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Arash Abizadeh

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A CRITIQUE OF THE “COMMON OWNERSHIP OF THE EARTH” THESIS ¹

ARASH ABIZADEH
MCGILL UNIVERSITY

ABSTRACT

In *On Global Justice*, Mathias Risse claims that the earth’s original resources are collectively owned by all human beings in common, such that each individual has a moral right to use the original resources necessary for satisfying her basic needs. He also rejects the rival views that original resources are by nature owned by no one, owned by each human in equal shares, or owned and co-managed jointly by all humans. I argue that Risse’s arguments fail to establish a form of ownership at all and, moreover, that his arguments against the three rival views he considers all fall short. His argument establishes, rather, a moral constraint on any conventional system of property ownership.

RÉSUMÉ

Dans *On Global Justice*, Mathias Risse prétend que les ressources premières de la Terre sont la propriété collective de tous les êtres humains de sorte que chacun a le droit moral d'utiliser les ressources premières nécessaires pour satisfaire ses besoins de base. Il rejette également trois points de vue concurrents selon lesquels les ressources premières n'appartiennent à personne; chaque être humain en est propriétaire à parts égales; ou elles appartiennent à tous les êtres humains, qui les gèrent conjointement. Je soutiens que les arguments de Risse ne parviennent à établir aucune forme de propriété, et qu'en outre, aucun des arguments qu'il présente contre les trois points de vue concurrents n'est concluant. Son argumentation impose plutôt à tout système conventionnel de propriété une contrainte morale.

In section II of *On Global Justice*, Mathias Risse defends the provocative thesis that the original resources and spaces of the earth, i.e., those resources and spaces that “exist independently of human activity” (p. 108),² are collectively owned by all human beings in common. Invoking the legacy of Hugo Grotius, Risse defends this “Common Ownership” model against three rival models of ownership of the earth’s original resources and spaces: No Ownership, which denies any original natural owner and claims that all ownership rights must arise through some process of appropriation; Equal Division Ownership, a form of collective ownership in which each co-owner has an equal share of private-property rights in what is collectively owned; and Joint Ownership, another form of collective ownership by which a corporate body of co-owners manage their property via some collective decision-making procedure. My thesis is that even if its premises are true, Risse’s argument does not “entail,” as he claims it does, a form of natural, collective ownership, and that his arguments against No Ownership, Equal Division Ownership, and Joint Ownership do not justify rejecting them.

Risse’s argument for his thesis comprises three basic premises (pp. 113-114):

1. The earth’s original resources and spaces are necessary for human activities and survival.
- 2.a. The satisfaction of basic humans needs is morally significant.
- 2.b. The satisfaction of basic human needs is more morally significant than any environmental value.
3. If resources and spaces are original (i.e., produced without human interference), then no one has any accomplishment-based claims to them.

Risse believes that these premises “entail” what I shall call the Inalienable Right to Basic Resources Thesis (IRBR):

4. Each human being has an inalienable, indefeasible moral right to use (a part of) the earth’s original resources and spaces to satisfy her basic needs.

This is my language, but it captures the essence of Risse’s conclusion.³ The moral right in question actually comprises, according to Risse, a bundle of rights: a liberty-right to use the resources in question, a protective perimeter of claim-rights (e.g. against interference in exercising one’s liberty), and an immunity-right against being stripped of this bundle (indeed, it is inalienable) (pp. 111-115).

Of course, Risse himself gives the Inalienable Right to Basic Resources Thesis a different, more evocative and rather charged label: he calls it human beings’ “Common Ownership of the Earth.” But it is important for my purposes to see that the content of what Risse calls Common Ownership of the earth does not refer to anything beyond IRBR. I have given the thesis an alternative label

because it is not immediately clear why, given its content, one should speak of a kind of “ownership.” Risse defines common ownership as a form of collective ownership in which (a) each co-owner is equally entitled to use what is owned, (b) within some specified set of constraints, (c) and without the right to exclude other co-owners from similarly using what is owned (pp. 110-111). He thus formulates the “core” idea of his Common Ownership of the earth thesis as follows:

- 4'. Each human being “ought to have an equal opportunity” to use the original resources and spaces of the earth to satisfy her basic needs (insofar as their satisfaction depends on such original resources and spaces) (p. 111).

(It is important to note that 4' is weaker than 4: it refers to a right of “equal opportunity” to use original resources, rather than a right to use original resources, but strictly speaking Risse believes that his argument establishes more than 4'.⁴ This weakening will be congenial to those who are resistant to the theoretical use to which Risse later puts his argument, namely, to restrict the state's unilateral territorial rights; but it will be unsatisfying to those that think Risse fails to restrict those territorial rights *enough*. Risse seems to suggest (p. 124) that the formulation in 4', which refers to opportunities, articulates the part of IRBR having to do with principles of justice; he thus leaves it open for IRBR to entail further, non-justice rights and obligations (p. 132)).

1. NO OWNERSHIP

One reason it is unclear why IRBR should be called “Common Ownership” is that, given the standard meaning of ownership, the content of IRBR is *prima facie* insufficient to establish any form of ownership at all: the standard incidents of ownership are much greater than mere use rights. Thus one problem with calling mere use rights “ownership” is that it encourages ideological obfuscation: it connotes a set of rights (such as the right to rents, or the right to exclude) that Risse's argument for IRBR does not seem to establish. Indeed, IRBR is open to an alternative, more natural, interpretation: it identifies a moral constraint on any just property regime. Claiming that there is an inalienable, indefeasible right to use original resources to satisfy one's basic needs might just be interpreted as claiming that there is a *constraint* of justice on any conventional property regime. One can say this without saying that the constraint constitutes a type of ownership, and one can say it while further insisting that there is no natural ownership of anything, i.e., that all property is conventional.

In fact, Risse implicitly concedes the possibility of alternative interpretations of IRBR when he considers No Ownership. If the earth's resources and spaces have no original, natural owner, as No Ownership claims, then if there is to be any ownership of the earth's resources and spaces, it must be possible to appropriate them. Risse considers two versions of No Ownership: according to the right-leaning version, individuals can unilaterally appropriate without restriction, and in particular without taking others into account; according to the left-leaning

version, individual appropriation is possible but only subject to provisos.⁵ Risse rejects the former version on the grounds that appropriation without provisos may lead to outcomes that prevent the satisfaction of basic human needs, in violation of IRBR (p. 117). Risse's response to the latter version is simply that No Ownership with provisos is plausible only if the provisos in question are identical to IRBR – no more, and no less (p. 119). But if that is Risse's response, then he has simply conceded that IRBR does not itself warrant talk of collective or common ownership. Something more would need to be said to motivate Risse's more evocative label.

The second reason that it is not clear why Risse calls IRBR "Common Ownership" concerns one of the specific incidents of ownership: the right to exclude.⁶ To motivate construing IRBR as involving or implying a kind of ownership, one would need to specify whom the putative co-owners have the right to exclude. Yet, on Risse's conception, common ownership implies that while all co-owners have the right to use (within constraints), they do not have the right to exclude other co-owners' similar use. Perhaps Risse wants to add that co-owners have the right to limit each others' *overuse*; but that is still not a right to exclude use. Hence it must be non-owners who are excluded. Here, then, would be a reason to call IRBR Common Ownership: to emphasize that humans have a right to exclude non-humans from the earth's original resources and spaces insofar as it is necessary to satisfy basic human needs. It is therefore surprising that anthropocentrism does not receive a stronger defence, and play a more prominent role, in Risse's discussion. Of course Risse's anthropocentrism is highlighted by premise 2.b, according to which the satisfaction of basic human needs is more morally significant than any environmental value. But Risse never actually argues for 2.b. His defence (p. 120) against critics of anthropocentrism merely amounts to name calling: he calls deep ecology one of the "rather extreme forms of environmental ethics." An argument for anthropocentrism is all the more urgent for Risse not only because it is important for motivating calling IRBR a kind of Common Ownership, but also for motivating premise 3. For the premise that *no one* has any accomplishment-based claims to resources that are not the product of *human* activity begs the question against deep ecologists: If non-humans have contributed to realizing original resources, then why do they not have any accomplishment-based claims? Indeed, Risse's construal of the rights entailed by common ownership actually provides positive reason for thinking that at least some of these non-humans *do* have such claims. For Risse wants to claim that such humanity's common ownership includes not just liberty-rights but also a perimeter of protective claim-rights. But if the point of calling IRBR a form of collective ownership is to emphasize the rights that human beings hold against non-humans, and if some of these rights are claim-rights, then this suggests that the non-humans in question – and not just other human co-owners – have the correlative duties to each human being to not interfere with her use of original resources. But to construe non-humans as bearers of duties to human beings is to attribute a normative standing to them that is in considerable tension with the denial of any accomplishment-based claims to the resources that they may have contributed to realizing.

2. EQUAL DIVISION OWNERSHIP

So far, then, I have argued that Risse has not provided sufficient reason for rejecting No Ownership and hence insufficient reason to characterize IRBR as a kind of Common Ownership. I want now to turn to Risse's critiques of Equal Division Ownership and Joint Ownership, where I draw similar conclusions.

Risse's fundamental criticism of Equal Division Ownership is that in order to divide collectively owned resources equally, one must have a metric for assessing the value of resources; Risse argues that no such metric exists (pp. 122-123). I fail to see the force of Risse's argument. He seems to assume that for Equal Division Ownership to be action-guiding, it requires a complete, cardinal ordering of the value of different resource aggregations. Yet even if we do not have a metric that assures equal division in all potential cases, surely we could devise metrics enabling us to identify *more or less* egalitarian divisions in many cases. We might not be able to specify what equality would consist in precisely, and we may not be able to tell in *every* pair-wise comparison of states of affairs which one has the more equal division, but we might still be able to tell, in many pair-wise comparisons, that some distributions are more equal than others. The ideal of equal division would then warrant choosing one from amongst the divisions that we can tell are more equal than all the others. To be clear: I do not find Equal Division Ownership a compelling view, so I do not intend to defend it here. But it seems to me that Risse owes its defenders a substantive normative argument, and not just an epistemic one, because even if they cannot specify equality precisely and absolutely, they could still do so with enough precision to compare some states to others, and this at a threshold above and beyond basic-needs satisfaction.

3. JOINT OWNERSHIP

Risse begins his critique of Joint Ownership by considering an admittedly crude interpretation of the view (p. 121). On the crude interpretation, jointly owned resources cannot be used by any of the co-owners without the consent of each of the other co-owners. The requirement that joint owners gain the unanimous consent of all others is of course a possible interpretation of Joint Ownership of the earth, but it is crude because it has a wildly implausible consequence: it implies that before any person can use the terrestrial resources necessary for satisfying her basic needs, she has to obtain every other human being's consent! She might as well die. Risse is therefore on solid ground when he rejects this crude version of Joint Ownership.

The crude interpretation has two salient features. First, it specifies an *actual* decision-making procedure for co-managing property. Second, the actual decision-making procedure for co-management that it specifies is governed by unanimity rule. This means that there are at least two ways to revise the crude version to produce a more plausible interpretation of Joint Ownership. One could continue to hold that Joint Ownership specifies an actual decision-making procedure, but abandon unanimity-rule (at least for appropriation). Or, alternative-

ly, one could assume that Joint Ownership specifies a *hypothetical* procedure by which the actual decision-making procedures are determined. Risse opts for the second, contractualist route; he simply overlooks the first possibility. This is an important oversight: nothing intrinsic to Joint Ownership requires the actual decision-making rule to be unanimity. Joint Ownership might require, for example, that co-owners manage their property collectively via some majority-rule procedure, or some complicated procedure where majority rule is constrained by individual use-rights, or some other rule.

Yet it might be possible to reconstruct what Risse would say in the case of this first kind of revision to Joint Ownership on the basis of what he does say in the case of the second, contractualist kind. Not surprisingly, Risse asserts that the only actual decision-making procedure for managing the earth's original resources and spaces that would plausibly result from a hypothetical original position of joint owners is IRBR – no less, and no more (pp. 121-122). No less: joint owners would agree that each has an inalienable, indefeasible moral right *unilaterally* to use the earth's original resources and spaces to satisfy her basic needs (without any other co-owner's consent). And no more: joint owners would not agree to (a) any collective decision-making procedure for distributing the remaining resources, nor to (b) any egalitarian principle, like the Rawlsian difference principle, constraining the other (non-collective decision-making) procedures that determine resource distribution. In other words, Risse asserts that even if Joint Ownership were correct, it would essentially lead to Risse's own view.

Both (a) and (b) seem wrong to me. It is essential to the contractualist thought experiment that the parties to the original position – in this case, the joint owners – each enjoy a veto over the outcome of the hypothetical procedure – in this case, over the actual decision-making procedure to be adopted. First, I see no reason to suppose that (a) joint owners in an original position would unanimously decide to reject all collective decision-making procedures for managing their joint property, e.g. *entirely* to delegate the actual management of their joint resources to original non-owners such as states. And Risse, unfortunately, provides no argument for why joint owners would do such a thing, *wholly* alienating their collective management rights to others.

Second, whatever reasons motivate parties in the domestic Rawlsian original position to adopt the difference principle would also, it seems to me, motivate the joint owners of the earth's original resources to afford themselves egalitarian protections in the case of the earth's resources. Risse asserts to the contrary that joint owners in an original position would simply endorse IRBR; nothing motivates them to adopt stronger, egalitarian principles because, he argues, joint owners do not care about morally arbitrary distributions. But this seems mistaken. Joint owners in an original position would care about the fairness of how joint property is distributed amongst themselves in part because, *qua* joint owners, they enjoy a status as joint equals: no joint owner is more of an owner than others. That would be one of the essential features of Joint Ownership inter-

preted in contractualist terms, as specifying a hypothetical decision-making procedure. Thus Risse's argument for why joint owners in an original position would not endorse anything more than IRBR just begs the question against Joint Ownership: his argument amounts to the assertion that we have no reason to model the original position as one involving joint owners. But that assertion is precisely what is in dispute here.

4. CONCLUSION

Risse's general approach is oriented towards finding principles for constraining the power of states (e.g. p. 137). He also wants to derive substantive, action-guiding normative conclusions from as minimal a set of assumptions as possible. I am sympathetic to this orientation and method. Yet constraining the power of states in the service of basic-needs satisfaction does not require one to use the inflated language of common ownership, nor to make even more inflated assumptions about human beings' claims against the non-human world. It just requires making claims, on behalf of individuals, against states and the conventional regimes of property that they coercively regulate. I take it that these claims arise from the constraints of justice on the coercive regulation of conventional property regimes. In my view, a conception of justice grounded in respecting the status of human beings as free and equal places at least two negative moral constraints on the state's exercise of political power, including its coercive regulation of property: that the state exercise its coercive power neither in a way that prevents some human beings from pursuing opportunities adequate to meet their basic material needs, nor in a way that functions to protect and entrench the structural sources of significant material inequality amongst human beings. To treat persons as free and equal while coercively exercising political power requires not using that power against individuals structurally to entrench absolute levels of *poverty* or relative material *inequality*. It is to Risse's credit that the "international pluralism" he defends in his book makes room for claims about inequality at the global level, even if they are not grounded in his claims about Common Ownership.

NOTES

- ¹ For comments, I am grateful to participants at the “Symposium sur la justice globale,” Montreal, December 10, 2012, and two anonymous referees.
- ² All in-parenthesis page numbers refer to Mathias Risse, *On Global Justice* (Princeton: Princeton University Press, 2012).
- ³ In Risse’s own language: “first, each person, independent of her actions, has a natural right to use original resources and spaces to satisfy her basic needs, and second, in conflicts with any further entitlements with respect to these resources, this natural right has priority” (p. 115). The claim that this is “entailed” by his premises is made on the same page.
- ⁴ 4 would entail 4’ on the assumptions that when Risse, in 4’, says that humans ought to have an equal opportunity to use original resources, he means that they have a moral right to such equal opportunity, and that each person’s moral right to use resources, in 4, is supposed to be an equal right and so includes the right to the equal opportunity to use resources.
- ⁵ Risse’s own labels are the “right-libertarian” and “left-libertarian” versions of No Ownership, but the reference to libertarianism is a red herring. Libertarians typically assert that there is at least one form of natural ownership, namely self-ownership, but proponents of No Ownership may very well reject all forms of natural ownership.
- ⁶ According to Honoré, the standard incidents of ownership include: the right to possess/recover, to use, to manage, to obtain the fruits/rents/profits, to alienate/consume, and to a relative level of security/immunity in these other incidents – where the right to manage includes the right to determine who else may use or not. A. M. Honoré, “Ownership,” in *Oxford Essays in Jurisprudence*, ed. A. G. Guest (Oxford: Oxford University Press, 1961).