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## Are property rights ever basic human rights?

### I

Stealing from someone is not as bad as torturing, killing or raping them. But is the difference between theft and these fundamental violations simply a difference in *degree* (of severity)? I start this paper by outlining several ways in which the moral grounds for property rights differ in *kind* from those for basic human rights, differences which underpin and explain the difference in severity. I go on in sections II, III and IV to ask whether, despite these differences, there might be some property rights that we should still classify as basic human rights.<sup>1</sup>

First, I have argued elsewhere that most property rights in wealthy societies cannot be individualistically justified. I defined individualistic justification thus:

A person P's right R is individualistically justified if and only if:

1. Some genuine feature F of P is of sufficient intrinsic importance on its own to constitute a powerful *pro tanto* reason in favour of P's holding a right that will protect, serve or in some other way ensure respect for F - and R is such a right.

2. This *pro tanto* reason is undefeated and hence R is justified [...]

The intuitive idea is that an individualistically justified right is justified ultimately by the great intrinsic importance of certain features of its holder, considered independently of their effect on other people.<sup>2</sup>

It is attractive to maintain that my basic human rights are individualistically justified – for example that my right not to be tortured is justified by the intrinsic importance of my not being tortured, considered independently of the value to others of my not being tortured.<sup>3</sup> But, I argued, at least most of the property rights of a moderately wealthy person cannot be justified in this way, because such property rights protect aspects of that individual person (e.g. that person's control over a car, or a pretty vase) that it is not plausible to see as sufficiently important on their own to justify rights.<sup>4</sup> For this reason, I concluded that most of the property rights of a moderately wealthy

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<sup>1</sup> In this essay, I take the philosopher's view of basic human rights as those rights that are justified by 'considerations about the fundamental well-being, or interests, of persons' (Meckled-García and Çali 2006, 13). Thus I would include the right not to be murdered as a basic human right, and would allow that something can qualify as a basic human right even if it is not recognised in international and regional human rights law. In Meckled-García and Çali's terminology, I am using the 'normative rights model' of basic human rights.

<sup>2</sup> Cruft 2006, 154-155.

<sup>3</sup> Raz's famous claim that "X has a right" if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty' makes *all* rights individualistically justified (Raz 1986, 166); later he modified this claim, allowing that some rights might be justified by interests of people other than their holders (Raz 1994, Ch. 3). I suggest that Raz's attraction to and subsequent rejection of an individualistic account of all rights reflects the appeal of individualism as an account of basic human rights.

<sup>4</sup> Even if we note that a person's property rights over their car protect their transportational freedom (which is surely a very important freedom), the *level* of freedom that a wealthy person's car provides is, I argued, not sufficiently important on its own to justify rights (Cruft 2006, 165-167).

person must be justified by what they do for the wider community, rather than simply by what they do for that person.

Secondly, most particular property rights of particular people are systemically justified, where this means that they are justified by the value of the whole property system of which they are a part, rather than by their specific value independent of their role in the system as a whole. Although the two can come apart, non-individualistic and systemic justification tend to go together. (For a case where they come apart we would need to find, e.g., a situation where the common good was best served by giving one person some specific right independently of the justification of wider systems of rights, or a situation where one person had such an important individual interest that this justified setting up a society-wide system of rights.) It is natural to regard basic human rights as justified independently of their value as part of a useful system.<sup>5</sup> For example, if my right that you not torture me existed in a world in which neither you nor anyone else held a similar right, my right would still be justified. Its value, considered independently of the value of the system in which it plays a role, is sufficient to justify it. By contrast, most of my specific property rights, while obviously beneficial to me, are not sufficiently valuable on their own (to me or others) to justify their existence: their justification is grounded in the value of the property system of which they are a part.

Thirdly, most property rights seem to be recognition-dependent in a way that basic human rights are not. That is, for most property rights it is doubtful that someone could genuinely hold them as rights if they secured absolutely no effect on other people. For example, suppose your parents bequeath their house to you but immediately following this bequest a major civil war breaks out, after which nobody but you knows about or remembers the bequest, and no restitution measures are instituted; other people live in 'your' house, you will not and cannot legally be compensated for this, and nobody will ever acknowledge your claim as legitimate in any respect. Under these conditions, it seems doubtful to me that you really hold property rights in the house, even though you would have held such rights if they had been recognised. By contrast, basic human rights seem recognition-independent: even if, say because I am a slave, my right not to be tortured or my right to political participation will never be recognised (even by future generations), I seem still to have these rights.<sup>6</sup>

Fourthly, we can infer from property rights' recognition-dependence that their justifying grounds must be at least partially instrumental. If my property rights cease to exist when they have no effect on other people whatsoever, then their justifying grounds – those ways in which they are valuable that make it the case that they exist – must be located at least partially in the values they secure *through their effects* on other people. This marks another contrast with basic human rights for, I have argued elsewhere, the non-instrumental value of basic human rights is sufficient to justify them. We can see this by reflecting on the case outlined at the end of the previous paragraph: even if my right not to be tortured goes wholly unrecognised, and will

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<sup>5</sup> This is not to deny that a *system* of basic human rights has distinctive value; I merely maintain that basic human rights would be justified whether or not they formed part of a system that had such value.

<sup>6</sup> Not everyone would agree, of course (e.g. Geuss 2001, 143-6). But this is a standard view (implicit, I would argue, in Pogge 2002, Raz 1986, Tasioulas 2007).

never be recognised by anyone in future, it still seems to be valuable and justified.<sup>7</sup> In my view (following Kamm), this is because the right gives me a specific kind of status, a status which it is valuable for me to have even when it fails to secure any results in the world.<sup>8</sup> In contrast, recognition-dependent property rights cannot be justified in this way, because if they were then they would not cease to exist when they fail to make a difference to the world. This is not to say that recognition-dependent property rights can only be instrumentally valuable: they might also be non-instrumentally valuable, but this value cannot on its own be their justifying ground.<sup>9</sup>

## II

These aspects of the character of the justification for most of a person's property rights – that their ground must be their value to the *wider group* of which the person is a member, that it must be the value of the property *system* as a whole to this wider group, and that this grounding value must be at least partially *instrumental* – distinguish a person's property rights from that person's basic human rights. It might seem to follow immediately that property rights need not be treated with the respect appropriate to basic human rights: thus one might infer that expropriating property to build communally useful roads is easily justifiable, that trade treaties favouring 'free markets' need not gain our support on principle but only when this would serve instrumental and communal goods, or perhaps that stealing from a wealthy person when one is destitute should not be a crime. But these conclusions are too hasty: they overlook various ways in which, despite the characteristics outlined in §I, property rights can share some of basic human rights' distinctive features. These ways that property rights can come close to basic human rights will occupy §§II, III and IV respectively.

First, and perhaps least interestingly, I see no reason to deny the possibility that *in specific contexts* particular property rights might be justified by their individualistic, their non-systemic, or their non-instrumental value, or by value which is both individualistic and non-systemic or non-systemic and non-instrumental etc. For example, consider someone who devotes their life to the flourishing of their garden. Maybe if the person's property rights over the garden have been essential to the protection of their labours, so that without the property rights the garden would have been ruined, and if the beauty of the garden is exceptionally great, then these property rights are non-systemically justified on the basis of their instrumental value: the rights are justified independently of their being part of a wider property system, simply because of their instrumental value in enabling the wonderful garden to be created. If we add that because the owner worked devotedly to create the garden, the *relationship* between the owner and their garden is non-instrumentally valuable, and we add further that this relationship is distinctively structured by the property rights the

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<sup>7</sup> For the full argument for this claim, see Cruft forthcoming 2010.

<sup>8</sup> Kamm 2007, Ch. 8; Cruft forthcoming 2010.

<sup>9</sup> Note that I claim merely that property rights' recognition-dependence entails that their justifying grounds must be at least *partially* instrumental. Their *non-instrumental* value (if they have any) might also play a role in justifying them: perhaps they are justified only when they secure both instrumental and non-instrumental goods. Their recognition-dependence entails simply that their non-instrumental value cannot justify them on its own.

person has over the garden, then maybe we can conclude that the owner's property rights over the garden are non-instrumentally justified: the rights are partially constitutive of a relationship of sufficient non-instrumental value to justify them. Perhaps we can fiddle with the example further to make it seem plausible that the gardener's property rights are also individualistically justified.

I do not rule out such possibilities. But they will not be the normal case. For even though most property rights are non-systemically and individualistically valuable (i.e. they secure something valuable for their holders whose value is independent of the value of the whole property system), and some might be non-instrumentally valuable, in most cases property rights are not *sufficiently* valuable in these ways for this value to justify them.<sup>10</sup> Furthermore, we cannot infer from the fact that in rare cases like the garden example above particular property rights are individualistically, non-systemically or non-instrumentally justified, to the conclusion that it is especially important to respect these particular property rights, just as it is especially important to respect basic human rights. For the great importance of respecting basic human rights is entailed by the great importance of their grounds (people's fundamental interests or freedoms, say)<sup>11</sup>, and the property rights in the garden case do not have such important grounds, even if they are individualistic, non-systemic and non-instrumental.

### III

There is a more interesting way in which property rights are akin to basic human rights, despite the differences outlined in §I: when someone violates my property rights, even trivially by painting graffiti on my wall or by stealing my garden gnomes, it feels like an *affront*, like a fundamental failure of respect. Someone who steals my gnomes seems to do more than offend against my interests in the gnomes, and also seems to do more than offend against the common goods of stability, efficiency, freedom etc. that justify most property rights in the first place; the gnome-thief also shows a lack of respect for me, a lack of respect that seems to be additional to the thief's offences against my interest in the gnomes and against the common good. Because these are *my established rights*, violating them seems to be an offence against me out of proportion to their value. And because of this, the fact that *my rights have been violated* seems sufficiently important on its own to justify requirements of apology, compensation and punishment, considered independently of the effects of such requirements on people other than me. This seems to be the case even when fairly trivial property rights are violated. Thus even if some non-individualistic good would not be well served by requiring the gnome thief to apologise, the thief is surely still under a stringent duty to apologise, a duty grounded simply in the importance of the affront to me that the violation of my property rights constitutes. But how can the

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<sup>10</sup> Cruft 2006.

<sup>11</sup> There is much debate about what exactly grounds basic human rights: fundamental interests (Raz 1986; Tasioulas 2007), basic needs (Pogge 2002), important freedoms (Sen 2004), central human capabilities (Nussbaum 2006), the autonomy that is central to personhood (Griffin 2008). My arguments do not require me to take a position within this debate, beyond maintaining that whatever the relevant grounds are, they provide an individualistic, non-systemic and non-instrumental justification for basic human rights.

violation of non-individualistically justified rights trigger individualistically justified compensatory requirements in this way?

In my view, the answer is that I – and everyone else – hold an individualistically justified *right to respect for whatever justified rights I happen to hold*. This includes an individualistically justified right to proportionate apology, compensation and punishment when any of my justified rights are violated. This is a basic human right that all bear. It embodies the fact that whenever I hold a right that is justified (be it on individualistic or non-individualistic grounds), violation of this right wrongs me; it constitutes a lack of respect for me. The fundamental importance of respecting me is sufficiently great that it justifies a right to respect for me, a right that is justified independently of whether it serves people other than me. As well as being individualistic, this right's justifying grounds are also non-systemic and non-instrumental: I hold this right to respect independently of whether it is part of a system of similar rights, and independently of its instrumental usefulness. These aspects of the right to respect – the right not to be wronged – reflect its fundamental non-instrumental importance.

Yet we might ask: why does respecting me require respecting *all* my justified rights, including those non-individualistically justified rights of mine whose grounds are what they do for others as well as me? I cannot offer a full answer here, but my suspicion is that my justified rights define the limits of my 'moral self', of what I am allowed to think of, in a certain extended sense, as 'me'. As Meir Dan-Cohen puts it in relation to ownership,

Ownership, as signalled by the application of a possessive pronoun to an object, consists in the permissible inclusion, on a sufficiently enduring, continuous, and exclusive basis, of that object within the scope of the personal pronouns as used by the putative owner.<sup>12</sup>

I suspect something like this is true of any rights I hold that are justified, not simply ownership rights. Just as painting graffiti on a barn I own in another continent counts as doing something *to me*, so does failing to hand in an essay on time in one of my courses. Both count as actions done to me even though my rights against graffiti and to timely receipt of the essay are justified on non-individualistic grounds. This is because in one important sense my self is defined by my justified rights. If one accepts this, then one has an explanation for why respect for me requires respect for all the rights I happen to have. And even if one doubts this explanation, it still seems intuitively attractive to maintain both that I have a right to respect for whatever justified rights I happen to hold, and that this right is itself individualistically, non-systemically and non-instrumentally justified.

If this is correct, it would suggest that *all* justified rights – not only property rights – will have something of the 'feel' of basic human rights, because violating any one of them will qualify as violating the individualistically, non-systemically and non-instrumentally justified right to respect. And this seems to be the case: the violation of non-individualistically justified rights that have nothing to do with property, such as lecturers' rights that students submit their essays on time, feels like a small affront to the right-holder, and the significance of this affront to the right-holder seems to be sufficiently important on its own to justify some requirement of apology and

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<sup>12</sup> Dan-Cohen 2001, 428-429, original emphasis removed.

punishment independently of whether such requirements serve people other than the right-holder.<sup>13</sup>

But there are further cases that cannot be explained by appeal to the *basic human right to respect for whatever justified rights one happens to hold*. Consider some property rights that are *unjustified*: suppose I own a vast amount of land, some of which would be extremely useful as a site for a railway station, and there is no plausible individualistic or non-individualistic justification for my ownership. Let us suppose the common good would be best served by the expropriation or violation of the relevant property rights, even bearing in mind the effect such violation would have on social stability. It looks here as if expropriation or violation of my property rights is wholly justified. But even here, where my rights are *unjustified*, simple expropriation or violation might have something of the feel of dishonesty. Jeremy Waldron describes such cases thus:

[T]here is a range of cases in which the condemnation of an open taking as dishonest does not depend on any judgment about the justification of the property right in question. One may withhold judgement on the latter issue, but still unequivocally condemn the taking as dishonest in the cases within this range. The existence of such a range of cases, I shall call, “*the normative resilience of property*”.<sup>14</sup>

My right to have my justified rights respected cannot explain why expropriating or violating *rights that might well be unjustified* feels like a dishonest affront. I surely do not hold a right to have all my rights respected, including those that are unjustified.

We should be careful not to give too much weight to the grievances of a wealthy landlord: perhaps the normative resilience of my unjustified ownership is a psychological phenomenon that lacks moral grounding. But while this might be part of the story, I think our uneasiness about the case in question can also be explained by the fact that there are good reasons for individuals and states to refrain from being willing to violate particular established rights whenever they think they are unjustified, reasons based on the risk of abuse that would arise if individuals and states felt able to do this.<sup>15</sup> This is compatible with individuals and states being allowed to violate established rights so long as either *they show, publicly, that such rights are unjustified*, or *the rights in question are so egregiously unjust that everybody should have understood immediately that they were unjustified* (as, I would claim, with the ownership of slaves). It rules out expropriations, violations or annulments that simply ignore or bypass established legal rights, but it allows them

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<sup>13</sup> This is not to deny that the interests of people other than the right-holder will also play a role in determining the shape of these requirements. In the essay case, students’ interests will clearly play a major role in determining the nature of the required punishment. But my claim is that when lecturers really do have a *justified right* that essays be handed in on time, it follows that when a late hand-in occurs this must be sufficient to trigger some requirements of apology or punishment independently of whether having any such requirements on this occasion serves people other than lecturers; the lack of respect shown to the right-holder is sufficient to trigger such requirements individualistically. This is compatible with the specifics of the required apology/punishment being determined by students’ interests.

<sup>14</sup> Waldron 2001, 12, emphasis in original.

<sup>15</sup> These are among the standard reasons that consequentialists give for respecting rights. Waldron follows Bentham in highlighting the costs of thwarted expectations (*ibid.*, 24), but it is unclear that the rights-based expectations of someone whose rights are *unjustified* should carry any moral weight. More important in justifying property’s normative resilience is the fear that allowing violation of *unjustified rights without requiring public explanation of such violation* will give states and individuals a freedom that is likely to lead to violation of *justified* rights.

when they are accompanied by a public demonstration that the relevant established rights are unjustified. Let me make clear that I do not intend that a ‘public explanation’ must involve actions made within legal or constitutional channels: illegal occupation of land by land rights campaigners might well be justifiable, on the account I am sketching here, so long as the occupiers do something to lay out the case for the injustice of the current legal allocation of property rights.

I have suggested that established rights’ normative resilience is justified by reasons to do with the risk of abuse that would accompany allowing individuals or states routinely to violate unjustified rights without publicly making their case against these rights. Do these reasons justify a *right* to have the grounds for violations or annulments of any of one’s established rights – other than those that are obviously unjustified – publicly explained? Is one *wronged* if one’s unjustified but established rights are violated without such a public explanation? For instance, is the wealthy landowner wronged if the state grabs his land to build a railway station, without offering any public explanation for this action? Certainly the state acts wrongly here (it should have offered an explanation) but does it wrong the landowner whose ownership was, after all, unjustified? I must confess that I am not sure. If there is a right in the offing here it will probably be a right that others, including the state, explain and offer reasons for their actions when these actions adversely affect the right-holder. But the scope of this right is limited: it seems unlikely that anyone is morally obliged to explain and offer reasons to slave-owners when they set slaves free (though it would no doubt be a good idea to offer such reasons). There is something, however, to the thought that when a right that is unjustified, but whose justification is *reasonably contested*, is annulled or violated by the state or others for good ends, then the right-holder has been wronged if the reasons for the annulment or violation, including an explanation of the rights’ unjustified status, are not made public. The scope of this *right that public explanation be offered for the annulment or violation of unjustified rights whose justification is reasonably contested* will reflect the vagueness of what counts as *reasonable* contestation.<sup>16</sup>

The right outlined in the previous paragraph is, I suspect, another basic human right: its ground – the importance to a person of there being public explanation offered for actions that contravene established conventions in a way that adversely affects that person, where the unjustified nature of these conventions is reasonably contested – seems sufficient on its own to justify a right for the person independently of considerations about the right’s effects on others; for any rational being the right would be justified independently of whether it was part of a system of similar rights borne by others; the right is, perhaps, justifiable independently of its instrumental usefulness.

I recognise that the arguments in this section, especially in the paragraph above, involve bald, bold claims, and I do not have space to offer a full defence here.<sup>17</sup> But

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<sup>16</sup> Note that although in this section I lump together *expropriating*, *annulling* and *violating* as ways in which an unjustified right can be ‘overridden’ as it were, it seems to me that the language of violation seems a little inappropriate here. If a right is genuinely unjustified, then it seems odd to describe contravening or overthrowing it as a ‘violation’: when I free your slaves it is doubtful that the term ‘violation’ is appropriate to describe my action even if I have contravened your established rights.

<sup>17</sup> Such a defence would require saying more about the importance of being offered reasons by agents whose actions affect one.

if they are correct, then we have identified two ways in which rights that are not basic human rights can, in a sense, partake of the flavour of these more important rights: first, whenever a justified right is violated a basic human right – to respect – is violated. And secondly, whenever an established right (justified or not), whose justification is reasonably contested, is violated without a public explanation, another basic human right is (arguably) violated. Even though property rights are not basic human rights, their violations can qualify as violations of such important rights in both these ways.

#### IV

There are perhaps more obvious ways in which property rights can seem to become basic human rights. First, many have argued, plausibly, that each person has a basic human right either *to have* or *not to be deprived of* secure access to human necessities: food, clothing, housing.<sup>18</sup> One might straightforwardly infer that each person's property rights (where they have them) over their food, clothing and housing are therefore basic human rights. But there is a distinction between (i) rights to secure access to food, clothes, housing and (ii) property rights over food, clothes, housing. Rights of type (i) could be fulfilled without giving people property rights: they could be fulfilled by supplying communally owned housing, or by building an abundance of easily accessible housing and declaring it all unowned; and by providing soup kitchens and clothes supplies. Or they could alternatively be fulfilled by giving each person strong property rights, but not property rights specifically in housing, food and clothes: instead, if each person was given property rights over other valuable things (e.g. land, vehicles, coal mines, money) in a quantity sufficient to create housing, food and clothes for that person through work and trade, then again this would secure everyone access to basic necessities.<sup>19</sup>

It might be possible to argue that in the contemporary global free market, the non-property route to fulfilling the human right to basic necessities (through communal provision) is not a live option. I rather doubt this, but for the remainder of this paragraph I will assume the argument is correct. Can we then conclude that people's property rights over their food, clothes and housing are basic human rights? No. In making this clear, it is helpful to distinguish between people who own *nothing but* enough food, clothes and housing to fulfil their basic necessities, people who own these things *and more*, and people who *do not even* own food, clothes and housing. For people in the first group, the argument implies that their property rights cannot be justifiably expropriated or violated for the sake of some worthwhile end without genuinely full compensation being provided, compensation that will ensure that they can purchase new food, clothes and housing after the expropriation, and that their access to these goods thereby remains secure. But this is not the same as according the first group's property rights over food, clothes and housing the status of basic human rights, for the latter cannot normally be justifiably violated for worthwhile

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<sup>18</sup> For the 'right to have' version of this claim, see Shue 1996, Caney 2006; for the 'right not to be deprived' version, see Pogge 2002.

<sup>19</sup> One might wonder how severely disabled people could use property rights in non-necessities in order to gain basic necessities: but they could do this through trade. They would need to be given extra property to reflect the greater needs of their disabled state (Otsuka 2003, 31-32).

ends even if excellent compensation is offered.<sup>20</sup> Regarding people in the second group, the argument implies that they have a basic human right to *enough* property to secure their access to food, clothes and housing through work or trade. But their specific property rights over their actual food, clothes and housing are not given a privileged status by the argument, so long as they own enough other things that could be worked or traded for food, clothes and housing if they lost their current rights over these necessities. Regarding people in the third group, the argument implies that they have a basic human right to be granted property rights over enough things to be able to secure their access to necessities: this could involve either the allocation of property over food, clothes and housing, or the allocation of property over goods workable and tradeable for these necessities.

Even though the argument considered in the previous paragraph does not make any specific property rights into basic human rights, it suggests that in the contemporary global free market the basic human right to necessities will entail that each person has a ‘meta-right’ to have some property rights (in particular, a meta-right to own enough to be able to secure basic necessities). Violating this meta-right will qualify as a basic rights violation, if the argument sketched in the previous paragraph is correct, for violating this meta-right will leave the victim with no market-based means of securing basic necessities, and the argument maintained that in the current climate market-based means offer the only realistic way of providing secure access to necessities.

Are there further, more direct grounds for the meta-right to own property, grounds that are independent of the current contingent success of capitalism? Hegelian theses might seem relevant here: that owning property is a necessary component of genuinely realising one’s will as an agent, that owning property is necessary for one to be recognised by as an agent by other agents.<sup>21</sup> If these claims are correct, then they could provide individualistic (and perhaps non-systemic and non-instrumental) grounds for the meta-right to own some property. For surely genuinely realising one’s will as an agent, and being recognised by other agents, are so important that they can justify rights for one independently of considerations about how such rights serve other people. I find it difficult to decide whether these arguments work only in our contemporary world in which property has become, contingently, so universal that non-property forms of realising one’s will and of being recognised are, arguably, hard to pursue. Even if the arguments work independently of the contemporary contingent dominance of property systems, it is important to notice that they establish as a basic human right only the *meta-right* to own some property: they do not thereby confer the status of basic human right on any particular property rights.

An additional pair of basic human rights with property-related implications are the rights to qualify as a full member of the moral community, and also to qualify as a full member of the particular political community governing the territory within which one lives. These, in my view, are among our most important basic human rights: full moral and political membership is so important for any given human being that it justifies rights for that individual independently of whether these rights serve others, independently of the rights’ place in a broader system of rights, and independently of

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<sup>20</sup> Consider a case where I torture you for some very important end, and offer you compensation afterwards; this cases wrongs you in a way that removing your property rights over subsistence goods but offering full compensation (e.g. financially) does not.

<sup>21</sup> Hegel 1991 [1821], §§41-70; Waldron 1988, Ch. 10.

the instrumental usefulness of these rights (either to the right-holder or to others). In a community in which property is central and prevalent, the importance of full membership clearly grounds a right *to be able* to own property, a right to have the status of a potential owner (someone to whom gifts can be given and with whom contracts can be made – and who, once they receive things, can then choose to transfer them in turn etc.).<sup>22</sup> This is one of the rights typically denied to slaves and serfs, and its denial is a notable part of the injustice they suffer. It is doubtful, however, that full membership will, in every possible type of society, require that one be able to own property. Societies in which nobody can own anything will not therefore be unable to accord their members full membership. Even certain societies in which some people can own things and others cannot will still be able to accord full membership to non-owners (e.g. the guardians do not seem to lack full membership of Plato's republic, despite their disability to own things). But in most contemporary societies ownership of property seems to play such a central part in all available social roles that full membership plausibly does require the normative ability to own things, the status of a potential owner. Denying certain people this status is a basic rights violation.

Do the basic human rights of full membership also require that modern individuals actually own something, as well as having the status of potential owners? The possibility of ascetic lives of denial that nonetheless involve full moral and political membership suggests a negative answer. Still, one might argue that full membership requires more than simply the status of potential owner: it also requires that one have a decent opportunity to be a genuine owner, so that any ascetic anti-ownership choices one makes are genuinely freely chosen. Anything less than a decent opportunity to own things, it might be claimed, leaves one as a less than full member of modern capitalist communities.<sup>23</sup> My response to these thoughts is to accept that someone who lacks a decent opportunity to own anything – despite having the legal status of a potential owner – has indeed had their basic human rights denied or violated in modern capitalist communities. But an explanation of this fact that focuses on how denying the person the opportunity to own involves denying them *full community membership* seems, to me, not to focus on the central issue of moral importance. Even if lacking ownership opportunities entails not being a full member of modern communities, this is ultimately because it entails either or both of *being unable to meet one's needs* and *being unable to attain a minimum level of freedom*. Being unable to attain these goods might well constitute or cause a lack of full membership, but a focus on membership does not seem to capture the core problem here, which is the inability to meet needs or attain freedom. Getting the focus correct returns us to the start of this section of the essay: denying someone the opportunity to own in modern capitalist societies involves violating the basic human right to necessities (and also violates the further basic human right to a minimal level of freedom). We saw in earlier paragraphs that this basic human right to necessities entails the meta-right actually to own something, and we have reached this claim again by considering how full membership requires the opportunity for ownership.

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<sup>22</sup> Note that this right – the right to be able to own property – is a Hohfeldian *liability*: the right is constituted by others having the Hohfeldian power to create new claims and powers for one (the claims and powers that constitute ownership). Few theorists accept that Hohfeldian liabilities can be rights, but this looks like a clear case (Hohfeld 1964 [1913 and 1917]; Cruft 2004, 358-359; Wellman 1985).

<sup>23</sup> See, for example, Dworkin 2002.

Theorists who have tried in book-length studies to do what I have tried to do in this short paper have tended to conclude that there is a disparate bunch of moral grounds for property rights, and that in deciding whether a particular government expropriation or private theft is justifiable, or in deciding whether to vote for a ‘free market’, we need to think about the complex nexus formed by these disparate justifying values.<sup>24</sup> I think this is correct, but I hope this paper shows how we can give some initial structure to the disparate ways that property rights can be valuable, and can interact with other rights. Most property rights differ from basic human rights in that they are non-individualistically, systemically and at least partially instrumentally justified (see §I). But property violations often seem akin to basic human rights violations, and the reasons why we think of property in this way are because:

- Some property rights in unusual contexts are individualistically, non-systemically and non-instrumentally justified (see §II).
- Whenever *any* justified right is violated or annulled without justification, this qualifies as a violation of the basic human right to respect (see §III).
- Whenever even an *unjustified* right is violated or annulled without public explanation, where its justification is reasonably contested, this arguably also violates a basic human right (see §III).
- The basic human right to necessities probably grounds a meta-right to own some property, at least in modern capitalist economies (see §IV) – and there might also be a Hegelian route to this meta-right.
- The basic human right to full membership in moral and political community also provides further grounds for the aforementioned meta-right, and also for the right to the status of a potential owner (see §IV).

In my view, the considerations that go furthest to explaining why property violations feel like violations of basic human rights are the first, second and third above. The final two considerations explain our outrage at situations in which people are condemned to destitution because they own nothing whatsoever, or are denied the opportunity or status to own, or have their only means of survival expropriated without compensation. But they do not so well explain our outrage when moderately wealthy people’s property rights are violated without compensation, or when people’s only means of survival are expropriated but compensation is offered. These cases can still (rightly) cause the type of outrage most naturally associated with the violation of basic human rights. I think the first three considerations explain and justify this outrage. Importantly, they do so without classifying property rights as themselves basic human rights.

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<sup>24</sup> See, e.g., Becker 1977, Munzer 1990, Harris 1996.

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