants can provide a benefit by creating jobs both for other immigrants and for citizens. According to Bill Gates, “If we increase the number of H-1B visas that are available to U.S. companies, employment of U.S. nationals would likely grow as well. For instance, Microsoft has found that for every H-1B hire we make, we add

317 See Michael Fix and Jeffre y S. Passel, “Immigration and Immigrants: Setting the Record Straight,” The Urban Institute Study, 1994. Also, Jonathan Coppel, Jean-Christophe Dumont, and Ignazio Visco, “Trends in Immigration and Economic Consequences,” OECD Economics Department Working Papers, No. 284, 2001. For contrary findings see Steven Camarota, “Senate Amnesty Could Strain Welfare System,” Center for Immigration Studies, 2007. One reason for opposite findings is that some studies do not take into account political refugees who often use much more welfare resources than those who come to work or those who I am calling “economic refugees. Another factor is that immigrants tend to use more welfare when they first arrive than they do the longer they remain.


319 “Overall, annual taxes paid by immigrants to all levels of government more than offset the costs of services received, generating a net annual surplus of $25 billion to $30 billion.” Fix and Passel, “Immigration and Immigrants,” 14.
on average four additional employees to support them in various capacities.\textsuperscript{320} The idea here is that allowing immigrants to enter the country can benefit citizens of that country rather than tax the welfare system. And even now, in the United States, the only welfare services most immigrants have access to is emergency medical care, public education, and food stamps. It is highly plausible that if border control were more relaxed and immigrants seeking employment could come and go with relative ease, one would find less immigrants staying for longer periods of time. Rather, one would be more likely to observe immigrants coming to work for several years in order to save money before returning home. One would also be more likely to find a rise in immigrants who come only for seasonal work in agriculture.\textsuperscript{321} And so, even if immigrants are not denied access to the same welfare services citizens enjoy, there is little reason to believe these immigrants would tax the system beyond sustainability.

The second way in which it is sometimes argued that relaxing border controls would unduly burden developed countries is that immigrants from illiberal backgrounds, who bring with them distinctly illiberal beliefs and practices, may undermine the liberal institutions prevalent in the developed countries. This sort of concern introduces the old debate about

\textsuperscript{320} Bill Gates, Testimony before the Committee on Science and Technology, March 12, 2008. Although Bill Gates is referring to skilled labor, as opposed to many economic refugees, who are largely unskilled labor, studies show that immigrants are more likely than citizens to own businesses. See, Michael Fix and Jeffrey S. Passel, “Immigration and Immigrants.” Such business owners likely provide jobs for either other immigrants or even citizens.

\textsuperscript{321} Some illegal immigrants report that they can no longer afford to go home periodically or when seasonal work ends because the costs associated with reentry are simply too high. See Michael Clemens and Sami Bazzi, “Don’t Close the Golden Door: Our Noisy Debate on Immigration and Its Deathly Silence on Development,” Center for Global Development Publication, 7. Such people may, then, use more welfare services as a result of having to stay.
whether or not liberal institutions must be tolerant of illiberal institutions or people. However, while this concern may justify keeping out dissidents, revolutionaries, and subversive individuals, it cannot justify keeping out the average economic refugee who seeks entry, not to undermine liberal institutions, but to improve the lives of himself and of his family. Even though such a person may still have an effect on the native culture, as any new element would, it does not mean the culture would be undermined or even changed for the worse. Allowing immigration for economic refugees would not unduly burden the liberal democratic societies within the rich countries even if many of these immigrants originated from non-liberal societies themselves. Keeping out subversive individuals, however, is certainly within the state’s power, and, is perhaps even the state’s duty.

There is, of course, a way in which the second condition of the minimal access proviso might not be met. This could occur if allowing further immigration would be likely to threaten public order or if a country had met its population density, beyond which everyone would be worse off. In such cases, the developed country would be akin to Adam in the Zelda II case mentioned above. If allowing immigrants to enter the country imperils those already residing in that country, denying access to new immigrants is certainly permissible. No developed countries, however, currently face such conditions.

The third condition required to satisfy the minimal access proviso is the requirement that access must be necessary to improve the imperiled person’s situation. In the case of economic refugees, such access would not be necessary if there were any viable ways to change the institutions operating in the countries from which most of them emigrate. But, as sustainable institutional changes are difficult to make even if the local elites have the proper motivation to do so, it is unjust to ask desperate people to wait for their own countries’ institutions to improve. To
do so would be like asking Zelda, in the Adam’s Island cases, to wait until someone else built an island in the middle of the sea. Even supposing someone else would come along in the future and build an island, this does not make Adam’s denial now permissible. And so, liberalizing borders may be necessary for economic refugees to escape peril, even if their own countries will one day improve. While it may not be necessary for any particular country to open its border to any particular economic refugee, according to the minimal access proviso the rights to exclude are limited in all countries. Each lacks the right to exclude if access to one of them is necessary. Just as in the adapted case in which Zelda approaches two previously owned islands and neither owner has the right to exclude her, so too do all developed countries lack the right to deny economic refugees access to their countries.

The sufficiency condition is also satisfied in the case of economic refugees because, in order to avoid falling below the minimal access threshold, most able-bodied people generally require only the protection of their rights and access to productive institutions that allow them to transform their property into resources necessary for their survival and ability to pursue projects and life plans. Even if one simply considers people who actually have jobs in their home countries, the difference between the wages in developed countries and developing countries, for the same job, is significant. According to a study by The Center for Global Development, “today low-skill workers can achieve salaries in the United States between five and twenty times their best option at home.”322 Many people in the United State, nevertheless, complain that illegal immigrants are treated badly and are paid less than the minimum wage for the jobs they perform, but they forget that if these circumstances were not better for such people than the circumstances they face at home, they would not have wanted to immigrate in the first place, or they would not

322 Ibid, 6.
continue to stay. Besides, these conditions would be likely to improve if immigration controls were loosened. Many immigrants facing the worst conditions in the developed world are there illegally; such people lack the legal rights to remedy their unjust treatment (sexual harassment, rape, abuse, etc.) as a result of their illegal status. Nevertheless, even when facing certain bad conditions many immigrants seem to find their lives to be better in the developed world than it was in their own countries. All this goes to show that access to the developed world can be sufficient to secure access to resources necessary for one’s survival and self-governance.

This discussion, however, is only relevant if sovereignty is understood as granting property rights to states, such that each state enjoys exclusive control over who enters its’ borders. That sovereignty entails this sort of right is not obviously the case from the perspective of natural rights liberalism. The point, however, is that even if it could be seen this way, considerations of sovereignty still cannot justify denying access to economic refugees. And so, supposing that immigration restrictions in general, and certainly immigration restrictions for economic refugees in particular, are unjust, it is the duty of the developed world to change their individual immigration policies.

Not only do these immigration controls violate the principle of voluntary transfer, but they also thwart efforts to alleviate poverty. Removing such barriers would have a powerful effect on the alleviation of global poverty, and not just for the immigrants themselves, but also for the countries from which such immigrants come. For, as far as the immigrants themselves are concerned, just as was previously mentioned, immigrants can earn significantly higher salaries in the developed world for performing the same work than they can in the developing world. In a particular study, the authors compared the wages earned by comparable people in the same age and employment sector, each working in either a developing country or in the United
States. This study found that a 35 year old Bolivian man with 9-12 years of education working in the formal sector in the United States can earn an average of 1,831 U.S. dollars per month, whereas a man meeting the same description in Bolivia can earn only 460 U.S. dollars adjusted for purchasing power parity.\(^{323}\) The difference is an almost fourfold increase simply as a result of living in one place as opposed to another. This magnitude turns out to be the median wage ratio, the lowest being in the Dominican Republic with a ratio of 1.37-1.43 and the highest in Nigeria with a wage ratio of 11.3-13.6.\(^{324}\) Imagine earning 13 times more for the same job just by crossing a border! And so, these figures illustrate the substantial gains to be had by the immigrants themselves as a result of being able to enter developed countries’ labor markets.

However, the gains do not stop at the wellbeing of the immigrants themselves. To have a portion of a developing countries labor force immigrate to the developed world can help that developing country in three ways. The first way is financially. Immigrants export knowledge and money back into their home countries. In 2006, 46 billion U.S. dollars was transferred to Latin America in the form of remittances from the United States, an amount that far exceeds the amount of foreign aid given to the region.\(^{325}\) Similarly, remittances make up one-fifth of GDP in Albania, El Salvador, and Haiti.\(^{326}\) Although remittances can distort the exchange rate in the home market, leading to “Dutch Disease” in much the same way as foreign aid, this can be mitigated by savings and individual spending patterns. More importantly, however, may be that

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\(^{324}\) Ibid.


\(^{326}\) Ibid.
the money goes into the hands of individuals and families and not into the pockets of political elite.

The second positive effect on development that can result from immigration is the development of industries in the immigrants’ native countries. It was the Indian immigrants in the United States and Great Britain who helped to start the information technology hubs and outsourcing facilities in India, which have proved phenomenal catalysts for India’s economic development. Similar experiences happened as a result of Taiwanese and Chinese immigration in the developed world. Even within Africa one can observe the trend. One of the largest cell phone providers on the continent was started by a Sudanese man living in Great Britain. Further, immigration can help develop better conditions and schools as a consequence of having opportunities for employment abroad. In India, the training one can receive in engineering and medicine is first-rate as a result of all the opportunities for educated immigrants in the developed world. Similarly, in the Philippines exceptional nursing schools have developed as a result of so many countries hiring Philippine nurses. Most foreign-born nurses in the United States are from the Philippines and the majority of all total nurses in Saudi Arabia are Philippine. As a result women training to be a nurse in the Philippines can receive a great education and, as a result, this benefits the residents of the Philippines because some of these highly trained nurses decide not to emigrate. And so, immigration can spark developments in certain industries in the immigrants’ countries of origin or can improve education opportunities for those who choose not to emigrate.

327 Ibid.
328 Ibid, 10.
329 Ibid, 8.
The last important way in which immigration to the developed world may help the immigrants’ country of origin is that immigrants may export the liberal institutions and values prevalent in the developed world back to their native countries. In a study by the IMF, the author finds that “indeed, foreign-educated individuals promote democracy in the home country, but only if the foreign education is acquired in democratic countries.”\(^{330}\) In Botswana, for example, the first president, Seretse Khama, who can be credited with much of Botswana’s successful institutions, was educated at Oxford University in England. Robert Mugabe, the president of Zimbabwe, on the other hand, was educated at an elite black university in South Africa prior to the end of Apartheid; at that time, South Africa could hardly have been called democratic.\(^{331}\) Similarly, while Mao Zedong was educated in China and turned down an opportunity to study in France, Deng Xiaoping, the leader of China from 1978 to the early 1990’s who instituted many market reforms and increased economic liberalization, lived, worked, and attended some school in France.\(^{332}\) There are numerous comparisons of this kind. Since democracy and other liberal institutions are highly correlated with economic growth, immigrants working and pursuing education in the developed world can also help the countries from which they originate by promoting these liberal institutions.

What the above discussion has highlighted is that restricting immigration for reasons other than national security is unjust, especially when those restricted are economic refugees. And this is true even if sovereignty entails the idea that states have property rights in the

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\(^{331}\) Robert Mugabe did obtain graduate degrees from London University, but only through their correspondence program, never in London itself. Martin Meredith, “Our Votes, Our Guns: Robert Mugabe and the Tragedy of Zimbabwe,” 22-23.

\(^{332}\) Michael Clemens and Sami Bazzi, “Don’t Close the Golden Door,” 12.
territories over which they govern. The reason for this is that economic refugees meet the conditions of having minimal access rights and the minimal access proviso acts to limit the right states may have to exclude such people. Allowing for less restricted immigration not only helps the immigrants themselves and their families but can also have positive consequences for the immigrants’ country of origin. And so, less restricted immigration may be a better means for the global poor to secure access to resources necessary for their survival and self-government.

CONCLUSION

This chapter has argued for two important institutional reforms directed at the members of the global community. Insofar as global poverty is largely the result of protectionist and anti-productive institutions, the situation of the global poor is unlikely to be mitigated unless these institutions and policies change. Foreign aid does not secure people’s minimal access rights because it fails to change the underlying causes of continued poverty and produces negative consequences for economic growth and political freedom, making the underlying problems worse. Since the global community as a whole cannot enforce many of the necessary changes, as they involve changes that can only be initiated by individuals in a local context, members of the global community can remedy the part they themselves play in perpetuating global poverty. While there are several other recommendations that can be made, the liberalization of trade and the free movement of both goods and people are two major reforms the removal of which would be in compliance with justice by protecting individuals’ rights to voluntarily contract with others and to secure minimal access to resources necessary for their ability to be self-governing. In doing so, both policy changes help to secure minimal access rights for the global poor. Further, both polices may have positive consequences for the quality of the institutions in the developing
Increasing wealth in many countries has, in the past, often led to increasing the amount of liberal reforms and the exchange of knowledge that comes with the exchange of goods and people often has a similar effect on development. These are the real remedies.
CONCLUSION

The purpose of this dissertation was to take up the task Thomas Pogge originally initiated. This task was to highlight the idea that, even if one accepted a minimal theory of justice, a theory that focused only on duties not to harm individuals, rather than more demanding duties to aid them, one would have to be committed to the idea that at least some amount of global poverty is unjust. Pogge’s theory fails to show this because he relies on interpretations of the principles of justice underlying natural rights liberalism that such proponents would not accept. Because of this, his solution to end the injustice of global poverty – that of a redistributive tax, the Global Resource Dividend – is inappropriate.

Taking up what Pogge started, this dissertation has argued that while the principles of justice regarding property acquisition and transfer have not been violated in the way Pogge imagines, the minimal access proviso, which limits the property rights of individuals, has not been satisfied. In other words, it has been argued that all individuals enjoy minimal access rights and that these rights are not being satisfied in the case of the global poor. But the solution to this problem is more complicated than Pogge makes it out to be. For, in order for redistributive taxation to be justified as a way of securing access for the global poor, it must be effective. The problems associated with foreign aid make the effectiveness of redistributive measures problematic. And so, the remedy offered in this dissertation is to change as much as possible the underlying causes of continued poverty – unproductive or protectionist institutions.

The first chapter of this work outlined the theory of liberal cosmopolitanism understood from the perspective of natural rights liberalism. The chapter explained that human rights are rights enjoyed by all people irrespective of the legal rights protected by their respective
governments. It also explained that those rights belong to all individuals separately and cannot be truncated in one person in order to be preserved or enhanced in another. Chapter one also defended the theory of self-ownership, which assigns the right of self-government and bodily integrity to each person, and the theory of world-ownership, which gives priority to private property rights. Lastly, chapter one outlined the principles of justice governing property distributions that underlie natural rights liberalism – the principles of original acquisition, transfer, and compensation.

Chapter two addressed one claim that Pogge argued provided a ground for identifying systemic violations of the natural rights liberal principles of justice. The claim was that the history of the world, including the acts of colonialism, slavery, and other forms of domination, violated the principle of voluntary transfer, rendering the resulting distribution of property, and in particular, the existence of global poverty, unjust. The response offered in chapter two was that, even if these events occurred in the way that Pogge describes, there is a compelling justification for a kind of statute of limitations on compensation for historic wrongs. The reason for this is that there are insurmountable problems with identifying parties both responsible for compensation and parties owed the compensation. Regarding the people responsible, it was argued that there is no justification for holding current inhabitants of certain countries responsible for the actions of past inhabitants. In regard to the people owed compensation, it was argued that there are no people who can be said to have been personally harmed by actions that occurred in the past. Chapter two admitted that there may be some legitimate claims for restitution, but only when conformation can be given that a particular person holds stolen property or when such rights violations continue to be suffered by people in the present.
In the third chapter, the principle of original acquisition was examined. In particular, the idea that acquisition requires some sort of proviso similar to the Lockean proviso was explored. After examining the proviso offered by Locke, the left-libertarians, and Nozick, it was determined that each of them failed to capture the reasons why, and in what way, property rights ought to be limited. Locke’s proviso is controversial since it is not clear that Locke actually had a proviso constraining acquisition. What is clear is that Locke believed individuals had a right to the resources necessary for their self-preservation, even if that meant those resources must come from some other individuals’ property holdings. The left-libertarians are committed to the idea that a proviso limiting property shares to equal amounts is required by justice. But the left-libertarian’s justification for such a proviso is unfounded; concern for treating people equally and fairly does not mandate equal shares of property or even equal welfare outcomes. What it does protect is equal opportunity for individuals to live meaningful lives. In the course of this discussion, the argument for the justice of particular property holdings emerged. What makes a particular property holding legitimate is that the property owner, by utilizing unowned property in a way that enhances his own or others’ welfare reveals the true value of that resource. By doing so, the property owner, in fact, discovers, creates, or transforms the resource in a way that no one else does. This kind of act supplies a reason to assign property rights to that person. Lastly, chapter three addresses the proviso employed by Robert Nozick. Nozick’s proviso is more promising but his reliance on counterfactuals renders the limit useless. This chapter concludes stating the need for an improved proviso.

Chapter four supplies that need by introducing a new proviso – the minimal access proviso. This proviso maintains that property owners do not have the right to exclude people who lack minimal access to resources necessary for their survival or self-governance from
accessing their property. As a result, all people have the right to access others’ property when doing so is necessary to preserve their individual status as self-governing beings. There are conditions to this proviso, however, that take into consideration the importance of personal responsibility and the moral weightiness of property rights. The conditions are that the person who is entitled to exercise her minimal access rights must not be imperiled as a result of her own negligence. Furthermore, accessing another’s property must not unduly burden the property owner. Lastly, access to another’s property is justified only when other non-coercive alternatives are exhausted and when such access is sufficient to bring the person beyond the threshold of peril. Chapter four also provided the justification for this proviso by highlighting that the very reason natural right liberals have for supporting private property rights also gives them a reason to support a limit on those rights as outlined by the minimal access proviso. The conclusion of this chapter was that a significant amount of global poverty could be unjust on the grounds that the minimal access rights of the global poor are not protected.

In chapter five, the reasons for the continued presence of global poverty were explored. The purpose of exploring these reasons was to determine what the root causes of poverty are in order to better understand why the global poor lack access to resources necessary for their survival and self-governance. These reasons focused on the importance of institutions, as the formal and informal constraints people face, which govern the interactions of people and governments. Most of the reasons associated with the continued existence of global poverty were local – that is, they had to do with corrupt or inefficient governments. But, in an effort to avoid Pogge’s criticism of this type of argument as a form of explanatory nationalism, the chapter also focused on the many ways in which the global institutional order perpetuated poverty. Chapter five paved the way for the remedies offered in chapter seven.
However, before moving to chapter seven and the offered remedies, chapter six examined the remedy offered by Pogge and many other people working on development issues – that of global redistribution. Chapter six argued that the history of foreign aid has been a history of failure due to numerous unintended consequences associated with aid. These consequences – the subsidy of bad or inefficient governments, the impediment to export diversification, and the impediment to democracy – rendered the reasons for continued poverty explored in chapter five more prominent. Given the similarities between foreign aid and global redistribution, chapter six also argued that global redistribution, insofar as transfers take place between governments, is likely to face the same negative consequences. It was acknowledged that transfers of resources to individuals, rather than to government, may be more successful, but only as a band-aid; money transfers cannot solve the underlying problems associated with continuous poverty. As a result, wealth transfers are likely to lead to dependence, rather than self-sustainability, the latter of which should be the goal of any poverty-reduction program.

Chapter seven, instead, tries to meet that goal by offering real solutions for satisfying peoples’ minimal access rights. There are many institutional and policy changes that the global community could institute, but the most egregious policies are those that place barriers on the free movement of goods and people. Not only do such barriers violate the rights of people living in the developed world, but they also violate the rights of people living in poverty. Further, the removal of such barriers offers real opportunities for people living in poverty to secure access to resources necessary for their survival and self-governance. As a result, the theory of rights in this dissertation has the resources to treat the issue of global poverty very seriously and offers a more promising agenda for achieving a world without extreme poverty.
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