

Individual Membership in a Global Order: Terms of Respect and Standards of Justification

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Abstract. The present paper examines alternative conceptions of what it means for individuals to be considered legitimate members in a global order. First, I will adopt a convergence view that takes the Universal Declaration of Human Rights as a *de facto* cosmopolitan reference for a wide plurality of conceptions. Within this framework, I will contrast two main cosmopolitan conceptions, each of them pivoting around a referential article in the Declaration. On the one hand, conceptions based on alternative interpretations of article 28 emphasize the role of global institutions in setting and implementing the conditions for just membership but differ on whether the baseline for the justification of the global order should rest on subjunctive or contingent standards (Pogge/Risse). On the other hand, conceptions of human rights based on article 15 emphasize the right to be a member in a self-determining political community. Here different accounts of basic conditions for local membership differ between terms of “due participatory respect” and those of “equal participatory respect” (Cohen/Benhabib-Forst). In this paper I hold that: (1) a contingent account of human rights (Risse) is compatible with a conception of membership as “due participatory respect” (Cohen) but incoherent with the justificatory premises of a conception of the common ownership of the Earth; and (2) that a practice of “democratic iterations” starting from existing conditions (Benhabib) requires a subjunctive justification of the global institutional order (Pogge) if the right to equal participatory membership is to be reconciled with an account of legitimate membership in the global order. Finally, (3) I defend that both conceptions are compatible with the support of a political status of global residency that offers an alternative to national membership and to global statehood.

Key words: cosmopolitanism, membership, human rights, global justice, citizenship, self-determination.

15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Universal Declaration of Human Rights

I. A CONVERGENCE APPROACH

To be sure, membership is a divisive issue. For some, the UDHR is the cornerstone of cosmopolitan morality, while this same list is depicted by others as a moral corner store where anyone can pick and chose rights according to convenience. I will take in this paper a “convergence” view on the articles of the UDHR. I hold that the Declaration is a widely accepted moral reference, while I am completely aware of the factual history of its framing and its historical limitations. I will not suppose the factual declaration has full and complete normative value, but it stands as a useful proxy of what can we realistically expect for a normative guide for our global order. Consequently, I will not

assume that the UDHR constitutes a real global overlapping consensus. What I hold is that the UDHR entails a “convergence view” that encapsulates some common concerns shared by a plurality of moral cultures. While the normative deficiencies of its framing are widely known, its real-world factuality presents some attractive features for connecting theoretical abstractions with political realities.¹

While some philosophers felt the need to embark on a foundationalist enterprise that would give HR the philosophical pedigree they lack, others undertook a more practical or political approach. Given that the peoples of the Earth reached this level of consensus, let’s take these widely recognized milestones as focal points for the political implementation of cosmopolitan projects. The plausibility of the latter would be backed by its confluence with the charter or some core articles within it.

One of the several attempts at reformulating the language of human rights draws heavily on the notion of membership. This is an old idea, being these rights originally conferred on the basis of “species membership.”² However, the articles selected at the opening of this paper suggest two alternative readings of membership:

According to Article 15, individuals have a right to national membership, and it should be interpreted as being a member of a political community, that is, a nation-state.

According to Article 28, individuals have a right to an international order that enables the realization of the conditions stipulated in the declaration. That means that the content of article 15 cannot be self-defeating: the terms of political membership have to be compatible with the realization of human rights, and so individuals and their nations may require a broader order that secures their fulfillment. Conversely, *de facto* members of a global order may require functional national polities for the full implementation of their rights.

Art. 15 Based: Members of a Polity in a Global Order

The views encompassed under the A-15 case share a common concern about the conditions for domestic legitimacy and political self-governance. This view collects the tragic memories of the twentieth century and the fate of those peoples and individuals that were deprived of political membership in a community where their rights could be enacted, respected, protected and fulfilled. This tragic realization was that when lacking proper membership, individual life was denied the basic ground to flourish. Consequently, it became imperative that every individual could be ascribed to a polity charged with the responsibility to grant the conditions for the realization of her basic interests. States emerge

1] The meaning of “convergence” in this context is mainly descriptive and may be closer to a “practice based view” than to the particular kind of “agreement theory” that Beitz calls “progressive convergence theory” of human rights. For the purposes of this article, I do not need to presuppose its hidden evolutionary logic (Beitz 2009, 73-95). “Convergence” here is closer to what Thomas Pogge would call “an ecumenical approach.”

2] See for instance Nussbaum’s conception (2006, 2011), although I will leave aside in this paper the discussion of capabilities as a metric (Pogge 2002) and the problem of specifying the terms of due “respect” when applied to natural qualities possessed in different degrees (Williams 2005, Carter 2011).

as the key actor for the implementation of basic freedoms worldwide. In a related way, this interpretation relaxes the attention on the specific content of a single list of universal rights and shifts the focus to the conditions of effective inclusion in self-governing communities. Personal flourishing depends on the conditions for national independence, so the determination of the content of individual rights is mostly a matter of collective self-determination. This interpretation poses three main problems for our analysis:

1. The paradox of democratic legitimacy (Benhabib 2004).
2. The problem of democratic boundaries and the politics of admission (Whelan 1983).
3. The question of the human right to democracy (Cohen 2004, 2006; Benhabib 2007).

The first question deals with whether individual rights transcend their democratic recognition by a self-governing community, and to what extent they pose an external limit to political sovereignty.

The second question is related to the allocation of membership, which is an issue that can't be democratically determined. This is so because determining democratically who is entitled to be a democratic member implies an infinite regress.

This third contested issue deals with the degree of admissible pluralism among the possible varieties of polities that fulfill the minimum core of human rights among their members. Some authors argue that it is enough if a polity takes into account all her members' interests even if it does not do it on equal terms. "Due recognition" is enough to honor proper membership (Cohen 2004, 2006). Critics reply that lacking equal political participation and the adequate channels to exercise political voice and powers, there is no guarantee that a political regime realizes the member's true interests. Consequently, critics argue that proper membership requires democratic rights (Benhabib 2007).³

It is a key element in this conception that there has to be an acceptable variety of realizations of human rights according to the domestic conditions of political deliberation and self-government. Cosmopolitan standards are not applied straightaway but adapted and adopted through democratic iterations that take place at a horizontal level, and also reflect processes of cross-fertilization and law migration between polities (Benhabib 2006, 2012).

Art.28 Based: Members in a Global Order that Enables Domestic Membership

The approach to global membership based on Art. 28 makes an explicit emphasis on the global factors that determine the achievement of a decent standard of living worldwide. It doesn't deny that national states have a prima facie responsibility for the fulfillment of human rights, but it also points to those contributing global factors which undermine

3] Benhabib, for instance, explicitly asserts: "My thesis is that without the right to self government which is exercised through proper legal and political channels, we cannot justify the range of variation in the context of basic human rights as being legitimate." Restated and expanded in (2011, 88; 117-37).

domestic efforts in this direction, or which promote the flourishing of corrupt regimes that systematically neglect the basic rights of their populations. The list of basic human rights emerges as a global standard for the assessment of institutional designs, be they local or global (Pogge 2008).

This approach faces one important challenge: we lack a shared universal justification for the list of human rights. Part of this difficulty was sketched earlier when mentioning the *de facto* convergence position: from a plurality of divergent moral traditions, we arrived at a common description of the basic conditions for a decent human life.

Thomas Pogge, for instance, takes this declaration and the human rights regime as indicative of our historical and institutional moment. These conditions should be achievable worldwide. They are feasible. If we can observe systematic under-fulfillment or violation then, in coherence with art 28, we have a duty to examine whether we, as members of a global order, are also part of the problem. That is, if we are contributing to the massive under-fulfillment of human rights, we are violating our negative duty not to harm. If this is the case, we, as members of the global order, have a duty to reform the institutional design that foreseeably and avoidably produces these dramatic effects. The global order is doing harm if it prevents the realization of the human rights of the world population—that is, if it keeps the global poor below the standard of living at which they should be (Pogge 2005b).

A global, institutional design “B” can be considered harmful even if it implies a modest improvement compared to its institutional predecessor “A.” If there is an institutional design at hand that foreseeably reduces the shortfall between the living conditions of the world population and the level at which we measure the satisfaction of their human rights, then supporting and maintaining in place modest improvement “B” still counts as harming the poor. Additionally, as members that benefit from imposing “B” we also have the duty to support and stop blocking the institutional reforms that would move us towards “C” (Risse 2005; Pogge 2005b).

Pogge’s formulation relies on this consensus on human rights, which is specified in the Declaration. The articles of the list detail the objects of the rights. In order to these rights be respected, the right holders must have secure access to the right’s objects (Pogge 2005a). The justice of an institutional design can be evaluated according to the degree of human rights satisfaction that produces for those subjected to this order.

Pogge denounces the strong connection between poverty and systematic under-fulfillment of human rights, as severe poverty itself is a human rights violation (Pogge 2008, 2007, 2011b). Consequently, he proposes a global institutional reform to address the problem of global poverty. One of the main arguments that back his proposals points to the systematic and uncompensated exclusion of part of humanity from the benefits of our common resources. This Lockean argument holds that the historical process of appropriation and exchange is inconsistent with the minimal conditions (proviso) that are stipulated to rationally compensate those excluded and latecomers. The manifest

violation of this clause demands the implementation of reforms oriented to eradicate severe poverty (at least).

Hillel Steiner defends a Lockean view that questions the legitimacy of hard territorial borders. He affirms that we don't share a justified convention about the legitimacy of domestic conventions that regulate individual property in a way compatible with the Lockean proviso. Simultaneously, hard territorial border exclude individuals form the job markets in which they could find a reasonable compensation for this injustice. Consequently, Steiner proposes taxing the differential value of land ownership worldwide to create a Global Fund in which all individuals would be equal shareholders (Steiner 1999, 2001).⁴

Pogge's reform proposal contemplates a transformation in the relationship between political communities and the natural resources present in their territories. The idea consists of transforming the current notion of territorial sovereignty—delineated along the lines of an exclusive and absolute property right, into a right of control conditioned on the application of a tax on those resources the sovereign community decides to exploit. This Global Resource Dividend is designed to fund programs of poverty eradication worldwide tackling that part of the human population whose real purchasing power prevents the secure access to the objects of their human rights (Pogge 2008).

However, this threshold is controversial as we lack a solid and universal rationale for the list of human rights. In order to avoid possible claims of parochialism in the confection and justification of this list, some authors try an alternative "contingent" strategy for a widely acceptable conception of human rights. According to Mathias Risse's enterprise, being originally on the same boat—that is, Life-Boat-Earth, is what defines our condition. We all have an original symmetrical claim to the natural resources. In this original situation, individuals don't have a duty to assist each other but nevertheless everybody has a legitimate claim on the goods required for basic needs satisfaction.

In order to avoid claims of parochialism, Risse's approach presents itself as virtually independent from contested notions of "human nature" or metaphysical doctrines of the good. It is the contingent fact of sharing the Earth in common ownership that grounds the claim for equal access to the satisfaction of basic needs. Political societies, the international order of territorial states and its institutions constitute a substantial alteration of the conditions of access to resources for those subjected to the global

4] Steiner's work is extremely interesting and deserves by its own right a more prominent role in this discussion. However, due to the space limitations of this paper I will focus on a Pogge-Risse exchange as they explicitly adopt the language of membership in a global order illustrative of an "Article 28" conception of Human Rights. For an interesting discussion of the aggregative nature of territorial sovereignty and individual ownership see the Steiner-Nine exchange (Steiner 2008; Nine 2008) or Simmons's work (Simmons 2001). For an interesting discussion of global taxes based on use/property see the exchange among Pogge, Steiner and Paula Casal (Pogge 2011a; Steiner 2011; Casal 2011).

order.⁵ Consequently, political institutions are only legitimized if they comply with this constraint. Human rights are contingent membership rights into a global order (Risse 2009a).

Translating Human Rights: Gained and Lost

1. Risse's reliance on the factual existence of a global order could be also its Achilles' heel. It could open the door to undesirable consequences if someone could convincingly question that the world is an integrated single order. In that case, these hypothetical "no-man's lands" would also be human rights lacunas and juridical limbos (Pogge 2009b).

2. Pogge's connection between the threshold of a decent standard of living specified in the human rights literature and the GRD is also contingent. This global tax is supposed to compensate for the exclusion from the benefits derived from the exploitation of limited natural resources. However, one could argue that the benefits from the shares in natural resources should be at a higher level than subsistence, or distributed according to a maximin structure of incentives. In any case, a settlement at subsistence level seems to fit into a minimal-ecumenical strategy that could also facilitate political feasibility. Nevertheless, higher levels of compensation are not necessarily ruled out.⁶

3. Pogge defends an institutional conception of human rights that doesn't demand its strict translation into individual legal rights. What matters is their actual degree of realization and not its formal positivization. This strategy facilitates an ecumenical convergence. Human rights work as standards to evaluate how institutions treat those affected by them but each society has a large variety of institutional alternatives to implement the standards of living expressed in the Declaration of Human Rights. This institutional conception is compatible with several legal systems and doesn't impose the terms favored by one particular legal tradition (Pogge 2008).

5] "What I mean by the global order is the system of states that covers most of the land masses of the Earth as well as the network of organizations that, while not constituting an actual government, provides for what has come to be called 'global governance.' Our current global order has arisen from developments that began through the emergence of states and the spread of European rule since the 15th century as well as the subsequent formation of new states through independence and decolonization. At the political level, the state system is governed by a set of rules the most significant of which are codified by the U.N. Charter. At the economic level, the Bretton Woods institutions (IMF, World Bank, later the GATT/WTO) provide a cooperative network intended to prevent wars and foster worldwide economic betterment. These institutions, jointly with the more powerful states acting alone or in concert, shape the economic order." (Risse 2009b, 21)

6] In fact, the classic arguments for a maximin distribution of global resources in a Rawlsian scenario are developed by Pogge (1989) and Charles Beitz (1999); and a justification for a GRD within Rawls's early proposal for a Law of Peoples by Pogge (Rawls 1993; Pogge 1994). The outcome of this debate was the final addition of the Duty of Assistance as the 8th principle of the *Law of Peoples*. However, the logic behind Rawls's Principle of Assistance is not strictly redistributive or cosmopolitan but based on "institutional capacity building" aiming to decent political reform. The cut-off point of this assistance is met when burdened societies become decent and independent regimes: "Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime." (Rawls 1999)

II. "WHO ON EARTH." THE STATUS OF CO-OWNERSHIP

Risse conceives two possible interpretations of the general conception of "common ownership of the Earth" and for the correlative claims based on their correlative accounts of the status of co-owners.

- The first one is the most limited and minimalistic. It just requires that the subsequent institutional orders that are imposed upon those that inherit the original status of co-owners, allow a level of basic needs satisfaction analogous to the original.
- The maximalist reading requires additionally that the political order imposed upon the original co-owners incorporates basic accountability measures. These checks and balances must prevent coercive interference with the satisfaction of basic needs. These institutional requirements would be very similar to the Lockean-liberal demand of the limitation of political power. However, the robust institutionalization of this guarantee doesn't necessarily equal a human right to democracy (Risse 2009a, 295). What is more surprising in this "maximalist" interpretation is that Risse explicitly rules out the positivization of constitutional guarantees regarding socioeconomic rights.

One could argue that if the author wants to be systematic and exhaustive regarding the conceptual implications of his premises and goes so far as to offer two alternatives, then he should offer a third one if there is conceptual space for it. This third interpretation would additionally require that basic needs satisfaction could be robustly realized, securing institutional socioeconomic conditions and embedding them in the constitution. In fact, if it is true that the state's political power can diminish the ability of the individuals to satisfy their needs; it is also true that the argument works the other way around. Authoritarian regimes are very capable of improving the ability of their subjects to satisfy their basic needs⁷ and this option is conceptually compatible with the contingent premises of "common ownership of the Earth." In order to rule out a fourth, authoritarian interpretation, a conception of individual freedom should play a stronger role than the one that it occupies in Risse's contingent project—and it must do it in a non-parochial way.

For instance, one could adopt Sen's diagnosis of famines as byproducts of deficits in democratic rights (Drezè and Sen 1989). This is a plausible move that links institutional conditions for political accountability to material conditions of needs satisfaction. This strategy strengthens the connection between liberal political rights and human rights as equality of opportunity for basic needs satisfaction. However, this move would be inconsistent with Risse's position, because if we believe that the link is this strong, then it would demand a human right to democracy but Risse stops short of this proposal. He explicitly considers and then rejects this view, favoring instead of some minimal right

⁷] Of course, we are aware of both sides of this story. See also James C. Scott, *Seeing like a State. How Certain Schemes to Improve Human Condition Have Failed* for an account of some failed utopias of high-modernist planning.

of interest representation in collective decision making. This consultative mechanism, however, can't guarantee the level of power sharing necessary to make the government fully accountable for the prevention of future famine.

Here Risse's strategy seems unnecessarily "ad hoc" and led by his preferred political views. He defends a minimalist conception of human rights correlative to "imperfect duties" and so they don't assign a specifiable obligation to a responsible agent. Imperfect duties are general duties that have to be reasonably balanced with the agents' other legitimate and important concerns. The conception of human rights as membership rights in the global order only requires an adequate response to cases of global urgency by those agents capable of intervention (remedial responsibility) when states fail to secure the basic conditions of their subjects. This time Risse explicitly adopts Sen's conception of human rights, his metric of "species normal functionings" and his embracement of imperfect duties (Risse 2009a, 292-294). However, Risse's partial commitment is inconsistent with Sen's whole conception. Sen's view rests on very demanding deliberative conditions and on a strong commitment to democratic rights—as seen in the famine problem (Sen 2009). Risse would have to justify why he selectively rejects constitutionalizing socioeconomic guarantees that would robustly grant an adequate standard of living, and why he avoids giving them the same status that he concedes to classic liberal rights. This is particularly problematic since he rests on the requirement of meeting material conditions to justify liberal rights. At the same time, he would have to justify why a human right to domestic democracy is inconsistent with his conception of human rights as membership rights in a global order.

Risse's minimal premises allow for a larger conceptual space than his specific proposal. Some might be more attractive than others, but all deserve to be exposed and explored in full length. Of course, presenting a wider family of alternatives doesn't prevent the author from defending a preferred one. But the arguments should be made explicit.

"Right from the Ground." Terms of Respect for Co-Ownership

To summarize, we could say that a conception of membership in the global order consistent with the original status of co-ownership of the Earth allows three main interpretations:

1. Membership demands the ability to satisfy one's basic needs in conditions of equal opportunity for subsistence. The global actors have a subsidiary imperfect remedial responsibility to assist in cases of global urgency.
2. Membership requires – additionally – the right to constitutional guarantees that prevent political power to interfere coercively with the membership right stipulated in (1).
3. Membership requires – additionally or alternatively to (2) – the institutionalization of constitutional guarantees that secure the fulfillment of the conditions described in (1).

I hold that, contrary to Risse's preference, alternative 3 is the most consistent with the premises. Risse's argument relies on a contingent original situation that is reconstructed as a situation of common ownership of the Earth among individuals symmetrically situated in relation to these resources, entitled with an identical claim on the means to satisfy their basic needs; they have a duty to respect their equal opportunity but not a positive duty of assistance or beneficence. These original conditions under this description delineate a particular "status." This particular status sets the benchmark for legitimate membership rights under consecutive political transitions, leading to increasingly complex political orders. In the end, even a complex global order like ours should guarantee an status of co-owner of the Earth equivalent to that constituted by the aforementioned original conditions.

My claim is that Risse's reconstruction is deficient. The main feature that captures the peculiarity of the original condition is not just the ability to satisfy one's basic needs. To be sure, this is a crucial element, but in fact it is only a consequence of the original status. When one's original status of co-owner is adequately respected, one is able to make ends meet. But what qualifies this status is the kind of relationship that is established among all individuals contending for common resources. My point is that what captures the essence of this status is a condition of "independence," as all are symmetrically situated and none of them has to rely on positive duties of beneficence.

This marks a strong departure, for instance, with Sen's conception of human rights. Sen holds that we have an (imperfect) duty to help those in need to achieve a decent level of human capabilities. This is not the case in the original situation. Co-owners have the duty of noninterference and the equal right of self-help to achieve this basic level. What characterizes the original situation is not only the outcome (need satisfaction) but the way by which it is achieved. The way equality of opportunity is realized expresses a condition of self-sufficiency that clearly marks the status of original co-ownership. What characterizes co-owners is not enjoying some benefits but being a shareholder. If my reconstruction is convincing, then the subsequent political transitions only respect the "status" if they reflect some analogous sense of independence in the way the subjects meet the sufficiency threshold. In my view this interpretation moves us closer to the constitutionalization of some socioeconomic guaranties, and not just minimal liberal rights. Identically, honoring the status of co-ownership as membership in the global order requires a division of institutional labor that allows that these conditions are met in a robust way. Again, robustness would require a determined global distribution of competences that go beyond imperfect duties of remedial responsibility.

III. POLITICAL ACCESS AND EXCLUSION

The transition from the original common ownership of the Earth to political societies also exemplifies the transition between one form of "property" in relation to natural resources and the legal definition of property rights. Risse explicitly rules out for

the original situation alternative forms of property like “joint ownership” or “individual property.” The reason to favor common ownership over these alternatives is because it requires a minimum of concerted action, only limited to reciprocal respect of a threshold of opportunity for sufficiency. The other property regimes require a more complex structure that demands the introduction of political authority. This transition may be induced, for instance, due to familiar “tragedies of the commons.”

Once we have an impartial enforcer it is possible to organize joint enterprises regulated by voting procedures or individual entitlements interpreted by an authorized umpire. The legitimacy of these transformations in the property regime depends on their factual respect of the original status of the co-owners, as we have repeatedly stated.⁸ They must allow *-de facto* or *de jure*, opportunity for sufficiency. “*De facto*” exemplifies Risse’s minimal and maximal interpretations, the latter implementing liberal rights that prevent coercive interference by the state. “*De jure*” reflects our view in support of a “robust” implementation of this constraint in terms of constitutional socioeconomic guaranties. The subsequent roles of the global order are also accordingly differentiated.

In the first case, minimal *de facto* respect only requires a duty of assistance with a cut-off point at the threshold of sufficiency. This captures the spirit of humanitarian duties of rescue.

In the second case, maximal *de facto* respect, requires that the global order intervenes and pressures different regimes into incorporating and respecting the terms of basic liberal rights. This view could incorporate conditional development aid and loans linked to the demand of implementing political transformations. As in the example of Sen’s diagnosis, assistance in food security crises would be conditioned on the implementation of accountability rights. However, although “conditionality” in practice is one of the most favored mechanisms in the pool of carrots and political sticks, it is problematic under the normative premises that Risse proposes. Let’s remember that we are talking about individual membership rights in a global order, and while we can hold a regime reprehensible for their reckless lack of provision, we must keep in mind that its subjects are right holders before the global order. They are entitled to demand the adequate level of resources even if they live under a criminal regime and especially if this is not a fully democratic regime. Conditionality backed by international blockade is problematic while “food for oil” kind of programs seem closer to this rationale for intervention. A coherent

8] Darrell Moellendorf (2009) defends a conception of global justice based on equality of respect in political and economic associations. For Moellendorf, the reference in the terms of respect is a moral conception of human dignity, captured in the formulation of human rights and that implies a *prima facie* principle of equality in its institutional realization, and “justificatory respect” is the kind of respect that is owed to the members of a common association governed shared rules. There are *pro tanto* reasons that allow justified departures from equality, but the overall presumption is that distributive inequalities violate the inherent dignity of the persons, and so the baseline for respect is global equality of opportunities, not just sufficiency – as in Caney 2007. Moellendorf agrees with Pogge and Risse that we are all *de facto* members of a global socioeconomic order, but he disagrees on the terms of respect. His “justificatory respect” is, however, closer to Benhabib and Frost’s conceptions of “equal respect for membership.”

reading of Art. 28 could even allow preventive humanitarian interventions to avoid forthcoming food-security crises under a strict doctrine of the responsibility to protect (R2P).

Our third case stipulates maximal *de jure* socioeconomic rights. According to this interpretation the global order should only recognize those regimes that are compatible with the institutionalization of these protections. Article 28 constrains Article 15, demanding that no member feels that she is in a situation of dependency, nor that her standing of equal-footing co-owner of the world is disrespected due to lack of resources. Whoever is the appointed primary/subsidiary responsible agent, its intervention has to be perceived as honoring a membership right. An appeal to benevolence or charity constitutes institutional disrespect. Pogge's GRD is closer to this interpretation.

This third maximalist interpretation is also consistent with the conceptualization of "property" as a legal right guaranteed in a jurisdiction (Murphy and Nagel 2002, caps. 3-4). Control over access is recognized and defined by a legal community, which is also defined by some exclusionary recognition of access implied in membership rights. So this transition seems seamlessly coherent, from shared control over access to common resources to legal access to the collective distribution of goods and services. Membership in modern societies has become not only an entryway to an attractive job market but also an access point to a series of entitlements, goods and services including infrastructure, public health systems, education, physical security and protection or effective legal representation. An adequate awareness of the value of this package attached to membership leads some authors to talk about citizenship as a "new property" (Reich 1964). Under this new paradigm, private property is being replaced by the entitlement to participate as co-owner in the network of goods managed by the community. The concept of membership entails as well the right not to be excluded.

Membership as an Exclusive Property

Ayalet Sachar, for instance, points to the two main features of citizenship as "enabler" (through access to resources) and "gate-keeper" (by restricting access to the community of co-owners) to illustrate how membership has actually become a "new property" (Sachar 2009, 32). This property is also transmitted through inheritance and in fact this is the most usual way of acquiring it. After examining the unequal value of the package of goods and services attached to membership in different communities worldwide, Sachar concludes that citizenship could be considered a birthright privilege that distributes opportunities for subsistence in a morally arbitrary way. Given the impact that membership has in the unequal quality of life of individuals worldwide, Sachar proposes that it should be taxed in a similar way as we tax inheritance and property. The latent rationale relies on luck-egalitarian intuitions. No one deserves to be disadvantaged through no fault of her own, and birthplace is by definition a morally arbitrary fact. One *is born* and this contingency determines her chances in life as a real, as the title says, "birthright lottery" (11, 91).

Again, we could discuss if the most coherent baseline for this redistributive taxation is a sufficientarian or a more demanding criterion.

Following Sachar's study of citizenship, we can distinguish two interesting dimensions intertwined:

- First, membership as the right to participate as co-owners in the political determination of the commonweal.
- Second, membership as the right to participate in the benefits of the community.

In these cases we could assimilate this discussion to the debate between rival conceptions of human rights as membership rights. The first case is illustrated by Seyla Benhabib's conception of a "right to have rights," which is connected to a human right to democracy (Benhabib 2007). The second case is exemplified by Joshua Cohen's defense of human rights as a right to membership in a community that shows "due consideration" to the interests of all its members. In this second case, the terms of respect of the status of membership are far less demanding than a full right of democratic participation (Cohen 2004, 197-8). In both cases, individuals' interests are taken into account, but the contrast rests between the requirement of "due consideration" and the terms of "equal consideration." In both cases, human rights are basically realized at the domestic level, so both alternatives belong to what we had called Art. 15 conceptions of human rights. Accordingly, they emphasize that all individuals are part of a community that protect their rights. Article 28 only applies in a subsidiary capacity to the realization of Article 15. Consequently, membership in the global order is derived from domestic membership.

Joshua Cohen's conception shares a number of insights with Rawls's political conception of human rights. These are defined by their political function in the international order as criteria for limiting its admissible degree of tolerance and justifiable intervention. Rawls's purpose is to show that a liberal conception of international justice can tolerate non-liberal but decent social models. In order to widen the scope of toleration a number of rights have to be sacrificed from the list (Rawls 1999, 36-38, 65-68, 78-81; Beitz 2009, 96-106). Cohen also agrees that minimalism about human rights is an acceptable price to pay in order to incorporate pluralism. His argument for rejecting democracy as a human right is that introducing an enforceable conception of democracy for real world conditions would necessarily devalue the democratic ideal. Otherwise it would lead us to forceful and exclusionary interventionism. Political traditions of the common good are good enough, and according to Cohen, probably the best we can hope for within the realistic limits of a political conception of human rights. Individuals are respected as members if their interests are taken into account when considering the common good. In these regimes, individuals are respected as members of a shared cultural and political tradition.

In contrast, membership rights for Benhabib imply democratic rights, because members of a political community are respected when their communicative freedom is

publicly recognized. Honoring this communicative competence requires doing justice to their capacity to evaluate, propose, accept or reject the terms of political deliberation that are relevant for her. For Benhabib, the only guarantee that this is so is to grant equal political power to all members (Benhabib 2007; cf. Christiano 2011, 145-46).⁹

She embraces justificatory minimalism about human rights because only when the content of a list of rights is specified in a local political deliberation is membership truly respected. But justificatory minimalism is compatible with maximal content, although this content is determined in an iterative process between cosmopolitan standards elaborated at the global level and domestic processes of adoption and adaptation. Individuals are members of a global order because the conditions of equal political power, participation and individual protections in self-governing communities express the universality embedded in deliberative reason. This way, through egalitarian deliberative institutions, the principle of rights applied at the domestic level is made congruent with the cosmopolitan standards at the global level (Benhabib 2011). This degree of interactive universalism is also tested when new members and foreigners challenge prevalent exclusionary practices and press for their reformulation in more universal terms (Benhabib 2004).

The content in the package of membership rights may vary substantially between democratic communities. Membership in the global order is realized through domestic participation in communities with very divergent thresholds of need satisfaction. However, once the communities have achieved a threshold of autonomous self-governance, international inequalities fade into a secondary plane. This degree of political control also implies that the *demos* are sovereign about their admission policies.

9] Thomas Christiano defends a coincidental argument for a human right to a minimally egalitarian democracy backed by empirical studies. I quote the argument *in extenso*: "The human right to democracy argued for asserts that there is a strong moral justification for states to adopt or maintain the institutions of minimally egalitarian democracy and that it is morally justified for the international community to respect, protect, and promote the right of each person to participate in minimally egalitarian democratic decision making concerning their society. By *minimally egalitarian democracy*, I mean a democracy that has a formal or informal constitutional structure which ensures that persons are able to participate as equals in the collective decision making of their political society. It can be more precisely characterized in terms of the following three conditions: (1) Persons have formally equal votes that are effective in the aggregate in determining who is in power, the normal result of which is a high level of participation of the populace in the electoral process. (2) Persons have equal opportunity to run for office, to determine the agenda of decision making, and to influence the process of deliberation. Individuals are free to organize political parties and interest group associations without legal impediment of fear of serious violence, and they are free to abandon their previous political associations. They have freedom of association at least regarding political matters. In such a society, there is normally robust competition among parties and a variety of political parties that have significance presence in the legislature. (3) Such a society also acts in accordance to the rule of law and supports an independent judiciary that acts as a check on executive power. This cluster of rights can be characterized simply as a right to participate as an equal in the collective decision making of one's political society, which I refer to as a *right to democracy*. To have a human right to democracy implies that there is a strong moral justification that such a cluster of rights be realized in one's political society." (Christiano 2011, 145-46)

Territory and Collective Self-Determination

The justification of territorial borders and democratic closure remains an especially problematic question. Article 15 formulations have to face the unsolvable paradox of democratic boundary. One approach consists of starting mid-way from the historical existing conditions that constitute the bounded rationality implicit in any historical form of cultural and political organization. The demos needs closure because the value of democratic membership rests on a sustained commitment to consequences of the decisions of a community over time (Benhabib 2004, 118-137). Political cooperation requires the expectancy of allegiance and reciprocity so individual sacrifices may be compensated in the long run. This generalized level of social trust is only possible if there is a perception of individual investment in a common fate linked to a political project (Christiano 2006). Membership could be defined as a specific form of reciprocal political subjection in which individual interests are intertwined over time. So membership is connected to but differentiated from “affected interests” and “subjection.”

However, article 15 conceptions reconcile democratic self-government with cosmopolitan universalism through the application of certain constraints to democratic admission policies. This “porous” border policy includes:

- Straightforward transition from long-term residence to full membership.
- The rejection of discriminatory criteria based on adscriptive features like race, ethnicity, sexual orientation, etc.
- Observance of asylum seeker rights.

So “democratic control over borders” can meet some justificatory criteria (Benhabib 2004, 137-63; 2011 136-65).

Some authors defend that political coercion is only legitimate if it can be justified to those subjected. Rainer Forst defends that justification of coercive measures constitute the terms of respect of human rights (Forst 1999), but it is not always clear if he differentiates between a duty to make explicit the reasons for the coercion and a duty to offer shared or acceptable reasons:

The declaration emphasizes strongly the connection between being safe from unjust and arbitrary rule and being a participant in political affairs. “The social and international order in which the rights and freedoms set forth in this declaration can be fully realized” which each person is entitled to is not meant to be one where rights are received as goods handed down from some authority. Rather it is to be one where no set of legally binding rights is determined without the participation of those who are the subjects of these rights. (Forst 2010, 718)

In the first case we are talking about a “right of interpellation” that those excluded from a polity could claim in order to force authorities to make public the grounds for the rejection. The decision would still be sovereign, and the deliberation would be restricted only to members. To be sure, some sympathetic members could decide to give voice to the

claims of excluded outsiders in the domestic realm of public reason. Forst differentiates between a primary obligation to implement the justificatory institutions (fundamental justice) and the specific deliberations that take place in each domain and sphere (maximal justice), and links human rights closer to the fundamental justice in a “basic structure of justification” in which the members have the means to deliberate and decide in common about the basic institutions that apply to them” (Forst 2010, 736). In any case, the main referent is still the state, explicitly defended as the main site for implementing social justice (Forst 2010, 378-79). However, his work oscillates between the classic statist defense of citizenship (Forst 2001, 172) and the openness to incorporate the justificatory right “both *within* domestic societies and *between* them” (Forst 2001, 174). In this phrasing, states are still the default building blocks. The substance of the transnational is the gap or the cement between blocks. It is not clear how much of these blocks would survive after the identification of all transnational domains in which “subjection” is experienced by the “members” of a social structure that “applies to them” and “affects” them (Forst 2010, 736).¹⁰

Human rights presuppose “the basic right to justification – but above that, they protect against the harm of not being part of the political determination of what counts as such harms.” (Forst 2010, 737) So for Forst, this conception of human rights entails a notion of “dignity” that means “that a person is to be respected as someone who is worthy of being given adequate reasons for actions or norms that affect him or her in a relevant way.” And the adequate criteria of justification are “reciprocity and generality in a strict sense” (Forst 2010, 734). The problem in Forst’s formulation is that he presupposes that all are already members, although there is not a clear limit of the scope: “all members,” “all subjected,” or “all relevantly affected”.¹¹ On the other hand, he pushes the duty of justification to a transnational dimension but he explicitly leaves aside the specific duty of implementing the “right to have rights” in a world of forced migration due to human rights violation or economic deprivation (Forst 2010, 739).

These are of course difficult questions, because on the one hand here Forst presupposes that there is an agreement on what constitutes a human right violation for the migrant in his country of origin; but on the other hand, it is not easy to find common ground on what constitutes “harm” based on formal criteria of reciprocity. So if one country eventually recognizes homosexual marriage on grounds of no-discrimination under the same “basic structure of justification” then it should recognize its violation elsewhere as a valid case for asylum based on human rights. Your harm is my harm. But territorial exclusion may be ruled out as harm or coercion on account of strictly formal, reciprocal and Westphalian terms: “You don’t cross my borders, I don’t cross yours.” Coercion and subjection are broad notions that must be specified in order to provide acceptable ground for practical policies.

10] Forst presents a synthetic reformulation of these arguments in Forst 2012, 222-27.

11] For an exhaustive distinction, see Goodin 2007.

This argument leads to a contact point with Nancy Fraser's conception of a multilevel global order defined by the duty to implement parity of political power for all subjected to the same institutions (Fraser 2009, 61-7). This proposal closely parallels Thomas Pogge's multilevel cosmopolitan order that incorporates all-relevantly affected interests (Pogge 2008). These terms of respect could differ in practice and could also have different consequences in institutional design. As Forst reminds us, the duty to take into account someone's interests is not the same as the duty to offer her acceptable reasons.

For Risse, the international order of territorial states implies subjection for those within and for those outside the borders and so it gives grounds for global membership rights (that is, to human rights to subsistence). For Steiner, the impact that border control has on the natural liberty of movement and of association implies a violation of basic rights that is not justified, and so it grounds compensatory participation in a *Global Fund*. But what constitutes "coercion" is also subject to dispute. For instance, contrary to Abizadeh (2008) or Risse's claims, Benhabib (2011, 161-65) and Miller (2010) hold that territorial exclusion does not constitute coercion if there are a number of acceptable options available.¹² Denying access clearly constitutes a limitation, and the mere presence of border patrols constitutes an act of intimidation. This situation may alter an individual's prospects and plans, but it does not constraint her freedom in such a way that forces her to act in a singular, restricted direction. If this was the case, then the coercion argument would apply. However, this is not the common case. Individuals usually face a sliding scale of alternative options that make selective admission policies compatible with human rights. Even if this non-coercive limitation of freedom is legitimate or justified in the first case, in virtue of article 28, the global order should provide a number of acceptable options and sources for independent self-sufficiency to those willing to exercise their global membership status abroad.

Massive acceptance of economic migrants will certainly alter both communities, one demos would lose some of its most dynamic members while other will have to integrate a higher internal diversity. However, "cultural integrity" as such is neither an a-priori valid exclusionary reason for co-owners of the Earth, nor a valid reason to deny exit.

National membership is a right, not a duty. Someone has interest in exercising a right when it entails a number of values and interests. In some sense, the prospects of particular cultures are linked to the differential value between domestic political membership and the options for independent self-sufficiency as a member of the global order. If national membership in X ceases to be experienced as a shared valuable project, then the global order must be re-defined in order to offer new opportunities for adequate subsistence for co-owners of the Earth. There is a certain amount of tradeoff the individuals are willing to undertake for keeping the network of attachments embedded in their national

12] Abizadeh claims that his thesis is sustained by two intrinsic features of democratic theory: the requirement of justification to those subject to coercive acts or threats; and the unbounded nature of popular sovereignty. Benhabib and Forst discuss these terms in a similar language with different accents.

membership. When this “common world” (Christiano 2006, 85-7) implicit in domestic membership collapses, then the status of co-owner of the Earth becomes more attractive.

Decoupling Territorial Rights

The possibility of decoupling polity and territory reveals how problematic their interconnection is within this contingent frame of common ownership of the Earth. As there is no ground for a “territorial duty,” rights of territorial control are conditional. No one “belongs” to the patch of land that he inhabits, although one may “feel that belongs” in the common world of a particular polity.

Anne Stilz argues in a different direction. She holds that the ultimate territorial right resides on the people, even after a state collapses. Stilz conceives the people as “collective moral personhood” that stands in a principal-agent relationship with its state. The people is the product of continued cooperation under a state over time and also the rightful owner of the territory. The state is the impartial agent capable of determining the rights of its subjects and of representing the will of the people. In this capacity, the state has jurisdictional powers over the territory, although it is the people who retains metajurisdictional powers:¹³

Metajurisdiction is thus a right over territory that inheres in the citizenry, the group that has historically cooperated in sustaining a state together. But it can be only exercised by the people in extraordinary circumstances, when their state fails to legitimately represent them or has been usurped. And there is only one object of the right: to set up a legitimate state that can exercise jurisdiction over their territory. In ordinary moments, the people exercise metajurisdiction simply by having a legitimate state in place. (Stilz 2009, 210)

The aim of this project is to make sense of some conventions in our modern international law using modified Kantian tools. But in order to do so Stilz takes away the Kantian cosmopolitan edge and sweeps the very Kantian problems under the footnote carpet. She doesn't address the question of the “right to revolution” or the “global state.” (Stilz 2009, 203 n.10, 207 n.12) Stilz discards them as parasitic on the prior right of territorial jurisdiction (2011, 573-74) even though these are the obvious issues that are relevant for us. Her strategy is focused on an account of the moral personhood of “the people as a whole” that is immune to intergenerational identity problems, even after the dissolution of the very agent that unifies it into a single body. “Who speaks for the multitude?” Hobbes would ask, rightly. Would Kant recognize a Revolutionary Government as having jurisdiction over the site of jurisdictional power? Would a *Council of the Wise* legitimately represent “the people as a whole?” Who can determine to what extent the state has ceased to perform its constitutional duties?

Stilz's project depends on the assumption that the rights of a collective of coexisting individuals can only be realized if an absolute territorial right is implemented. What she fails to justify is to what extent this is true. On her account, jurisdictional and

13] “Metajurisdictional powers are powers over powers: they confer authority on certain agents to decide who has powers to make primary rules over which pieces of territory.” (Stilz 2009, 196)

metajurisdictional powers are attached to the state and the people, respectively. This is a self-referential conception of absolute territorial rights. Externalities and the exclusion of outsiders have been cropped out. But, why should the “integrity” of this moral personhood be the only criterion to determine how to exercise control over a territory? Couldn’t we also assess its record in managing the environment it controls, and maybe conclude that it had done a poor job, one that shows very little concern for the intergenerational continuity?

The promise: “You shall inherit the Earth,” as Hobbes knew well, only makes sense if it’s made by a real God. No Mortal God can fulfill his prophecies once he is gone. Attributing metajurisdictional power to a diasporic body premised on its moral personhood is bootstrapping oneself from the grave of a failed state. International politics is a matter of recognition, so a territorial right cannot be formulated just in self-referential terms. If the territorial right is justified as necessary for the continuity of a people then the value of its integrity should be assessed also against external standards recognized by outsiders (UDHR’s, for instance) and justified against other alternatives. This implies that the metajurisdictional power over the territorial right of “We-the-People” (as a whole) rests on “We-the-Peoples” and their concerted agency.¹⁴

Another related conclusion is that territorial rights do not need to be absolute (Miller 2007, 221).¹⁵ They can be linked to national collective determination in ways compatible with the realization of the rights of all human beings (article 28 UDHR). In some cases when peoples reject an instrumental valuation of the land they inhabit or express an strong attachment, the right of territorial control may be key for having the necessary collective control over their lives. The fact some very singular place is *irreplaceable* for a people is a pressing condition for its assessment, but not absolute (Moore 2012, 94-101).¹⁶ Conditioning territorial rights on the taxation of natural resources for global

14] I leave aside here the complex details of global institutional design, but for questions of usurpation and restoration, something along the line of Thomas Pogge’s international Democracy Panel would be enough (Pogge 2008, 152-67; cf. Keohane, Macedo and Moravcsik 2009).

15] Although Miller defends a Nationalistic conception of self-determination according to which the territorial rights that the state exercises “belong fundamentally to the people collectively and are exercised on their behalf by the state they have authorized to do so.” (2007, 217) The justification of the connection between nation and territorial right comes from a shared sustained history of adaptation and transformation of the land according to a cultural system and expressing determined cultural values. Control over this environment is crucial for collective self-determination. Additionally, Miller claims that the present generation is the natural inheritant of the value added historically to the land through a shared history of investment of labor. Miller argues in a quasi-Lockean way against Steiner that it is practically impossible to differentiate between the added value and the raw natural value that constitutes the baseline for the equal division of the Earth. (2007, 56-62) These are weighty factors that justify partiality towards fellow citizens and their collective interest before foreigners, but not in an absolute and systematic way. (2007, 216-24).

16] To be sure, the assessing representative global institution should be adequately design in order to avoid parochial interpretations of human rights and alternative global orders should be evaluated according to its propensity to realize human rights worldwide. The risk of circularity is obvious, even when we start provisionally from a convergence view of human rights anchored in a broad factual consensus. However, there is an inescapable need to refine and contrast the epistemological acuteness of our institutions with the contexts of application. Allen Buchanan defends a social epistemological approach to this institutional design, consisting of “a normative, not a purely descriptive enterprise; it is the comparative evaluation of alternative institutional arrangements according to their tendency to foster true or justified beliefs. The guiding prem-

redistribution (GRD) or on universalist criteria of justification for border control are just some of the compatible alternatives.

In the case of border control, the global order can keep reasonable stability concerns in mind. It doesn't have to accommodate collectives or national groups as such, but only members of the global order on an individual basis. Accommodation according to this status of independent co-ownership may require regulated transition to full membership in a different polity in which she can enjoy an adequate standard of living but it does not imply rights of cultural reproduction or national reunification.

The global order could also establish compensatory mechanisms for recipient countries when migration is triggered by subsistence needs. Risse argues that admission should be enforced on those countries with a very large ratio of unexploited natural resources and population (Risse 2008, Blake and Risse 2009). It is difficult to see why this option is favored over other alternatives like high GDP that is frequently the derived accumulation and transfer of exploited natural resources.

We could say that when individuals decide to enact their status as global denizens and relocate abroad, the global order "cashes out" their global shares to fund their new accommodation. New admission options are the product of concerted allocation decisions between the global order and national communities. National communities are collective managers of a share of the Earth. Part of the product of this collective management also funds the global order in which everybody is a member by right. While one is committed to her national membership, one is also an investor in a cooperative enterprise (Rawls) that funds both a national collective project and a global fund. If one decides to exercise global membership, opting out from national membership by becoming a denizen, then one is also funded by the global order.

Obviously, the existence of a global safety net attached to the status of "global membership" modifies the terms of respect of citizenship as the prevalent political status. It also affects the capacity of domestic communities to fund "basic unconditional income of citizenship" (Van Parijs 1995). It affects its rationale as the individuals that decide to opt out the cooperative scheme can retain a funded status as global denizens, the level of which is also determined by the number of candidates, the taxation rates and the impact on the global productivity incentives. However, we also face similar problems on a domestic scale (Miller 2008, 382).

ise of the enterprise of developing a social epistemology is the anti-Cartesian insight that knowledge – and justification – are to a great extent social achievements." (Buchanan 2010, 89) The tendency in ecological thought to resist the instrumental valuation of the *irreplaceable* places through strict cost-benefit analysis (willingness to pay) tends to privilege the irreplaceable communitarian perspective. In both cases value is in the eye of the beholder, so Sen's observations about the need to introduce open and non-parochial impartiality in the deliberative process through. The problem in this specific case is that some cultural groups can claim an asymmetric interest in something irreplaceable similar to the "positional relevance of parenthood" (Sen 2009, 160) that limits the ability to achieve the "interpersonal invariance" required to achieve "positional objectivity" (Sen 2009, 156). Douglas Kysar reflects this tendency in environmental law against agencies of environmental impact assessment. See also Anderson 1993, O'Neal 2007, and Taylor 2006.

In this paper, I only lay out a converging justificatory approach for this conception of global membership. Due to the reasonable space limitation, I will explore in a forthcoming paper its more concrete implications. I won't discuss here, for instance, whether Malibu surfers could be "incentivized" to waive full-membership as citizens in favor of a "global denizen" status. According to our interpretation of article 15.2., everybody has the right to be and to keep full domestic membership somewhere. They cannot be forcibly denationalized, but domestic communities may consider that some individuals are also voting with their (otiose) hands in matters related to social cooperation (White 2003). However, the status of global co-ownership demands from the global order sources for adequate self-sufficiency, which may entail contextually equivalent income (purchasing power parity from global resource shares) supplemented with job opportunities (global social opportunity shares) adequate to keep a capability threshold of independent self-sufficiency. This global equivalence attached to residency addresses the accusation that the struggles for an unconditional basic income for citizens in rich countries, in a context of massive global injustice, amount to mere "justice among thieves" (Steiner 2003; Van Parijs 2003).

Under this view, one could argue whether the *metics* are the default cosmopolitans, and to what extent this "cosmopolitanism" implies a retreat from local politics and real politics. If this is so, it would be a very cynical move, literally. We could reclaim Diogenes as the founding father of cosmopolitan detachment of local conventions, but also Socrates with his stubborn, fatal attachment to "deliberative," democratic Athens. Cosmopolitans need not be "dead souls" (Benhabib 2011, 3-5; Benhabib and Álvarez forthcoming). However, global denizens are residents in local contexts, and it is in this very local dimension where differences in membership status become less relevant. In fact, part of the modern terminological confusion identifies the city and the nation, citizenship and nationality. Local residency implies a level of recognition, access to resources, and opportunities for participation that are not so easily available at the national level (Miller 2008, 377). The city of New Haven, Connecticut (US) issues ID cards even to illegal immigrants, but not passports (Carens 2008, 181-83). Some countries in the EU allow EU residents to run for mayor in local elections, but not to run for office at the national level. These cosmopolitan implementations are exhaustively analyzed in Benhabib's work (2004, 2006, 2011).¹⁷

Another pertinent objection has to deal with the effective political feasibility and the uncertain impact on global productivity. To be sure, this is a complex crucial question that deserves an independent paper. For the moment I think it is desirable to move in this direction, and I hope we can. There are three factors that contribute to make these hopes reasonably realistic.

First, it is presented as a "converging view" among a reasonably wide scope of normative theories.

¹⁷ For other important contributions on this line of parsing the concept of membership see the works of Saskia Sassen (2006), Linda Bosniak (2006), Rainer Baubök (2007) Melisa Williams (2007), and Dora Kostakopoulou (2008).

Second, the terms of respect for independent self-sufficiency can be expressed in a language of capability. This fact creates incentives for early and efficient investment in promoting the capabilities of the global poor. The more “resourceful,” “capable” and adaptive the individuals become, the easier will become for the global order to fund their status as denizens.¹⁸

Additionally, the global community might be interested in minimizing the cases of transborder accommodation, so it may channel investments through the worse-off communities and create incentives to maintain their common worlds. This system constitutes a way of revaluing the conditions for national membership. In practice, this global scheme implements some sort of institutional maximin. The more a community invests in promoting its collective capacity of self-government and of efficient management of the resources they control, the larger its contribution to the global fund. The larger the impact of these transfers abroad, the more attractive the developing societies become for their members. In practice, this scheme shortens the difference in the value of political membership around the globe (cf. Cavallero 2009).¹⁹

Third, assuming this normative political framework could facilitate moving towards a global public goods economic model in which developing countries and the global poor benefit from the incentives that drive economic productivity, research and innovation in the developed countries. In the current system, the products of these activities, due to market inefficiencies and the lack of capacity of the developing states, are marked up at unaffordable prices for the populations in which their impact could be higher in boosting capacities for independent self-sufficiency. Under this proposal, developed countries have additional incentives to align their productivity with real global development goals (Buchanan, Cole and Keohane 2011; Banarjee, Hollis and Pogge 2010; Pogge 2009b). Related to this point, we should notice that the pressing ecological limits of our current productive model require the introduction of sustainable incentives and rewards. The introduction of this necessary constraint is the more pertinent, as this conception relies on the common ownership of a warming Earth and its translatability into intergenerational claims. With this horizon in mind, sacrifices in global productivity have to be assessed

18] See for instance Moellendorf’s insistence on investing in the acquisition of a capacity for *lingua franca* (English education) as a necessary complement to the liberalization of immigration policies if we want to promote global equality of opportunities (Moellendorf 2009, 68-89). For an interesting discussion of the injustices associated to a *de facto* hegemonic *lingua franca*, see Van Paijs 2011.

19] Eric Cavallero (2006) develops a very interesting proposal that partially converges with the one exposed here, although departing from different premises. His “immigration-pressure model” assigns entry quotas for rich countries and charges them with a duty of assistance with no absolute cut-off point. The threshold of the international transfers is established at the level at which the immigration pressure from developing countries is neutralized. This point is supposed to identify the state of affairs in which both sides of the borders find their options equivalent or equally attractive. Both proposals adopt a “communicating vessels” model and both accept that migration flows are a destabilizing phenomenon that exerts a pressure for integration. However, the conceptual framework I try to sketch revolves around the status of the individuals, so that they can legitimately perceive themselves as true co-owners of the world. Cavallero’s goals are closer to an institutional amendment of our unjust international order. I want to leave the transborder door open as it may lead us to a more cosmopolitan order. Cavallero wants to minimize the need to open it.

against an acceptable set of sustainable conceptions of welfare and standards of life. As Roemer reminds us, neglecting this pressing fact leads us to a “consumerist fallacy” in our assessments (Roemer 2011, 379-80).

Respectable Members of a Legitimate Global Order

Individual involvement in the international system is also problematic, especially when it exhibits constitutive practices that undermine the opportunities for the subsistence of large segments of the world population. Pogge enumerates predatory practices, like the international resources privilege or the international loan privilege that frequently go in tandem as the concession of exploitation license for foreign extractive industries, and other natural resources can be also used as collateral for funding corrupt governments in their campaigns to stay in power. Pogge’s Global Resources Divided stipulates a conceptual shift in the definition of sovereign control over natural resources. The tax proposal considers that states keep a preferential control over the resources in their territory and a sovereign decision on whether they should be exploited or not. From a strictly cosmopolitan point of view, it is difficult to defend a *prima facie* right to exclusive control over the resources contained in a limited territory. They naturally belong in common to humanity.

Leif Wenar, for instance, takes for granted that natural resources belong to the peoples, as it is accepted in international documents (2007, 2010, 2011). When rich societies take advantage of corrupt governments and pay a reduced price for natural resources, they are stealing from the peoples that legitimately own these resources. His argument establishes an analogy between stealing among individuals in a domestic setting and stealing in the international order. This parallel is interesting because we accepted that “property” is the product of a legal convention enforced within the limits of a jurisdiction. But the status of a global jurisdiction remains unclear. On what grounds should we accept that domestic respectable consumers in one part of the globe are also global smugglers?

If Wenar’s argument holds, we can take individual domestic consumers as global smugglers because they are collectively taking advantage of existing foreign authorities interfering in their subjects’ right to benefit from their resources. They could also argue that it was done following a valid legal procedure with a corrupt but internationally recognized representative. Confronted with a clash between moral and legal conventions and challenged by the epistemic and practical impossibility of tracking down every step in every transaction, domestic consumers may well argue for the implementation of an institutional mechanism that re-integrates their status as bona-fide members of a legitimate global order (Wenar 2011, Pogge 2010, 230-31).

IV. THE FAIR VALUE OF MEMBERSHIP IN COSMOPOLITAN TERMS

Wenar’s argument presupposes that individuals have a global status, and that current international conventions are in need of legitimation. The existing practice

is a factual set of references that exhibits a normative deficit. However, creating the institutional forum where this deliberation could take place also clears a path towards questioning the arbitrary global distribution of resources behind exclusionary borders. Global smuggling undermines the potential of resource-rich countries, but resource-poor countries cannot even be exploited by foreign companies. Why would their populations accept that inhabitants of a neighboring territory have a right to exclude them from its natural resources and the benefits thereof?

We could say that the recognition of a certain degree of territorial self-determination and preferential control over its resources is legitimate if it is compatible with Art. 28. The compatibility consists on its contribution to the sustainability of a global order in which the rights of all global members could be fulfilled.

The many implications of this conception exceed the limits of this paper, but we could note that it proposes a challenging paradigm to consider pressing problems as guidelines for global regulation of migration flows, new ways to deal with adaptation/mitigation policies for climate change, and incentives to shift towards a model of global public goods that can have a differential impact on the worse off.

Extractive processes, environmental degradation, resource depletion, and “not in my backyard” policies are undesirable consequences of a historical process of progressively refined capacities of resource transformation and commercialization. This process, often shaped by violence and by political and military colonization, also exerts an unequal influence on migration patterns, demographic concentrations, the attraction of capital and skilled labor, training opportunities and talent rewards. To be sure, these transformations add a substantive surplus that also attracts and generates new forms of social life and the flourishing of science, technology, cultures and the arts.

A *demos* has an intrinsic interest in fostering a shared commitment to manage and cultivate this natural, social and human capital from one generation to the next. Some polities manage to thrive longer while others decline but on the long run, the big picture is still one of unequal distribution of burdens and benefits. By splitting the claims about territorial control and collective self-determination, we can see that all human beings, by virtue of sharing a common status of co-owners of the Earth, have an original valid claim on part of the products of natural resource-based activities. By separating membership in the global order from political membership, we see that the interest in preserving democratic self-determination is linked to a commitment in global reinvestment.

This conception may seem too difficult to reconcile with our current state of affairs, and too idealistic for what Rawls demanded from a realistic utopia. It may be. But our current state of affairs – sovereign states, living on borrowed time – is no more realistic. The twilight of international politics is marked by its inability to adapt to the limits of sustainability. So maybe what we need is some chance of reconciliation with the future instead of patching up an agonic international system (Pogge-Álvarez 2010a; cf. Sen 2009, 15-17).

V. CONCLUSION

In this paper I defend an account of membership in a global order coherent with a contingent conception of common ownership of the Earth. In contrast with Risse's formulation, I argue that the most plausible translation of the status of co-owner of the Earth implies the institutional conditions for independent self-sufficiency secured by the global order to global denizens and embedded into constitutional socioeconomic protections for national members.

I also hold that, from the original premises of common ownership of the Earth, it is possible to defend the decoupling of absolute territorial self-determination from collective self-government. Since there is no convincing defense for absolute territorial control that is compatible with the original premises of the common ownership of the Earth, I defend an interpretation of the Article 28 of the UDHR according to which national membership (Art. 15) is conceived as individual participation in a cooperative enterprise that manages global resources, the benefits of which are taxed by the global order. Decoupling territorial control and collective self-government allows the possibility of disaggregating domestic membership in a cooperative enterprise (citizenship/nationality) and global residency (membership in the global order). I defend this last status as a plausible and promising means for reenacting the status of co-owner of the Earth in terms of independent self-sufficiency.

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