

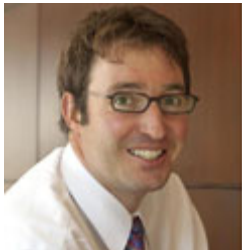
General Aspects of Law **GALA**

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***“ORIGINAL OWNERSHIP OF THE EARTH:
A CONTEMPORARY APPROACH”***

By



MATHIAS RISSE
Professor of Philosophy
and Public Policy
Kennedy School of Government
Harvard University

NOTE

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Note to readers:

This is a chapter of my forthcoming book "The Grounds of Justice." So it indeed has the format of a chapter, rather than a freestanding paper. It's also a bit on the long side. If you find it's too long, a natural cut-off point would be after the first paragraph of section 9, when the chapter moves on to look at two application scenarios for the view developed, to illustrate its relevance.

Chapter 8

Original Ownership of the Earth: A Contemporary Approach

October 13, 2010

1. Alongside others preoccupied with collective ownership, Grotius held that God had *given* the earth to humankind.¹ Using it as starting point for his discussion of property in his 18th century treatise on English common law, William Blackstone considered this donation “the only true and solid foundation of man’s dominion over external things, whatever airy metaphysical notions may have been started by fanciful writers upon this subject” ((1979), p 3). Yet the view that the earth originally belongs to humankind collectively is plausible not only without “airy metaphysical notions,” but also without religious input. Asking about “original” ownership is to ask if resources that exist independently of human activities are owned, in a sense that will be morally prior to claims individuals or groups have to resources based, say, on first occupancy or the “mixing” of labor with resources. This chapter explores from a secular standpoint the view that the earth belongs to humankind collectively. I offer a view on the ownership status of the earth that I call “Common Ownership.”

Recently it has mostly been left-libertarians who took collective ownership seriously. Left-libertarians hold that agents are self-owners but that natural resources are owned in an egalitarian manner.² Right-libertarianism’s *differentia* is the denial of any but at most a minimal moral account of ownership of external resources. There are various ways of endorsing such a denial. Jan Narveson seems to deny that any

¹ Again, I talk about “collective ownership” in a generic sense, capturing the idea that, in some sense to be explicated in more detail, humanity as a whole owns the earth.

² See Vallentyne and Steiner (2000a) for contemporary contributions, and Vallentyne and Steiner (2000b) for historical ones.

compensation is due for acquiring originally unowned resources.³ Such right-libertarians recognize constraints on appropriation. Yet they either think these constraints are non-moral, such as requirements that first occupancy extend only to what occupiers can meaningfully occupy; or else grant that the constraints are moral, but minimally so, in the sense that one is morally permitted to acquire only things for which one can claim first occupancy and where first occupancy is non-morally constrained by meaningful occupation. Others deny that objects of appropriation are “external.” Israel Kirzner argues 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*.”⁴ Although left-libertarians often count Nozick (1974) a right-libertarian, right-libertarians attack even his weak “proviso” that permits acquisition of unowned resources only if it makes nobody worse off.⁵

Blackstone famously remarked that nothing

so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. ((1979), p 2)

Species of collective ownership that constrain this “sole and despotic dominion” are bound to be controversial (although, as we already saw, Blackstone himself endorsed the idea of humanity’s collective ownership through divine donation). So let me address a typical *reductio* through which right-libertarians seek to ridicule collective ownership.

Can anybody sensibly claim, asks Murray Rothbard, that a newborn Pakistani baby has

³ See Narveson (2001), pp 82-85.

⁴ See Kirzner (1978). For a similar view, see Paul (1987), p 230. In an article that belongs to another corner of philosophy, Bittner (2001) criticizes the idea that we ever create anything. Rothbard (1974) and (1996) stresses “creation” less than Kirzner. Objects must belong to somebody, and whoever has ‘added’ to them has a stronger claim than others.

⁵ See Nozick (1974), pp 178-182

claims to a plot in Iowa that Smith just transformed into a field?⁶ As soon as we consider such implications of collective ownership, says he, we realize its implausibility. Smith has claims on the strength of his efforts. The baby has none. Yet collective ownership as I defend it does not require that every nugget of gold found on the ocean floor be divided among all humans, or each drop of oil extracted on the Arab peninsula. That the baby has claims on a par with Smith's is consistent with his not having to vacate *that* land (the baby does not have a claim to each object), and with his not having to *vacate* that land (the claim may be satisfied through compensation, cohabitation, etc). A detailed view of collective ownership remains to be established, but it is not so easily shown to be absurd.⁷

Sections 2 and 3 introduce Egalitarian Ownership as a general stance asserting the original ownership status of the earth. Egalitarian Ownership captures the symmetry of all human beings with regard to claims to resources and spaces. Section 4 explores the relationship between Egalitarian Ownership and environmental ethics. Conceptions of Egalitarian Ownership offer competing interpretations of the symmetry stated by Egalitarian Ownership, discussed in sections 5-8. Proceeding in this way allows for the presentation of my argument for Common Ownership as the correct view of original ownership in two parts, and thereby shows what considerations enter into this argument.

⁶ Rothbard (1996), p 35; Hospers (1971), p 65, makes a similar point.

⁷ (1) Some think outside a theistic framework collective ownership is *meaningless* (Narveson (2001), p 73). What leads to this view are concerns about what exactly is owned and who owns, and to a larger extent concerns about the sort of ownership-relation that can apply to humanity per se. These worries are addressed in what follows. One may say ownership presupposes that some people are excluded; "humanity," that is, cannot be an owner unless a class of beings is excluded. This class would have to consist of animals or extraterrestrials. ("Arriving on earth, E.T., like other extraterrestrials before and after him, found himself sadly excluded from what is collectively owned by humankind.") Yet ownership, in the limit case of humankind as an owner, loses this feature. (2) Considerations of original ownership also enter in discussions of the legitimacy of private property (which do not necessarily have any libertarian focus); see Waldron (1988), Munzer (1990), Christman (1994), Penner (1997), and Harris (1996). See Becker (1977) and Reeve (1986) for overviews.

A first step introduces the assumptions behind the idea that humanity collectively owns the earth. A second step distinguishes various views developing these assumptions. Rather than with revelation, like the 17th century, we can work only with the plain plausibility of these conceptions (in light of how they cohere with other moral convictions), as well as the extent to which they are plausible developments of the assumptions behind Egalitarian Ownership.

So Common Ownership is supported, first, by the assumptions behind Egalitarian Ownership, and second by arguments showing that it is the philosophically preferred conception of Egalitarian Ownership. Section 5 introduces Common Ownership as such a conception and provides initial support for it. Sections 6-8 repudiate competing conceptions: No Ownership, Joint Ownership, and Equal Division. Common Ownership is the philosophically preferred conception. Sections 9 and 10 illustrate how Common Ownership enters into philosophical arguments. Section 9 shows that one version of left-libertarianism (Otsuka (2003)) is incoherent. Section 10 shows that one of Pogge's (2002) arguments for the claim that the global order harms the poor, fails (Uncompensated Exclusion; this is unfinished business from Chapter 6).

2. *Egalitarian Ownership* holds that the earth originally belongs to humankind collectively: all humans, no matter when and where they are born, have *some* sort of symmetrical claim to resources and spaces of the earth as they exist independently of human activities. Talk about "symmetrical claims" means that everybody is entitled equally to these resources and spaces: conceptions of Egalitarian Ownership differ in explicating what this means. Egalitarian Ownership is detached from the complex set of

rights and duties the civil law delineates under the heading of property law (Honoré (1961)). At this level of abstraction from conventions (which themselves must be assessed vis-à-vis views on original ownership) all Egalitarian Ownership says is that all humans have symmetrical claims to resources. Nothing is said about exclusion, transfer, or other aspects of property in civil law. The term “ownership” conveys nothing more, and the term “egalitarian” only conveys the symmetry-claim.⁸ I use both terms in a thin sense appropriate for this level of abstraction. That the earth “originally” belongs to all of humanity means (and thus is a metaphorical way of saying) that we are talking about resources that exist independently of human activities.

Egalitarian Ownership is the most plausible view of ownership of natural resources and spaces. While section 3 introduces the assumptions based on which I think so, the remainder of section 2 clarifies that view. Egalitarian Ownership speaks to raw materials and spaces only, not to what we *have made* of them. Yet artifacts use up resources too, and the distinction between what “is just there” and what humans have shaped is blurred, say, for land human beings have wrested from the sea, or for natural gas harnessed from garbage deposits. Moreover, we must ask under what conditions man-

⁸ (1) One may still insist that “ownership” is misleading in the statement of Egalitarian Ownership. Yet first of all, we are concerned with claims individuals have to resources and spaces. Second, there is a connection between Egalitarian Ownership and property law parallel to the connection between Rawls’ principles of justice and judicial decisions. Like Rawls’ four-stage sequence ((1999c), section 31) that begins with the Original Position, then proceeds to the constitutional, legislative, and finally the judicial stage, we begin with the abstract viewpoint of Egalitarian Ownership, develop conceptions of it, and could (but do not) proceed to assessing civil law prescriptions in light of the most plausible conception. Only if in light of the philosophically preferred conception of Egalitarian Ownership political structures are justified where something like a civil law is available, can we discuss property under such conditions. (2) Risse (2004b) did not develop collective ownership in this way. Following Christman (1991), there I understood “ownership” to consist of a set of rights and duties: First, we have the right to possess, use, manage, alienate, transfer, and gain income from property. Derivative of these are rights to security in ownership, transmissibility after death, and absence of term (specifying absence of temporal limitations on ownership). In addition, there are the prohibition of harmful use, residuary character of ownership (laws specifying rules of ownership in cases of lapsed interest), and liability to execution in case of insolvency. All of this is true of ownership in the civil law, but Egalitarian Ownership here is much weaker.

made products, including improvements of resources, are no longer accompanied by special entitlements of their creators or their offspring. Chapter 9 explores this topic.⁹

We inquire about materials that exist independently of human contributions (air, soil, raw materials such as minerals, coal, water), but also about how biophysical factors such as climate endow regions with value for humans. Collectively owned are different parts of the earth that lends themselves in very different ways (if at all) to private appropriation: not only the land masses, but also the seas and the skies, including the different goods that those regions provide (such as the absorptive capacity of the earth that we discuss in Chapter 12). Crucially, it is the earth *as a whole* that is collectively owned, and inferences from there to the ownership status of parts of the earth are non-trivial (which again is a subject for Chapter 12).

I talk about “original” or “external” resources. These formulations mean the same: resources and spaces of the earth that exist independently of human contributions. When Grotius wrote, land was central to the economy, and questions about access to territory as well as the seas were unsettled. When Marx wrote, attention had shifted to the means of production in industrializing societies. Maybe we now live in the “age of access” and must understand basic economic parameters (“paid-for experiences;” Rifkin (2000)) yet differently. So it is important to be clear that what is originally owned is three-dimensional space of differential usefulness for human purposes, regardless of its era-

⁹ Egalitarian Ownership also does not speak to the human gene pool. Genes are transmitted through actions of individuals. They do not exist independently of human activities. Steiner (1994) and (1999) argue that germ-line genes are effectively natural resources and subject to rent payments. Bovenberg (2006), chapter 3, transfers Grotius’ reflections on the freedom of the seas to the case of the human genome, parallel to how I will transfer these reflections to intellectual property in Chapter 14. I apply Egalitarian Ownership only to cases where all the assumptions I introduce to support it apply beyond reasonable doubt. I wish to claim that the relevant ownership rights are natural rights, and derive a particular conception of human rights from them. So our starting points have to be minimalist.

dependent economic relevance. I wish to stay neutral with regard to the status of animals. I exclude wildlife from collectively owned resources, but including it would be unproblematic.

States may adopt vastly different systems of ownership, explicating what forms of control, benefits, or exclusion owners may have, as well as differing ideas about who can own what and how. Some states have insecure property rights, are unable to enforce rights, or cannot control access to their territory. Some indigenous peoples may reject ideas of ownership entirely. Still, Egalitarian Ownership formulates a standing demand on all groups to occupy the earth in a manner that respects the symmetrical status of all individuals with regard to original resources. That Egalitarian Ownership operates in this way should be acceptable even in cultures that do not see individuals as property owners if we read the claim that all have symmetrical claims to what is originally owned sufficiently weakly to keep it plausible.

3. I make four assumptions in support of Egalitarian Ownership. First, the resources and spaces of the earth are valuable to and necessary for all human activities to unfold, most importantly to secure survival. Second, the satisfaction of basic human needs matters morally. Third, to the extent that these are resources that have come into existence without human interference, no human being has any claim to them in terms of desert or accomplishments vis-à-vis the creation of these resources that is privileged over claims of any other. The fourth assumption, of minimal solidarity, is best explained later. In light of these assumptions I submit that Egalitarian Ownership is the most plausible view of original ownership. Grotius explored collective ownership to address “differences of

those who do not acknowledge one common Civil Right whereby they may and ought to be decided” (DJB, I.1.I). Any standpoint from which to do so must rely on assumptions acceptable to all relevant parties. For Grotius, the Old Testament did this job. Yet at this stage, we must be careful to make only assumptions that are acceptable across cultures. Let me make a case to that effect for each assumption.

The first assumption remains trivially true as long as human life is earth-bound. I make it for two reasons. First of all, it accounts for the relevance of inquiries about original ownership. Second, it makes sure that a reference to remote galaxies that no human being has helped to create does not lead our inquiry ad absurdum. The earth is the natural habitat of humanity, a closed system of resources everybody needs for survival. Humanity’s habitat may grow through space travel, and we may then have to reformulate this assumption. The other assumptions speak to the expanded space too. The idea of “common heritage of humanity” has been applied to Outer Space. More problematic than outer limits of what is collectively owned is why we should accept that the relevant space includes the *whole* earth. Why could not people in Japan or New Zealand say they, and *only* they, collectively own their islands? A reply to this challenge must wait until I can introduce the fourth assumption, of minimal solidarity.¹⁰

¹⁰ Compare the treatment of this matter at the beginning of section 62 of Kant’s *Metaphysics of Morals*, Doctrine of Right: “The rational idea of a *peaceful*, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic (ethical) principle, but a principle *having to do with rights*. Nature has enclosed them all together within determinate limits (by the spherical shape of the place they live in, a *globus terraqueus*). And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole and so as possession of that to which each of them originally has a right, it follows that all nations stand *originally* in a community of land, through not of rightful community of possession (*communio*) and so of use of it, or of property in it; instead they stand in a community of possible physical *interaction* (*commercium*), that is, in a thoroughgoing relation of each to all the others of *offering to engage in commerce* with any other, and each has a right to make this attempt without the other being authorized to behave toward it as an enemy because it has made this attempt.” (Kant (1996), p 489; see also Doctrine of Right, section 13, Kant (1996), pp 414f, as well as *Perpetual Peace*, discussion of the Third Definitive Article, Kant (1970b), p 106). The role of the spherical nature of the earth in Kant’s

The second assumption is that the satisfaction of basic human needs matters morally. Whereas the first is descriptive, this one (like the remaining two) is normative. Without such an assumption we cannot illuminate the appropriateness of talk about *claims* in Egalitarian Ownership. Chapter 4 discusses the normative significance of the distinctively human life. The satisfaction of basic needs (“the conditions that must be met for a person to have a decent life given the environmental conditions he faces,” Miller (2007), p 184) is morally as significant as that life itself. The concept of basic needs is tied to ideas of the essential, indispensable, unimpeachable, or inescapable. I wish to make maximally uncontroversial assumptions that generate a universally acceptable, non-parochial standpoint to adjudicate questions of global reach. Therefore, I mean by “basic needs” merely what Doyal and Gough (1991) mean by fundamental needs: physical health and a mental competence to choose and deliberate. The first assumption remains

theory of property in the Doctrine of Right is difficult to determine. The literature offers no unified account of this matter. The relevant passages in the *Metaphysics of Morals* are very brief, and as for instance Flikschuh (2000) argues, Kant’s political philosophy in general and his appeal to the spherical nature of the earth in particular are heavily involved with his metaphysics. (“The image of the earth’s spherical surface is construed with reference to two highly abstract metaphysical categories – the concept of causality and the idea of freedom – whose reconciliation with each other is made possible through the notion of human finitude as a practically enabling condition of human existence,” pp 196f.) Roughly speaking, I think he proceeds as follows: Each person has a right to freedom (i.e., not to be subject to another person’s will). In virtue of this right each person is entitled to taking up some space or other on the earth. But in virtue of the spherical and thus limited nature of the earth, human beings potentially or actually encounter each other. In virtue of these two facts (right to freedom, spherical nature of the earth) all human beings form a community with the (sole) obligation of regulating the acquisition of property. To that community Kant ascribes a collective will charged with this regulation, and that has to do so in a way acceptable to all persons. (This community with a collective will is not independently given, but must be postulated for there to be personal property at all, the necessity for which follows from the assumed right to freedom.) But since then this regulation of property acquisition would indeed capture the will of all, nobody would acquire anything (and thus subject others to obligations) through unilateral acts of her will, an action Kant considers unacceptable. If something like this is correct, Kant offers an alternative route to Egalitarian Ownership, or in any event, to a position similar in spirit. On Kant’s account and on mine, what would have to follow is the kind of discussion I conduct under the heading of “conceptions of Egalitarian Ownership.” Kant does not address these matters. For a discussion of the differences between Grotius and Kant on original ownership, see Flikschuh (2000), chapter 5, section 2. On Kant, see also Byrd and Hruschka (2010), chapter 6, sections 2-4, and Kersting (1984), pp 113-154. The Doctrine of Right has engendered a considerable secondary literature, especially in German; for references see the works I mentioned.

true if we speak broadly of “human activities” rather than needs. Yet such a broad assumption is unsuitable to derive claims of universal reach.

The third assumption states that, to the extent that resources and spaces have come into existence without human interference, nobody has claims to them in terms of desert or accomplishments vis-à-vis their creation that is privileged over claims of any other. Since nobody has such claims, nobody can have claims to resources that draw on accomplishments of *others*, as I may be entitled to an inheritance if I am the designated beneficiary of somebody else’s accomplishments. Consider social primary goods. No newly-born baby has done more than another to create such goods, but others have. For entities whose form of existence depends on human interference, it is not generally true that of any two individuals, none has a stronger claim to them in terms of desert. The only way of denying this is to insist that no manner of being involved with the way in which an entity comes into its form of existence generates claims to it.¹¹ This I take to be false. Maximally uncontroversial is that to resources and spaces that have come to exist without human interference nobody has claims in terms of desert or accomplishments that are privileged over those of others. No statement about artifacts is as uncontroversial.¹²

While the first and third assumption also hold for animals (as does, arguably, the second, for some animals), I assume that humans stand in moral relations to each other that differ from their relations to animals, if only because the distinctively human life (see Chapter 4) differs importantly from the life of animals. Nothing turns on claiming that

¹¹ I talk about a “form of existence” to make room for the fact that raw materials are used by humans and receive a certain shape then. The particular form of existence of clay may be that of a stature.

¹² Beitz (1999), pp 136-143, discusses principles of justice as they apply to external resources, concluding that “the natural distribution of resources is a purer case of something being ‘arbitrary from a moral point of view’ than the distribution of talents” (p 140). See Pogge (1989), pp 250-253 for critical discussion.

animals are inferior. I explore original ownership to assess redistributive claims humans make *upon each other*.¹³ So the first assumption explains why there can be claims *to the original resources of the earth*. The second makes clear how *claims* of some sort arise here. The third demonstrates why Egalitarian Ownership ascribes *symmetrical* claims to all humans. Such symmetry does not imply that nothing else matters for assessing the acceptability of claims to original resources except the significance of basic needs and the inadmissibility of claims based on desert or accomplishment. But it implies that we must articulate additional claims as part of a conception of Egalitarian Ownership, and make them coherent with, and plausible in light of, our assumptions. The fourth assumption below interprets the strength of the second (which does not say anything about the kinds of claims involved). In light of these assumptions Egalitarian Ownership is the most plausible view on original ownership of the earth. It is plausible to make sense of collective ownership of the earth even without a divine gift.

4. Does *ownership* aptly capture our relationship to our environment? Walt Whitman, for one, praised animals, by way of contrast with humans, by emphasizing that “not one is demented with the mania of owning things” (section 32 of “Song of Myself”). A version of this point would presumably apply to the present approach. Yet crucially, Egalitarian Ownership is a view about the relationship among human beings: *to the extent* that nature

¹³ For discussions about what may be morally special about human beings, see Singer (1993), chapters 2 and 3, Arneson (1999), and Gosepath (2004), chapter II.5. Most plausibly, as far as extensions of moral considerations to animals are concerned, we would be talking about higher animals anyway. An intriguing question (my flippant reference to E.T. in an earlier footnote notwithstanding) is if we should count extraterrestrial species among the co-owners, should they emerge. In the 2008 science fiction “The Day the Earth Stood Still,” a representative of alien species arrives to assess whether humanity is capable of preserving the earth’s life-sustaining capacities, which are sufficiently rare for these species to find their loss unacceptable. Would such species have claims? I think they would.

is at our disposal, nobody has a privileged claim.¹⁴ While the civil law often permits us to destroy objects, Egalitarian Ownership does not entail the permissibility of wanton destruction, nor does it commit us to ascribing merely instrumental value to nature. Valuing nature intrinsically, as sublime or awesome, as providing a context where human life obtains meaning, even as sacred, is consistent with my view. Parallel to Rawls' four stages that connect the Original Position with judicial decisions, I begin with the abstract viewpoint stated by Egalitarian Ownership, develop conceptions of it, and could proceed to assessing civil law prescriptions in light of the most plausible conception. Considerations about the value of nature matter at that last stage. Only then do we settle conclusively what can be done with resources.¹⁵

The idea that humanity owns the earth has done its share in the history of human chauvinism: Gruen and Jamieson (1994) include excerpts from Locke in their collection of reflections on nature to make this point. But Egalitarian Ownership does not presuppose the arrogance associated with a reading of the Bible that subjects the creation to the human will. This attitude emerges, say, in Calvin's view that God took six days to create the world in order to demonstrate to human beings that everything was prepared

¹⁴ To wit: the Hohfeldian rights that constitute Common Ownership – the conception of Egalitarian Ownership I defend below – capture duties and liberties as they are *directed at* other human beings. Such duties may not be all-things-considered duties, which in turn would also take concerns about nature or animals into consideration. See Sreenivasan (2010) for the distinction between directed and all-things-considered duties.

¹⁵ A classical starting point for reflection on nature is Mill (1874). For an overview of theories about the value of nature, see Krebs (1999). Wiggins (2000) emphasizes that nature is “sublime and awesome,” and that our valuing it thus must have an impact on our attitudes towards it. Goodin (1992) defends the view that the value of nature lies in the fact that it provides a context for our lives to find meaning. Crucial about this context is that humans have not designed it. Chapter 9 explores the possibility of there being an overall assessment of the value for human purposes of certain regions. But even the construction of such a value is consistent with acknowledging nature's independent value; the purpose of such a value is to assess what distribution of human beings across the globe is acceptable.

for them. In that way my approach differs from its 17th century predecessors many of whose advocates accepted this stance.¹⁶

Not all efforts to reconsider our ways of valuing nature are consistent with Egalitarian Ownership. Aldo Leopold's credo ("A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise," (1949), p 224f), is not. Leopold suggests that eventually we will find practices of "owning land" as despicable as practices of "owning people." He makes that point by evoking a scene where Homer's Odysseus hangs a dozen slave girls by one rope for suspected misbehaviors. Their conduct was a matter of property. We find that attitude revolting, but, says Leopold, continue to display it with regard to other entities. This "land ethic," later developed by Callicott (1989) and others, moves outside of *enlightened anthropocentrism*, the view that all values ultimately must be values to human beings, values on a human scale, which, however, does not mean their range is exhausted by instrumental values or values of human flourishing. Enlightened anthropocentrism recognizes that answers to environmental questions "must be based on human values, in the sense of values that human beings can make part of their lives and understand themselves as pursuing and respecting" (Williams (1995), p 234).¹⁷

¹⁶ One can read the biblical story in different ways, see White (1967) and Passmore (1974), chapters 1 and 2. Passmore explores the diversity of attitudes towards nature across cultures. For the reference to Calvin, see Passmore, p 13. An alleged letter from the Indian Chief Seattle to US President Pierce from the 1850s takes a different view on the ownership situation that connects human beings and the earth: "The earth does not belong to man; man belongs to the earth.... All things are connected like the blood which unites one family. Whatever befalls the earth, befalls the sons of the earth. Man did not weave the web of life: he is merely a strand in it. Whatever he does to the web, he does to himself" (Weiss (1988), p 1). References to this letter circulate widely among environmental activists, and appear frequently in the literature. For an account of what we know about the different versions of this text and their origins, see Kaiser (1987).

¹⁷ For a similar statement, see Wiggins (2000), pp 7f.

Outside of such a view also stands arguably the “biospheric egalitarianism” of the Deep Ecology movement inspired by Arne Naess (1989), according to which all living things, including plants and ecosystems, have value in their own right.¹⁸ Such approaches may grant that it so happens that humans care more about each other than about other entities, but do not give any morally privileged status to human projects: their concern is a rejection of alleged human chauvinism (Routley and Routley (1980)). They do not even give such a status to the idea that human beings are “at home” in the world in the sense that they acceptably use the environment to satisfy basic needs. According to Locke, “[t]he Earth, and all that is therein, is given to Men for the Support and Comfort of their Being” (*Second Treatise of Government*, section 26). Minimally, this idea, stripped of theology and human arrogance, must be acceptable within approaches to the question of how to value nature for Egalitarian Ownership to be plausible.

The ideas that there is moral significance to the satisfaction of basic needs and that this significance at least *tends* to overrule environmental concerns conflict only with rather extreme forms of environmental ethics.¹⁹ Potential for conflict increases if we

¹⁸ “Arguably:” Perhaps even Deep Ecology is reconcilable with Egalitarian Ownership. Naess (1984) says that “humans have no right to interfere destructively with nonhuman life except for purpose of satisfying vital needs” (p 266). But we also read that “Ecosophy, as I conceive it, *says yes to the fullest self-realization of man*” (emphasis in original, p 270). Using ownership language, Naess (1989) writes: “The Norwegian people or the Norwegian state does not own Norway. The resources of the world are not only resources for human beings. Legally, we can ‘own’ a forest, but if we destroy the living conditions for life in the forest, we are transgressing the normal of equality” (p 175). But also: “The principle of biospheric egalitarianism defined in terms of equal rights, has sometimes been misunderstood as meaning that human needs should never have priority over non-human needs. But this is never intended. (...) Human beings are closer to us than animals, but there is no unsatisfied need driving the food cosmetic industry. (...) The dimensions of peripheral needs of humans must be compared with vital needs of other species, if there is a conflict” (p 170f). While there might be a way of rendering Egalitarian Ownership consistent with this outlook, it would be awkward to do so. Yet there is more of a commitment to the moral importance of beings with a subjective good (in particular humans) in the ownership approach than Deep Ecology is likely to be comfortable with.

¹⁹ “At least tends to:” defenders of Egalitarian Ownership do not *have* to concede that any human need must prevail, say, even if the Grand Canyon must be destroyed to meet it. As Kamm (2007) writes:

understand the priority given to beings with a subjective good (especially humans) as including a further-reaching priority for the good life of such beings beyond the satisfaction of needs. Required would be a considerable priority for the good of such beings, although none that holds that this sort of good trumps all other considerations. I endorse a priority statement of this strength (to avoid trivialization in the clarification of the relationship between Egalitarian Ownership and environmental ethics), although this plays no role in subsequent arguments that deploy Common Ownership, the conception of Egalitarian Ownership I argue next is the philosophically preferred one.²⁰

5. While the concept of Egalitarian Ownership expresses the symmetry of claims of all individuals to original resources and spaces, *conceptions* differ in how they capture this symmetry. Generally, an entity may have roughly four types of ownership-status: *no* ownership; *joint* ownership – ownership directed by collective preferences; *common* ownership – the entity belongs to several individuals, each equally entitled to using it within constraints; and *private* ownership. Common ownership is a right to use something without a right to exclude other co-owners. If the Boston Common were held

“Sometimes the remarkableness of something or its uniqueness calls for more protection than does something else’s having moral status” (p 230).

²⁰ Freeing the idea of collective ownership from its theological context also allows us to respond to a way of ridiculing the idea that the earth exists for the sake of human beings. John Muir, patron saint of the environmental movement, writes: “But if we should ask these profound expositors of God’s intentions, How about those man-eating animals – lions, tigers, alligators – which smack their lips over raw man? Or about those myriads of noxious insects that destroy labor and drink his blood? Doubtless man was intended for food and drink for all these? Oh, no! Not at all! There are unresolvable difficulties connected with Eden’s apple and the Devil. Why does water drown its lord? Why do so many minerals poison him? Why are so many plants and fishes deadly enemies? Why is the lord of creation subjected to the same laws of life as his subjects? Oh, all these things are satanic, or in some way connected with the first garden” (Muir (1916); in Gruen and Jamieson (1994), p 24). My view does not lead to such absurdity. Yet neither is my view reversely committed to a care-taking attitude associated with some understandings of the divine creation, captured for instance by the idea of a Great Chain of Being (where nothing is created in vain) See Lovejoy (1957), and for some discussion, Sagoff (2008), p 201.

in common when it was used for cattle, a constraint could have been to bring no more than a certain number, a condition supported by respect for others and a concern to avoid the Tragedy of the Commons. If Bostonians held the Common *jointly*, each use would have been subject to a process to be concluded to the satisfaction of each co-owner. Joint ownership ascribes to each owner rights as extensive as private ownership rights, but others hold the same rights: each co-owner must be satisfied on each use.²¹

The difference between common ownership and no ownership emerges clearly if we ask how to create *private* property. No ownership requires a theory of *acquisition*. The crucial issue is how to create rights and duties constitutive of property at all, one important question being if this process is subject to moral constraints. Right-libertarians deny this. Yet such a denial does not follow from No Ownership. One may argue that, while resources are originally unowned, acquisition requires consideration of others (“provisos”). Common ownership requires a theory of *privatization*, the crucial issue being how to derive private ownership from a bundle of rights and duties constituting common ownership. Private ownership must derive either from a contract, or in a way that renders a contract superfluous. (I speak of “appropriation” when staying neutral between acquisition and privatization.)

In what follows, “Joint Ownership” and “Common Ownership” in capital letters are names of interpretations of Egalitarian Ownership and hence views about ownership specifically *of the earth*. In small letters “joint ownership” and “common ownership” are general forms of ownership of anything. I say that humanity “collectively” owns the earth if the precise form of ownership does not matter. I use the term “Equal Division”

²¹ The most plausible view on duties to nature must be factored in; but again, only at the stage of the civil law will those fully come into their own when it is spelled out precisely what one can do with resources.

for the interpretation of Egalitarian Ownership that corresponds to private ownership. According to Equal Division, each of altogether n human beings has a claim to a $1/n$ share of original resources. No Ownership, Joint Ownership, Common Ownership, and Equal Division are the four conceptions of Egalitarian Ownership that I explore.

According to each of these views, ownership rights are pre-institutional, and so *natural*, rights. How can we decide which conception (each of which could be developed in various ways) to prefer? Political philosophers in the 17th century debated how to interpret God's gift. We need a similar debate about these conceptions. Rather than divine revelation, we can work with (a) the plain plausibility of these conceptions, in light of how they cohere with other moral convictions, and (b) the extent to which they are appropriate developments of the assumptions behind Egalitarian Ownership. Distinguishing between the stage at which we argue for the concept and the stage at which we compare the plausibility of different conceptions is a device that allows for a distinction between considerations establishing the basic stance captured by Egalitarian Ownership, and those bearing on different developments of that idea.

There may well be other conceptions. As Rawls (1999c) defends his principles of justice not against *every* objection, but against several relevant alternatives, I defend my preferred conception, Common Ownership, against a short list of competitors. But let me first elaborate on Common Ownership some more. Its core idea is that all co-owners ought to have an equal opportunity to satisfy basic needs to the extent that this turns on collectively owned resources. This formulation, first, stresses an equality of status; second, it insists that the equality concerns opportunities to satisfy basic needs (there being no sense in which co-owners are entitled to an equal share of what is collectively

owned, let alone to support in getting such a share, any more than co-owners of the Boston Common had such claims); and third, it does so (only) insofar as such needs require collectively owned resources.²²

In Hohfeldian terminology, common ownership rights include liberty rights accompanied by what Hart (1982) calls a “protective perimeter” of claim rights (p 171).²³ To have a liberty right is to be free of duties to the contrary. Co-owners are under no duty to refrain from using resources. Were co-ownership reducible to such rights, we would end up with a Hobbesian state of nature where nobody is obliged not to interfere with any use by others. Yet in light of the intuitions supporting Egalitarian Ownership, to count as an interpretation of the latter, Common Ownership must guarantee minimal access to resources, that is, impose duties to refrain from interference with certain uses. Otherwise some might legitimately be deprived of access to resources.²⁴

Therefore we must add a protective perimeter of claim rights, similarly to how Grotius argued that individuals may take from nature what they need to survive, and others are not allowed to interfere. We can obtain enough mileage from our assumptions to require that Common Ownership rights (for Common Ownership to serve as an interpretation of Egalitarian Ownership) be conceived in sufficientarian terms, in the sense that no co-owner should interfere with those actions of others that serve to satisfy basic needs. I submit that, pending an engagement with competing conceptions of Egalitarian Ownership, we cannot press these assumptions further. Equal Division and

²² Equality of opportunity is exhausted by the liberty, claim, and immunity rights I am about to introduce.

²³ For the Hohfeld terms, see Jones (1994), chapter 1, Edmundson (2004), chapter 5, or Wenar (2005).

²⁴ In the discussion of No Ownership below we will see that this move is too quick; more needs to be said.

Joint Ownership press them too far: no requirements of equality in one's share in originally collectively owned resources, or participation in a collective decision-making process, emerge from our assumptions.²⁵

In a pre-institutional state of nature, where the level of technology and organization is low, liberty rights plus a protective perimeter of claim rights plausibly guarantee an equal opportunity to satisfy basic needs to the extent that this turns on obtaining collectively owned resources. Yet we must also ensure that co-owners maintain their status under more complex arrangements. These arrangements may be property conventions where access to resources plays little immediate role for most people. A necessary condition for the acceptability of such conventions is that the core purpose of the original rights is still met. That purpose is to ensure that co-owners have the opportunity to meet basic needs. Grotius, too, recognizes something like this, by imposing limitations on property conventions. In Hohfeldian terminology, co-owners have an *immunity* from living under political and economic arrangements that interfere with their having such opportunities. Individuals' status as equal co-owners ought to be preserved regardless of what property arrangements hold. In Chapter 10 this immunity will take us to human rights.

Common ownership rights are *natural* because we can justify them without reference to conventions or institutions that hold within or among groups, as well as without any reference to any transactions, such as promises or contracts. The justification

²⁵ One assumption that enters implicitly is that, globally, and modulo our ability to find sensible allocation mechanisms, there is "enough" to render the stipulation of such claim rights plausible. In a world that is wildly at odds with that assumption (e.g., the post-apocalyptic world in Cormac McCarthy's *The Road*) much moral thought must be reconsidered anyway. The plausibility of such claim rights is not undermined by the existence of emergency situations (e.g., shipwrecks) where claims to non-interference may not hold.

appeals only to natural attributes of persons and facts about the non-human world. The force of these rights can be recognized by all reasonable people independently of provisions of positive law. Hobbesians may say individuals might rationally agree to living in states or under other arrangements even if those failed to offer guarantees called for by the aforementioned immunity. But rationality would dictate such behavior, and, given the basic nature of the needs at stake, individuals would normally make such agreements only under duress. My argument takes individuals to be co-owners of the earth, and it is in this manner that an entitlement of the sort stated here arises.²⁶

6. Why accept Common Ownership *over* the other conceptions? Let me first make the case for Common Ownership over No Ownership. One may think No Ownership is the default among interpretations of Egalitarian Ownership. Otsuka (2003), for one, does, since “in the absence of any such belief that the earth was previously owned by some being who transferred this right of ownership to humankind at the outset, it is reasonable to regard the earth as initially unowned” (p 22, n 28). Yet as Wenar (1998) notes, No Ownership possesses no such character if we acknowledge any natural rights at all (as Otsuka does, cf. p 3f, and as I do too). Since (a) views on collective ownership other than No Ownership are not entirely implausible to begin with, and (b) there are then no circumstances where no rights hold, the absence of natural rights that capture the original ownership status of the earth loses its default status.

²⁶ (1) On Grotius’ understanding of rights – rights being individual possessions – it is possible to surrender even minimal rights. A better way of conceptualizing rights is to regard them as reasons, some of which may still apply even if the person whose situation is at stake might wish to forfeit them. While I take much inspiration from Grotius, I part company when it comes to the ontology of rights. (2) All I say is consistent with the existence of additional natural rights, especially rights to individual appropriation, as long as common ownership rights are respected.

No Ownership embodies an ideal of “equal freedom,” whereas Common Ownership, Joint Ownership, and Equal Division embody one of “equal voice” (Wenar (1998)). No Ownership gives everybody the same freedom to occupy unowned resources and spaces, but nobody must make room for those who arrive late (unless moral constraints are added, or anyway more than minimal constraints). The equal-voice characterization fits the other views because they grant each person a claim to being treated as an equal, and actual, owner (of sorts). I rejected an argument to push the burden of proof on opponents of No Ownership. Consider an argument to push it on the “equal-freedom” approach. According to this argument, any view on original ownership interprets the idea that everybody has an *equal claim* to resources. Unless we can show otherwise, we should explicate “equal claim” in terms of “equal voice.” After all, “equal voice” is the appropriate way of *respecting* individuals equally, which is the vantage point of moral inquiry and leads to the “equal claim” perspective to begin with. However, this argument begs the question. It is hard to see what *mistake* someone makes insisting that “equal freedom” is the right way of respecting individuals.

So we must tackle No Ownership directly.²⁷ Some defenders of No Ownership constrain the acquisition of property (through “provisos”), others do not. Whereas Kirzner and Rothbard reject any moral constraints, Nozick endorses a proviso:

You may acquire previously unowned land (and its fruits) if and only if you make nobody else worse off than they would have been in the state of nature in which

²⁷ There is a semantic oddity in my terminology. No Ownership is a trivial case of everybody’s having symmetrical claims to the earth, and so counts as a conception of Egalitarian Ownership. However, I have also been speaking of collective ownership of the earth, and have thought of Egalitarian Ownership as the view that generically captures collective ownership of the earth. But No Ownership cannot sensibly be seen as a version of *collective* ownership, other than perhaps in a vacuous sense. Since I am about to argue against No Ownership as a conception of Egalitarian Ownership, and thus reject this right-libertarian idea, I continue to use the term “collective ownership” to refer to Egalitarian Ownership. But we must be careful to note that this does not introduce any prejudice against the right-libertarian stance.

no land is privately held but each is free to gather and consume food and water from the land and make use of it.²⁸

To mention another example, Otsuka (2003) endorses this proviso:

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. (p 24)

First I discuss No Ownership without provisos. European conquerors in the 16th century claiming for their king all land between Atlantic and Pacific would not meaningfully occupy anything. Defenders of No Ownership can recognize such constraints (meaningful occupancy), much as somebody who condones lying may insist that communication requires linguistic structure. (She may even agree that these are minimal moral constraints.) An objection to restricting constraints on acquisition in this way may insist that it is inappropriate for accidents of space and time to determine property holdings, certainly if this process leads to rights that resonate through the ages through inheritance and bequest, as it is often taken to do.

Yet defenders of No Ownership without provisos might bite such bullets. As long as nobody prevents others from exercising “equal freedom,” say they, accidents of space and time do not invalidate anything: justice need not remedy such interference with life chances.²⁹ Defenders of No Ownership may defend their view *as a conception of Egalitarian Ownership* by insisting that “equal freedom” not only offers an *acceptable* interpretation of the assumptions I made, but one we should prefer because of its restrained nature: it does not generate stronger duties than the assumptions warrant. No Ownership may indeed create a situation where some people’s opportunity to satisfy

²⁸ For discussion, see Nozick (1974), pp 174-182. In this formulation, I follow Otsuka (2003), p 23.

²⁹ For discussion, see Nagel (1997).

basic needs is not ensured. But that, defenders say, would be so because morally unproblematic actions of others create such a situation.

Opponents of the “equal freedom” interpretation argue that we should support further-reaching duties than defenders of No Ownership concede. Much of the debate about libertarianism turns on such resistance. Yet at some point it becomes clear that it is hard to offer such resistance against “equal freedom” *from shared premises*. Ultimately one must press against defenders of No Ownership that they unacceptably disregard a notion of even *minimal human solidarity*, an acknowledgement of a minimal entitlement everybody has to an opportunity to acquire resources, to the extent such resources are needed to satisfy basic needs. This is our fourth assumption. This assumption goes beyond the second assumption by insisting that morally impeccable behavior of others cannot overrule the relevance of having an opportunity for basic needs satisfaction (which is why I talk about minimal *solidarity*). Minimal solidarity ensures that Egalitarian Ownership is interpreted in terms of “equal voice.”³⁰

We encountered an idea of solidarity in Chapter 7. In DJP, Grotius states that, once individuals have entered civil society, they must seek to protect others and support the community (p 37). DJB makes a similar point more descriptively, saying that human beings are distinguished by a “Desire of Society, that is, a certain Inclination to live (...) in a Community regulated according to the best of his Understanding” (P, VI; cf. also P

³⁰ (1) Readers who think libertarianism fails on the strength of the three assumptions I already made might want to think of minimal solidarity as a conclusion that can be derived from the earlier assumptions. (2) The utmost failure of such solidarity would then be the refusal of one group to share the earth with another altogether. It is in such terms that Hannah Arendt, in *Eichmann in Jerusalem*, characterizes the nature of crimes against humanity. Specifically with regard to the Holocaust, she says that the Nazis “wished to make the entire Jewish people disappear from the face of the earth” ((1963), p 268). Recall from the beginning of Chapter 7 that Arendt also thinks that “[t]he earth is the very quintessence of the human condition, and earthly nature, for all we know, may be unique in the universe in providing human beings with a habitat in which they can move and breathe without effort and without artifice” ((1958), p 2).

VIII). Sociability is the “Fountain of Right” (P, VIII). We can reformulate these ideas in terms of a notion of solidarity that DJP understands normatively and ties to a theological background, and that DJB understands descriptively as well by ascribing sociability to human beings. My argument requires the normative version. We cannot dismiss No Ownership as a conception of Egalitarian Ownership without this assumption. The first three assumptions behind Egalitarian Ownership should be acceptable across societies. The same, I claim, is true for minimal solidarity, in virtue of its minimal nature.

We can identify the argumentative work this notion does (which shows what its content is, and thus what it adds to the earlier assumptions): it is in light of, first, the moral value of the satisfaction of basic needs, and, second, the fact that the existence of the external resources required to that end is nobody’s accomplishment that Common Ownership becomes a plausible conception of Egalitarian Ownership. Yet these points fall short of defeating No Ownership. Minimal solidarity closes the gap insisting that each person’s opportunity to make ends meet should be protected from accidents of space and time *sufficiently much* to render acceptable the claim right (to the effect that no co-owner should interfere with those actions of others that serve to satisfy basic needs) and the immunity right involved in Common Ownership. The stipulation of minimal solidarity denies the possibility of interpreting Egalitarian Ownership in terms of claims that impeccable behavior of others may render ineffective. Minimal solidarity constrains what counts as impeccable.

I do not make an exclusive appeal to the significance of the satisfaction of needs to delineate the role of minimal solidarity. The notion of solidarity bridges the gap *not* between the significance of the satisfaction of needs, on the one hand, and Common

Ownership, on the other. It bridges the (smaller) gap between the significance of the satisfaction of needs *and* the fact that resources are nobody's accomplishment, on the one hand, and Common Ownership, on the other. By doing so, minimal solidarity captures the importance of realizing what one might call then the *fair value* of our symmetrical claims. Interpreting symmetrical claims to the earth exclusively in terms of "equal freedom" denies their fair value, much as the equal right to vote loses such value if people cannot participate meaningfully in public discourse.

Minimal solidarity is basic enough to be a starting point for additional claims, rather than being derived from elsewhere. While we can offer additional support for this view (appealing to the arbitrariness of anybody's station in life, the value of the satisfaction of basic needs or of realization of life projects, or the fair value of symmetrical claims), we cannot derive minimal solidarity from anything defenders of No Ownership plainly must accept. Minimal solidarity is an assumption. Recall now that I have yet to respond to somebody who denies that the shared space of humanity is the *whole* earth (which I said we could do only after introducing the fourth assumption). The view that it is not the whole earth to which we must apply Egalitarian Ownership implies that one would deny support or entry to some even in light of the complete absence of opportunities to satisfy basic needs. Minimal solidarity rules this out.

We have so far discussed No Ownership without proviso. Alternatively, defenders of No Ownership may accept a proviso. However, depending on what proviso they accept, they would adopt either a theory identical in what it permits and forbids to one of the collective-ownership scenarios we distinguished, or else a different theory. As I am in the process of arguing, ownership theories that go beyond Common Ownership (in terms

of the natural rights they derive) are implausible as interpretations of Egalitarian Ownership because they press the intuitions too far that support that view to begin with. Assuming that no proviso would be of interest that formulates restrictions that leave people unable to satisfy basic needs, we see that no separate discussion of No Ownership with provisos is necessary.

7. Let us proceed to Joint Ownership and Equal Division. Much of what I said to defenders of No Ownership was said on behalf of *any* equal-voice approach. We now need to show that, among equal-voice approaches, we should prefer Common Ownership. Consider first Joint Ownership. To support this view, one needs a theory of what it is about individuals that requires such a high standard of justification for each use of collectively owned assets. Defending Joint Ownership, Grunebaum (1987) takes the notion of *autonomy* to imply that each use violates a person's autonomy unless she approves. Although this notion may appear strong, it is actually too weak to be plausible. If each person must *be asked* about any use of the collective property, he also must *ask* about any such use. Yet regardless of assessing the strength or weakness of the notion of autonomy needed here, this use of autonomy overstates its normative weight. As Chapter 2 noted, the notion of autonomy captures a vision of persons controlling their destiny to some extent. But pushing that extent as far as needed for Joint Ownership to be plausible overstates the significance of each person vis-à-vis the rest of the world. This problem is not alleviated by the fact that each person's importance is so overstated.

Perhaps I have not offered the best view of Joint Ownership. The choice between Common and Joint Ownership, a defender may say, should occur at the level of choosing

principles for something like a global basic structure, not at the level of acquisitions, which is where my objection applies. We would model an original position where all parties are joint owners and seek to agree on principles under which all may acquire without unanimity in particular acts. In the original position, this is to ask what permissions it is reasonable both to give and to receive. Joint Ownership, the objector concludes, captures better than Common Ownership the idea that we must justify the acquisition of resources to each other.

I grant all this. But Common Ownership would then emerge from deliberation thus conceived. An “original position” is only an expository device to capture factors relevant to collective decisions. The contemporary *locus classicus* for the application of this device is Rawls’ *Theory*. Given the nature of the state, we must decide which features of individuals give them just claims to primary goods. In each case, this must be carefully argued in light of the factors characterizing the normative peculiarity of the state. In the original position in which deliberators are looking for principles of justice in a state, deliberators know all and only those features of themselves that entitle them to primary goods. Were we to construct a similar device regarding original ownership of the earth, we could only help ourselves to the assumptions leading to Egalitarian Ownership to assess which features of persons matter to the distribution of resources.

Suppose the question arises of whether, say, intelligence and strength make it acceptable for some to acquire more resources than others. One may incline to answer negatively because of the morally arbitrary nature of these features. But this will not do. Consider again the parallel to the state. Strength and intelligence should have a limited effect on one’s distributive shares because such assets are morally arbitrary. Pressed *why*

this arbitrariness matters, we could say that everybody, weak or strong, intelligent or simple-minded, is subject to the state (an artificial structure) and offer the considerations discussed in Chapters 2 and 3 when we explored the normative peculiarity of the state. Yet, crucially, when discussing resources and spaces, we can offer no such elaboration to support duties among all co-owners beyond what Common Ownership prescribes. As long as the exercise of intelligence or strength does not keep others from satisfying basic needs, there is nothing morally problematic about this exercise. Unlike in the case of the state, no *additional* considerations are available when discussing resources and spaces to explain why certain kinds of arbitrariness would matter.

Whenever somebody offers a stronger interpretation of Egalitarian Ownership than Common Ownership, a sensible response is that Common Ownership exhausts the assumptions supporting Egalitarian Ownership. The assumptions in sections 4 and 6 offer no traction for stronger views *as opposed* to the weaker one expressed by Common Ownership. As reasonable persons can reject stronger conceptions of Egalitarian Ownership, no such conception delivers *natural rights* (which are rights every reasonable person should accept). So as a way of setting up certain deliberations, Joint Ownership does not conflict with Common Ownership as a view about how co-owners should relate to each other.

8. Consider Equal Division as defended, for instance, by Steiner (1994).³¹ Equal Division gains plausibility from the idea that there is a (figurative) heap of resources to which each person has an equal claim. However, the idea of “dividing up” such a heap presupposes

³¹ The argument in the last paragraph also applies to Equal Division, but an additional objection arises too.

an ability to assign values to sets of resources to render them comparable. This could be done in ways that either do or else do not draw on human practices. The second manner of doing so is ruled out from the start. Such an approach would involve evaluations made from something like a divine standpoint, or a standpoint of the universe. Regardless of whether it is plausible for anything at all, such a standpoint holds no plausibility for an assignment of values to original resources. Therefore, then, these assignments would have to be made in a way that draws on human practices.

To assign such values one needs to find some way of assessing an *aggregated* value for the overall heap of resources. This would be complicated because we do not merely have to assess property values of two-dimensional spaces, but the overall usefulness of three-dimensional regions for human purposes. But let us ignore the sheer complexity of this enterprise. Crucially, defenders of Equal Division need a uniquely most plausible way of assessing the value in question, one that everybody could reasonably accept. The aggregate value of the overall heap of resources would in particular draw on valuations of raw materials. However, many materials only acquire value through activities that require social contexts. How valuable, say, oil, uranium, or silicon are depends on what people can and want to do with them. So it depends on what technology is available that requires these materials; on how people choose to integrate such technology into their lives; and on what specific property rules determine what they can do with resources and technology.

These matters do not only in fact vary across societies, but are not the sort of thing for which there would be a single most plausible arrangement that everybody could be expected to respect. One may say that, at least for those entities for which there is a

world market value, we should use that value, and find some way of assigning values to those entities that are not priced in this way. Yet world market prices have themselves arisen from different ways of valuing entities in more local contexts and merely reflect their differential impact on overall demand. Such prices cannot provide what defenders of Equal Division need to determine which resource bundles have equal value.³²

One may wonder whether the problem I raise is solved through an auction mechanism of the sort used by Dworkin (1981) and (2000), chapter 2. Dworkin envisages a scenario where a group of ship-wrecked people enter an auction respectively with the same number of shells to bid for resources. They are engaging in a Walrasian auction. In such an auction, participants calculate their demands at every price and submit the results to an auctioneer. The auctioneer sets the prices so that the demand across all participants equals the total amount of the goods. All agents spend all their resources, and all the goods clear. What any individual can acquire arises from how much the others value the goods. Each person can be said to contribute equally to the demand that determines the prices. Yet as Dworkin is aware, the applicability of this device presupposes facts about what kind of technology is available, how people choose to integrate such technology into their lives, and what rules determine what they can do with resources and technology. Dworkin's device therefore does not provide what the defender of Equal Division needs.

³² (1) See also Mack (2009), section 5, for difficulties with determining which resource bundles have equal value. Miller (2007), chapter 3, rejects equal entitlements to resources as a principle of global equality since "the idea of global equality of resources remains indeterminate in the absence of a non-arbitrary way of determining resource values" (p 61). Although Miller thinks his argument has further-reaching implications, it is an argument (only) against Equal Division, very similar to mine. (2) If one particular measure for evaluating resource bundles were picked although many materials only acquire value through activities that require social contexts, the claim that all human beings have an equal claim to the spaces and resources of the earth in terms of that measure would simply be unfounded.

Now that we see the difficulties with other conceptions of Egalitarian Ownership one might nonetheless wonder if we do not need *some* conception that is stronger than Common Ownership in order to give fair consideration to those bearing the consequences of appropriation. Suppose two groups of ship-wrecked people land on an island. One group occupies most of it, leaving just enough to the others to satisfy basic needs. According to Common Ownership, this is acceptable. But that, in turn, seems counter-intuitive. And indeed, there is something morally problematic about this case. Yet while Common Ownership does not find such acquisition wrong, neither does it demand of those left with little to acquiesce. They are justly entitled to taking holdings of the other group if those do not use them to satisfy basic needs. Neither side commits an injustice, either by appropriating much more than others, or by not accepting this state of affairs. Nor would they commit a wrong if either side defended the exercise of their rights with force, assuming such force is limited to what is strictly necessary to defend these rights. This seems the right result, as far as natural rights are concerned.³³

But we can also ask: under what circumstances could both sides in this scenario *be reasonably expected to waive their liberty right* to resources within, or entry to, a certain portion of three-dimensional space? Under what conditions could they not only demarcate an area and attempt to control entrance to it, but expect outsiders to accept this scenario? As far as the group of shipwrecked people is concerned who occupy most of the island, we should say this: While it would not be wrong to exercise liberty rights in this way, it would be reasonable for them to waive their liberty rights, but unreasonable

³³ This analysis also applies to the thought experiment (in Chapter 7) of the two people who control access to the US via sophisticated border surveillance. They would not do anything wrong in terms of Common Ownership, *but neither* would others if they tried to dismantle the surveillance to enter the country.

to expect others to suspend efforts to enter. Chapter 9 explores this matter systematically, in the context of assessing questions of immigration. For now the point is that Common Ownership gives appropriate consideration to individuals who bear the consequences of appropriation. It does so by allowing not only for judgments of “just” and unjust” but also for judgments in terms of what exercises or waivers of rights it is, or is not, reasonable to expect of persons.

9. We saw in Chapter 7 that the divine gift of the earth to humanity made sure that human beings were at home in this world. Centuries after Grotius and Locke, Bertrand Russell stated in his essay “A Free Man’s Worship” that a major component of an atheist’s world view was the realization that the world was not made for us ((1919), p 52). The main result of this chapter, that we can preserve the idea of humanity’s collective ownership of the earth without theology (and so without resorting to the idea that the world was made for us), is therefore no small matter. It is significant to explore what follows from it. Common Ownership is the philosophically preferred conception of Egalitarian Ownership. The chapters on immigration, human rights, duties to future generations, and duties from climate change develop its consequences in detail.

To conclude this chapter, I now explore two of its implications to illustrate what kind of work Common Ownership does. One implication is that a prominent version of left-libertarianism is incoherent.³⁴ Otsuka (2003) combines a libertarian understanding of personhood with an egalitarian view of ownership of external resources. In this view of personhood individuals have a right of self-ownership, which Otsuka understands as a conjunction over two rights (p 15):

³⁴ This discussion follows Risse (2004b).

1. A very stringent right of control over and use of one's mind and body that bars others from intentionally using one as a means by forcing one to sacrifice life, limb, or labor, where such force operates by means of incursions or threats of incursions upon one's mind and body (including assault and battery and forcible arrest, detention, and imprisonment).
2. A very stringent right to all of the income that one can gain from one's mind and body (including one's labor) either on one's own or through unregulated and untaxed voluntary exchanges with other individuals.

Yet granting a "very stringent right to all of the income that one can gain from one's mind and body" is anathema to those endorsing the minimal solidarity needed for the acceptance of Common Ownership. One natural ownership right is an immunity from living under arrangements where an equal opportunity to satisfy basic needs is not realized. Once we endorse minimal solidarity, it does not matter as categorically as Otsuka assumes how we enable others to meet basic needs. Anybody who endorses the solidarity needed to justify Common Ownership may also endorse limits on what redistribution states can enact, but would not take a rejection of redistribution as far as Otsuka.³⁵ As a view combining ideas of a common ownership of resources with ideas of personhood such that nobody is required to aid others, left-libertarianism is incoherent.

We would not need to argue for the superiority of Common Ownership over other conceptions if we could read this superiority off theological premises or receive it from revelations. We would then have to make no other commitments to exclude No Ownership, and be free to adopt views on personhood independently, read those off theological premises, or obtain them from revelation. Yet outside of a theological framework we must ask with regard to both our conception of Egalitarian Ownership and

³⁵ Christman (1991) and (1994) argue, from an egalitarian perspective, for a conception of ownership that excludes precisely that second bit of Otsuka's right to self-ownership.

our view of personhood why one would want to endorse *those* rather than plausible competitors. Otsuka's version of left-libertarianism brings the reasons required to maintain these views separately into a tension with each other.³⁶

One may want to side-step the problem by adopting No Ownership with a suitable proviso. Yet how do we decide whether to accept a proviso, and which one? Rejecting Nozick's proviso, Otsuka (2003) argues that as a means of ensuring

that nobody is placed at a disadvantage, Nozick's version of the Lockean proviso is too weak, since it allows a single individual in a state of nature to engage in an enriching acquisition of all the land there is if she compensates all others by hiring them and paying a wage that ensures that they end up no worse off than they would have been if they had continued to live the meager hand-to-mouth existence of hunters and gatherers on non-private land. (p 23)

He thinks the egalitarian proviso has prima-facie plausibility for the following reason:

One's coming to acquire previously unowned resources under these terms leaves nobody else at a disadvantage (or, in Locke's words, is 'no prejudice to any others'), where being left at a disadvantage is understood as being left with less than an equally advantageous share of resources. Any weaker, less egalitarian versions of the proviso would, like Nozick's, unfairly allow some to acquire a greater advantage than others from their acquisitions of unowned land and other worldly resources. (p 24)

Defenders of No Ownership with a proviso wish to ensure nobody is *at a disadvantage* through other people's acquisitiveness. The disagreement is about how to think about advantage. But why care about disadvantaging others at all? Kirzner and Rothbard have no qualms about disadvantaging people, insisting nobody is *entitled* to not being so treated. Again we arrive at a point in the argument where we need to endorse a version of minimal solidarity, this time to support the proviso. That, in turn, generates the same incoherence result as before. Crucially, again, the reasons for endorsing Otsuka's proviso

³⁶ Vallentyne, Steiner, and Otsuka (2005) tentatively grant the incoherence laid out here, but insist that coherence should not be required, because "there is a very significant difference in the moral status of agents (...) and natural resources" (p 209). This response is unsatisfactory.

conflict with the reasons for endorsing the second bit of his right to self-ownership. No unified stance endorses both.

10. Another implication of Common Ownership (unfinished business from Chapter 6) concerns an argument in Pogge (2002) that the global order wrongfully harms the poor:

Uncompensated Exclusion: The better-off enjoy ample advantages in the use of a single natural resource base from whose benefits the worse-off are largely, and without compensation, excluded.

This view succeeds *only* if the natural resource base belongs to humankind collectively. Unless those barred from enjoying a share of resources have a legitimate claim, no violation occurs through unilateral appropriation. In light of Common Ownership, Uncompensated Exclusion is plausible only if one takes a particular viewpoint within the debate about the sources of growth and prosperity we encountered in Chapter 4.³⁷

Common Ownership implies that co-owners who unilaterally use resources do not owe compensation *merely* because others do not, or *merely* because they exploit one particular resource (say, oil) that others do not find where they live. However, adversely affected parties have a valid complaint if (first) they are illegitimately prevented from using resources, or (second) are harmed in the sense that their interests are thwarted by unilateral acquisition in a manner contrary to their status as co-owners. As far as the first condition is concerned, it has become rare that some societies keep others from extracting resources, or that countries own extraction facilities in colonies. Moreover, many of the poorest countries are resource-rich. This leaves us with the second condition.

³⁷ This discussion follows Risse (2005b). This section introduces comparisons among countries. But Egalitarian Ownership is formulated for original appropriation in a pre-institutional world and does not yet provide for the formation of countries out of appropriations. I fill that gap in Chapter 9, when we talk about immigration, and in the process talk about over and under-use of resources and spaces.

We seek to identify a way in which interests are thwarted in a manner inconsistent with people's status as co-owners that can be ascribed to the global order rather than to specific countries. The most plausible way of spelling out Uncompensated Exclusion in that sense is that the global order wrongfully harms the poor because the relative economic standing of countries within it is fixed by the fact that some possess more useful resources than others, although humankind owns those resources collectively. Such a disadvantage for some through unilateral exploitation by others is unacceptable because all are co-owners, and so violates ownership-rights of those so affected.³⁸

Implicit in that way of spelling out Uncompensated Exclusion is

Resource Significance: Resources are crucial for countries' wealth.

Unless Resource Significance holds, Uncompensated Exclusion fails to show that the global order harms by violating ownership rights. Resource Significance is not a necessary condition for the success of the harm claim made by Uncompensated Exclusion if we adopt either Joint Ownership or Equal Division as an interpretation of Egalitarian

³⁸ This way of assessing how Uncompensated Exclusion may identify a way in which the global order harms the poor makes considerable concessions to Pogge. Common Ownership embodies such a minimal understanding of collective ownership that, strictly speaking, a *wrongful* harm occurs only if individuals are prevented from satisfying basic needs to the extent that this turns on external resources. At the end of section 8, however, we encountered a different way of inquiring about the compatibility of certain actions or states of affairs with Common Ownership, namely, to ask about the conditions under which individuals could reasonably be expected to waive their liberty rights. Refusing to waive rights, however, although it might be unreasonable, does not amount of a wrongful harm. But this, indeed, is the sense in which we are now talking about harm: We are asking under what conditions co-owners can reasonably be expected to waive their liberty rights in the sense that they accept the territorial structure of the global order (the frontiers that determine who has access to what resources). They *cannot* be reasonably expected to do so if the relative economic standing in the global order is determined by the fact that some possess more useful resources than others, although humankind owns those resources in common. This is a *concession* because we can rebut Uncompensated Exclusion more readily by sticking to the notion of wrongful harm delivered by Common Ownership. My argument shows that Uncompensated Exclusion fails even under a *much* broader understanding of harming, one that amounts to "not doing what one could reasonably be expected to do," rather than plain wrongful harming.

Ownership; but it is if we adopt Common Ownership. Recall now the debate about the sources of prosperity from Chapter 4. Recall the following three views:

Institutions: Growth and prosperity depend on the quality of institutions, such as stable property rights, rule of law, bureaucratic capacity, appropriate regulatory structures to curtail at least the worst forms of fraud, anti-competitive behavior, and graft, quality and independence of courts, but also cohesiveness of society, existence of trust and social cooperation, and thus overall quality of civil society.

Geography: Growth and prosperity are primarily determined by factors such as location, climate, endowment of resources, disease burden, and thus agricultural productivity, quality of human resources, and transportation costs.

Integrations: Growth and prosperity are primarily determined by world market integration.

If Integration holds, a country's wealth level does not crucially turn on resource endowment. A country may offer to the market what it has a comparative advantage to do, which may be the provision of minerals, tourism, manufacturing, or services. A similar argument holds for Institutions. Arguably, only Geography supports Resource Significance. So one must endorse Geography for Uncompensated Exclusion to show that the global order wrongfully harms the poor. The institutional stance I adopted in Chapter 4 implies that Uncompensated Exclusion fails.³⁹

³⁹ One may object that the institutional stance only shows that resource-poor countries would not on average do better under the counterfactual of being resource-rich; it does not show that they are not wronged by being excluded from resources. Suppose A steals B's money, but can show that B would have gambled it away. Under the counterfactual of A's not stealing B's money, B would be no better off, but has still been wronged. However, if my argument is right, there is no parallel in the scenario I discuss to the act of stealing in this example.