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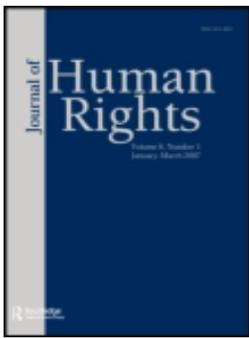


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Recommended Citation

Rhoda E. Howard-Hassmann (2013) Reconsidering the Right to Own Property, *Journal of Human Rights*, 12:2, 180-197, DOI: 10.1080/14754835.2013.784667

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To link to this article: <http://dx.doi.org/10.1080/14754835.2013.784667>



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Published online: 17 May 2013.



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Reconsidering the Right to Own Property

RHODA E. HOWARD-HASSMANN

This article considers whether there should be a separate international Covenant to elaborate on the human right to own property. Citing two contemporary cases—namely, the semi-starvation faced by many citizens of Zimbabwe and the shortage of food in Venezuela—I argue that a human right to own property protects the economic human rights to adequate food and freedom from hunger. The right to own property is also crucial to the economic development necessary to ensure that human beings can supply themselves with food and otherwise support themselves. As such, it is a strategic human right, a right that protects other rights. I also argue that the right to own property is an intrinsic human right, valuable in itself as a component of human dignity. The article ends with a brief proposal for an elaborated Covenant on the human right to own property.

Introduction

This article considers whether there should be a separate international Covenant to elaborate on the human right to own property, which has languished since its inclusion in the 1948 Universal Declaration of Human Rights (UDHR).

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Dr. Howard-Hassmann is grateful to Kwan-Sen Wen and Elizabeth Baisley for their research assistance and to Richard Hiskes for his comments on an earlier draft. She also thanks the Canada Research Chairs Programme for the time and funds necessary to write the article and Wilfrid Laurier University for nominating her for her Chair.

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Focusing on two contemporary cases—namely, the situation of semi-starvation faced by many citizens of Zimbabwe and the shortage of food in Venezuela—I argue that a human right to own property protects the economic human rights to adequate food and freedom from hunger found in the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 11, 1 and 2. The right to own property is also crucial to the economic development necessary to ensure that human beings can supply themselves with food and otherwise support themselves. As such, it is a strategic human right, a right that protects other rights. I also argue that the right to own property is an intrinsic human right, valuable in itself as a component of human dignity. The article ends with a brief proposal for an elaborated Covenant on the human right to own property.

The Human Right to Own Property

Article 17 of the UDHR states:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

There was, however, much discussion among the drafters of the UDHR about this right. They disagreed over whether property should refer only to personal property and if so, what personal property meant, as opposed to a more expansive meaning of property, including shares in corporations (Morsink 1999: 139–146). The section “alone or in association with others” was a compromise to permit both capitalist forms of joint ownership and Soviet forms of collective ownership (Morsink 1999: 146–152). Eventually, the right to own property was introduced into the UDHR.

Nevertheless, the right to own property was not included in the two subsequent international human rights Covenants, the 1966 International Covenant on Civil and Political Rights (ICCPR) and the ICESCR, which introduced into international law the declaratory provisions of the UDHR. Both Covenants prohibit discrimination on the basis, *inter alia*, of property (ICCPR, Article 2(1), 24(1), 26; ICESCR, Article 2(2)), but they do not include the actual right to own property. Although it is often thought that the omission of a right to own property from these Covenants was a result of opposition from the communist bloc, according to Schabas there was no capitalist-socialist split over this right. Rather, there was disagreement between those who proposed a right to own any form of property and those who proposed a right only to own personal property, similar to the discussion that preceded the formulation of the UDHR. There was also much discussion when the two Covenants were being drafted about what would constitute fair compensation, in the event that a state were to deprive a citizen of property in a nonarbitrary manner, as permitted by UDHR Article 17(2) (Schabas 1991).

Several human rights documents state that individuals are entitled to enjoy all their human rights without discrimination related to property. These include the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Article 15(2); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 5; and the Convention on the Rights of the Child, Article 2(1). With regard to property rights per se, regardless of discrimination, refugees and displaced persons are guaranteed the right to return of their property (Sprankling 2012: 28). Among regional documents, the 1948 American Declaration of the Rights and Duties of Man, Article 23 guarantees “[the] right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.” The African Charter on Human and People’s Rights, Article 14, states that “The right to property shall

be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.” Protocol Number 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1, also protects the right to own property but permits dispossession subject to the rule of law, and the right of the state to control the use of property and to tax it. In addition, the various human rights committees of the United Nations have issued rulings such as on the right to housing that tangentially might be taken to intersect with the right to own property (Weissbrodt and de la Vega 2007: 92–93).

Despite these various clauses in international and regional documents, there is no elaborated international Covenant covering all aspects of the right to own or enjoy property. In the late 1980s, the United States suggested further protection of this right in the context of discussion of the right to development at the UN. Its initiative met with opposition from the Eastern bloc, but after the fall of the Berlin Wall in 1989 this opposition abated (van Banning 2001: 52–59). The UN General Assembly then passed a Resolution defending the right to own property, which it acknowledged “contributes to the development of individual liberty and initiative.” This Resolution called for further measures to protect:

- (a) Personal property, including the residence of one’s self and one’s family;
- (b) Economically productive property, including property associated with agriculture, commerce and industry. (United Nations General Assembly 1990: para. 3)

The Resolution was passed without a vote, but it did not generate much further interest, leaving the right to own property in abeyance.

That the human right to own property is still not deeply entrenched in international human rights law is perhaps because many people see it as a right of the rich. Philosophically speaking, private property has frequently been treated with disdain, as an indication of all that is worst in human society. From Proudhon’s “property is theft” (Proudhon 1840) to Marx and Engels’ call for the abolition of private property (Marx and Engels 1888/1967: 96) to Macpherson’s (1962: 3) contention that property is a characteristic of possessive individualism, morality seems to condemn private property. As one contemporary critic puts it, “Property rights necessarily generate violent, and oftentimes lethal, processes of dispossession” (Andreasson 2006: 3). Much accumulation of private property is indeed accomplished by force, often used against indigenous peoples, peasants, inhabitants of urban slums, or women. The question then becomes whether the best solution to this problem of violent accumulation is to abolish the concept of private property altogether or to protect the property rights of these vulnerable populations. I contend that it is better to protect property as a human right than to abolish property rights.

The aversion to the principle of property ownership as a human right may also stem from aversion to private as against communal use of property. This aversion stems from a long tradition that maintains that “God intended the world for the use of all men in common; only greed and avarice produce an exclusive right to property” (Herbert 2004: 59). Thus, any private acquisition of property or any inequality in property undermines everyone’s right to use what should be common property as they need it, but not to acquire what they do not need. John Locke, while defending private property, argued that one should not have more property than one could actually use and that one should not accumulate so much property that others were deprived of its use. “As much land as a man tills, plants, improves, cultivates, and can use the product of, so much [only] is his property” (Locke 1995: 398).

Locke, however, also argued that the essential aspect of political society was to preserve property (1995: 401); this key argument is fundamental to the libertarian

perspective on property rights. In this perspective, “Our individual persons and pursuits are what we have, and the general principle of liberty protects us in being the persons we are, doing what we want to do, and thus acquiring what we can and want to acquire” (Narveson 2010: 111). Property is what grounds other rights and enables the individual to act as a free agent. For example, Levy maintains that “Free speech is of little value to a propertyless person” (Levy 1995: 26); only property can enable the individual to “make independent decisions and choices because he [is] not beholden to anyone; he ha[s] no need to be subservient” (Levy 1995: 18).

My own preliminary defense of the human right to own property is grounded in the strategic and intrinsic values of the right. Strategically, the right to own property helps people to realize their economic human rights, such as freedom from hunger, and also assists in development. Intrinsically, everyone needs the right to own property in order to preserve their human dignity. Before elaborating on these arguments, I present below two illustrations of the relationship between deprivation of private property and malnourishment.

Deprivation of Property and Malnourishment

Zimbabwe 2000–2012: Malnutrition by Expropriation

The citizens of Zimbabwe suffered from severe malnutrition during the first decade of the twenty-first century, relying heavily on the World Food Program and other international agencies for food. This situation was caused by the decision by Zimbabwe’s President since 1980, Robert Mugabe, to deprive the country’s large land owners—or at least, the vast majority of them, who were white—of their land. This deprivation took place without the rule of law and in violation of Zimbabweans’ original constitutional right (Chapter III, 16) to protection against deprivation of property (Gubbay 1997: 230). So-called veterans of the 1972–1979 war of independence against white rule (many of them actually too young to have fought in the war) engaged in violent land invasions of white-owned farms. The land that white owners lost was supposed to be redistributed to small-scale black peasant farmers, but much of it was given to Mugabe’s family members and allies, many of whom did not farm the land (Howard-Hassmann 2010: 900).

The Zimbabwean Supreme Court ruled in 2001 that the expropriation of white-owned farms was illegal, but Mugabe ignored the ruling (Richardson 2005: 542). In 2007, 79 white land owners took their case against this violent expropriation to the Southern African Development Community (SADC) Tribunal. This Tribunal ruled that the white landowners had been victims of racial discrimination and that the state had failed to pay compensation, as it was obliged to do: Mugabe ignored the ruling (Naldi 2009). The Tribunal’s ruling did not directly address the right to own property, however, and in any case SADC’s reaction in June 2011 was to dissolve the tribunal for another year (after previously having suspended it for six months) rather than force Zimbabwe to uphold the ruling in favor of white farmers (Bell 2011). Moreover, the Zimbabwean High Court, not as independent as it had been in 2001, ruled in 2010 that the SADC Tribunal’s decision was not enforceable in Zimbabwe (Bell 2010). Violence against white farmers continued in 2010 and 2011 (Newsday 2011).

The result of this land redistribution was that much previously productive land became unproductive, providing neither for the internal urban food market nor for export. Moreover, 1.5 to 2 million black farm workers and their families were estimated to have worked and lived on the white-owned farms (Howard-Hassmann 2010: 899–900). When the owners were dispossessed, the workers found themselves without livelihood: only 1 percent of “resettled” black farmers (those who took over the expropriated land from whites) were

estimated to have formerly been farm workers (Hellum and Derman 2004: 1795). This displacement of farm workers may also have been deliberate, as many voted for the opposition political party, the Movement for Democratic Change, against Mugabe's ZANU-PF (Zimbabwe African National Union-Patriotic Front) (Hill 2005: 78). Justice for Agriculture, an organization defending the interests of white farmers, estimated that as many as 500,000 displaced farm workers and their dependents had died of disease and starvation since their expulsion from white-owned farms (Godwin 2010: 31; 2012).

Nor were the effects of the expropriations confined to white farmers and their workers. Peasants living in "communal" areas were also adversely affected. The decision to violently expropriate white farmers caused immediate deterioration in the Zimbabwean economy. So severe was the economic deterioration that the government could no longer continue to subsidize agricultural inputs such as fertilizer; without fertilizer, there was a downward spiral in the amount of crops communal farmers could produce. Many black small farmers reverted to subsistence from commercial agriculture (Richardson 2005: 556, 553).

In 2005, Mugabe also decided to "clean up" urban slums, depriving about 700,000 urban Zimbabweans of their homes and businesses, expelling them from cities, and ultimately compromising their livelihoods, and therefore the nutritional intake, of about 2.4 million people (Potts 2006: 276). In 2010, Mugabe embarked upon an indigenization campaign, by which black Zimbabweans would take over industrial, financial, mining, and other properties owned by foreigners (Cropley 2010). This further eroded the fragile Zimbabwean economy, as investor trust was undermined by the possibility of indigenization and the capricious ways in which it appeared to be proceeding. For example, Nestlé, a food multinational, was seemingly punished for not buying inferior milk from farms owned by Mugabe and his wife (Macheka 2011). In 2011, Zimbabwe was ranked 128th of 129 countries in the category "protection of physical property rights," in the International Property Rights Index (Jackson 2011: 28).

However, it did appear that in at least one region of the country, Masvingo province, land was redistributed in such a way that previously landless farmers did benefit. About a million people were settled on land expropriated from white farmers, among whom some managed to cultivate both subsistence and market crops, despite the difficulties of the deteriorated economy. This suggested some hope for economic progress after the land seizures ended, assuming that the government adopted sensible farm support policies such as making sure that the new occupiers received secure land tenure and supplying inputs such as fertilizers and seeds (Scoones et al. 2010). One may still question, however, whether the possibly positive long-run outcome of land redistribution justifies the 12 years of intense national suffering that coincided with it. Orderly land redistribution in conformity with the rule of law, in which the state could have purchased the land from white owners on a willing-seller-willing-buyer basis, might have had the same outcome at a much lower price. Meanwhile, the World Food Program estimated one million Zimbabweans would need food aid during the first few months of 2012 (World Food Programme 2011).

Venezuela 1998–Present: An Emerging Food Catastrophe?

From 1999 until the time of writing of this essay in early 2012, Hugo Chávez was President of Venezuela. Chávez came to and remained in power on the basis of a populist platform, relying for support on the "people" plus the military, from the latter of which he himself had emerged (Kornblith 2006: 311). His populist platform rejected liberal democracy and property rights, in favor of arbitrary rule, nationalizations, and redistribution of wealth. Chávez attempted to implement "twenty-first century socialism" to rein in the excesses of what he

considered to be “savage capitalism” (Myers 2008: 285, 319). From 2001 on, he issued various decrees that “raised doubts about the protection of private property” in Venezuela (Kelly and Palma 2004: 225), despite the guarantee of the right to property in Article 115 of the Venezuelan Constitution, “The right of property is guaranteed” (Bolivarian Republic of Venezuela 2009).

Scholarly evaluations of Chávez’s record as president are mixed; some focus on the good he did for Venezuela’s poor, while others emphasize the harm he caused to Venezuela’s economy. As an example of the former, Weisbrot and Sandoval maintain that at least until 2006, Chávez greatly increased social spending on food. Almost 16,000 stores throughout Venezuela offered subsidized food; there were also soup kitchens and special food distributions for the extremely poor (Weisbrot and Sandoval 2007: 8). However, they also note that “In recent months [in 2007] there have been reports of shortages of foods such as beef, sugar, corn oil, milk, chicken and eggs.” They attribute these shortages to a combination of price controls and the rapid growth of consumption, along with some hoarding of goods. They maintain, however, that the black market could ameliorate some of the food shortages, and in any event, the government would easily be able to mitigate the problem (Weisbrot and Sandoval 2007: 16).

By contrast, Kelly and Palma pointed out in 2004 that poverty had increased substantially in Venezuela, affecting more than 70 percent of households in 2003 (Kelly and Palma 2004: 227). Supporting their point of view, Francisco Rodriguez argued in 2008 that “neither official statistics nor independent estimates show any evidence that Chávez has reoriented state priorities to benefit the poor.” Rather, he argued, no significant indicators showed any progress beyond what would be normal in the midst of an oil boom, and basic foodstuffs were increasingly scarce (Rodriguez 2008).

It appears that during the early years of his rule, Chávez was able to use Venezuela’s enormous oil earnings to provide many needed goods to the poor, including state-subsidized food. However, by 2007, falling oil prices meant that he was unable to subsidize Venezuelan consumers as completely as they had become accustomed to. In desperation, Chávez began to blame the market economy, claiming that price gougers and hoarders were responsible for the high price of food. Increasingly, he used the slogan “expropiese!” (“expropriate it”), proposing that expropriations would release food supplies and lower the price of food (Grant 2010). But the opposite occurred: Faced with price controls and threats to imprison those who violated them (Romero 2007), private businesspeople withdrew from food production and distribution.

Unsurprisingly, the government had to spend more money on food imports as local production shrank (Ellsworth 2009). In desperation, Chavez closed down hundreds of stores for “speculation” in early 2010 and seized a French supermarket chain (Economist 2010a: 46); in May 2010 he detained about 40 butchers for “speculation” (Sanchez 2010). Nor did the state properly manage food imports: In June 2010 the government admitted that 30,000 tons of food was rotting on the docks, although opposition media claimed the figure was 75,000 tons (Economist 2010b: 43). Reports in 2010 and 2011 of mismanagement of food production, distribution, and imports, as well as of threatened and actual takeovers of farms, ranches, and factories are too numerous to summarize here. In late 2010, however, the national legislature passed an “enabling law” allowing Chávez to rule by decree for 18 months until the next election in 2012 (Economist 2011: 31); thus, he could continue his program of expropriations unhindered for another 18 months.

It seemed Chávez had some justification in attempting to redistribute land; in 2001, it was estimated that one percent of farms occupied 46 percent of the arable land, despite

40 years of prior land reform (Economist 2001). The means he chose, however, were extra-legal and arbitrary, causing chaos in the farming and ranching sectors. The Venezuelan cattle ranchers' federation reported that 139 farms were invaded by 2001, although the government claimed the figure was an exaggeration (Economist 2001). By 2010, the government had reportedly seized five million acres of farmland (James 2010).

Chávez also encouraged land invasions, as Mugabe had done. In late 2011, the Venezuelan Supreme Court ruled that it was not necessary to enforce criminal code sanctions against people occupying private land, arguing that "above private rights are those rights for the common good destined to the production of food or other products for human consumption" (MercoPress 2011). Yet, both production of food for the internal market and food exports declined drastically because of land expropriations and insecure land tenure, while food imports increased to supply the unfulfilled local demand. In 2011, Venezuela was ranked 129th of 129 countries in the category "protection of physical property rights," in the International Property Rights Index (Jackson 2011: 28).

A Human Right to Own Property?

Both Zimbabwe and Venezuela are examples of failed democracies that deteriorated into dictatorship and arbitrary rule. Functioning, multiparty democracies do not appear to be at risk of state-induced malnutrition or starvation (Sen 1999: 178). Such democracies, however, also protect property rights, although they do so as a legal, not a human, right. Again, the question becomes whether it is necessary to protect ownership of property as a human right, or whether the legal right to own property is sufficient to protect not only the interests of property owners but also the interests of society as a whole.

One way to decide whether ownership of property should be a human as opposed to a legal right is to investigate whether it is merely strategic to the objective of protecting other human rights or whether it is intrinsically valuable as a human right. I define strategic rights as rights that are needed so that other human rights, such as the right to food, can be protected. By contrast, I define intrinsic rights as human rights that are central to human dignity, even if they have no strategic function. If ownership of property is merely strategic, perhaps it is sufficient to protect it in law but not to declare it a human right, but if it is intrinsic to human dignity, then perhaps it should be a human right.

Property as a Strategic Right

One might argue that the right to own property is merely a strategic right, allowing its possessor to more easily enjoy other human rights. Shue argues, for example, that subsistence is a basic human right (Shue 1980: 22–29); the right to own property assists individuals to enjoy their subsistence rights, either directly by cultivating food on their own land or indirectly by otherwise providing income from property that they can use to purchase food.

The right to own property is also strategic because it contributes to economic growth and development. All rights-protective societies have market economies based on private property: "capitalism is the only economic system that has so far been found to be compatible with the relatively effective protection of human rights" (Freeman 2000: 44). Yet, the 1986 United Nations' Declaration on the Right to Development contains no reference to the individual human right to own property and neither did the 1974 World Food Programme's Universal Declaration on the Eradication of Hunger and Malnutrition. This might be a consequence of the prejudice at the time among both Socialist Bloc and underdeveloped states against private property and capitalism. In their view, the right to own property was

merely a right of the rich: They believed that there were paths to growth that did not require market economies, and that socialized or state collective property-ownership would obviate any need for the individual right to own property.

The poor as well as the rich, however, do need the right to own property; without such a right, their use of property is insecure and they cannot invest in it to increase their wealth. Moreover, the poor could contribute to development if their property were secure. De Soto argues that the poor in the Third World and former socialist countries collectively possess enormous wealth, but that this wealth is dead capital that cannot promote development because the poor do not possess legal property rights. Were they incorporated into the formal legal economy, de Soto argues, they could use their properties to obtain mortgages and credit, they would be able to expand their business and perhaps sell shares, they would have addresses that would entitle them to municipal services, and many other advantages. Had they such rights, they would possess more money to enable them to purchase food, housing, education, and health care, that is, to realize their economic human rights. Instead, the poor are subject to “legal apartheid” and do not possess what de Soto calls a “meta-right,” the right to have property rights (De Soto 2000: 158), as in the case of the expelled urban dwellers of Zimbabwe. This meta-right is the human right to own property.

De Soto’s argument underpins attempts in many parts of the world to vest property rights even in the smallest, most peripheral businesses found in urban slums. The 2008 Commission on Legal Empowerment, for example, insists on the necessity to make sure that everyone has the legal existence and documents to assure one’s property rights, through property titling (Commission on Legal Empowerment of the Poor 2008: 6–7). Similarly, the World Bank lists many advantages of property titling. The more secure the property owner, the more likely she is to be able to obtain credit and invest in her property. Indeed, a study in Peru showed that the more secure ownership of land was, the more time an individual could work outside the home, as she would not need to spend that time guarding her property (World Bank 2004: 81).

Legal ownership of property also protects vulnerable social groups. Indigenous peoples possess “the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and are supposed to be protected from dispossession of, or forcible removal from, such lands, according to the 2007 Declaration on the Rights of Indigenous Peoples (Articles 8, 2(b), 26). Yet, absence of formal title to their land opens opportunities for the state, settlers, or capitalists to seize it. Much frontier settlement and colonial exploitation is rooted in the expropriation of traditionally occupied, but not formally owned, land from indigenous peoples, as in Brazil (Anonymous [a group of Brazilian anthropologists] 1985). In 1997, only about 10 percent of the land in the Amazon rain forest was covered by property titles (De Soto 2000: 85), making it easy for settlers, miners, and the government to seize land traditionally used by indigenous peoples.

Even when land seizure from indigenous peoples is no longer a concern, absence of formal title renders investment difficult and contributes to low levels of development. This is a concern, for example, among Canadian indigenous peoples who often do not possess clear title to the land they inhabit. It is also a concern because without formal property rights, some Canadian indigenous individuals are at the mercy of nepotistic or politically motivated collective decision makers, who may undermine individuals’ effort to build homes, to farm, or to invest in businesses on the land they occupy (Flanagan and Alcantara 2004; Alcantara 2007).

Peasants—whether indigenous or not—also risk both private land invasions and expropriation of their lands by governments. Without clear title and legal resources, they can do little to resist such incursions. This is why the right to own property is included

in the emerging movement for an international declaration of peasants' rights (Edelman and James 2011: 86). If a peasant's land is securely his own, he can feed himself and his family in normal times, only relying on the state or other agencies in emergencies. If his property rights are not secure, his land can be forcibly seized by the state or by local elites, as frequently happens in sub-Saharan Africa. Members of political and economic elites in Namibia, for example, fence off tracts of communal land for their own use and are able to do so in part because traditional users of communal property do not possess formal title to their lands (Odendaal 2011).

Similarly, women's vulnerability to exploitation and abuse by men is rooted in part in their lack of property rights. In many precapitalist societies, traditional law gave women defined rights to use the land, from which they were expected to support themselves and their children. However, as capitalism spread, male family heads and village elders accumulated and registered land in their own names. Cash-crop agriculture encouraged men to take over land from women in order to produce for a profit (Howard 1986: 190). Women are also disadvantaged in the current practice of transnational land deals ("land grabs") that fail to take account of the interests of those losing the land before it is sold to outsiders (Wisborg 2011). In Uganda in 2011, women lost their banana trees and cassava plants when 22,500 people were evicted to make way for a British timber company (Celsias 2011).

Lack of property rights for women can also work against them in cases of divorce or widowhood. In Uganda, traditional "customary" law, imported colonial law, and Islamic law all discriminate against women (Kafumbe 2010). In contemporary Guadalajara, Mexico, women also have a "secondary relationship to property" especially in marriage, divorce, and inheritance (Varley 2010: 1). Indigenous women are also sometimes subject to legal systems that deny them property rights or discriminate against them in marriage and divorce: In Canada, indigenous women living on reserves are often subject to rules that deny them the property rights that all other Canadian women have in cases of marriage breakdown (Alcantara 2006). Many more such examples could be found. Thus, feminist analysts otherwise skeptical of the role that capitalism or its current international manifestation, globalization, can play in protecting human rights nevertheless advocate inheritance and private property rights for women (Reilly 2009: 112, 125). Indeed, women's demand for the right to own property confirms Levy's proposition, cited above, that property relieves its holder of the necessity to be subservient to others.

The above analysis suggests that the right to own property has strong strategic value. Property titling helps the poor in general and vulnerable groups in particular to use their land, homes, and businesses to support themselves. Nevertheless, perhaps it is better to consider the right to own property as a social institution that can facilitate the enjoyment of human rights, rather than a human right in and of itself. Many social institutions are necessary to protect, to promote, and to fulfill human rights. For example, human rights cannot be realized without a functioning government, nor can they be protected without a trained, uncorrupt police force that eschews torture. But social institutions that are strategically valuable to human rights are not necessarily considered human rights themselves; we do not have a human right to a government or to a police force. If property is merely a useful social institution, perhaps it is sufficient for it to have status as a legal right, despite its inclusion in the UDHR.

Property as an Intrinsic Right

The right to own property may be more than a strategic human right; it may also be an intrinsic human right, necessary to the preservation of human dignity. In its Preamble, the

UDHR roots all human rights in human dignity in the famous phrase, “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, peace and justice in the world.” At one point in the discussion of the right to private property, the drafters of the UDHR voted to adopt a version that explicitly linked it with dignity: “Everyone has the right to own such property as meets the essential needs of decent living, that helps to maintain the dignity of the individual and of the home, and shall not be arbitrarily deprived of it” (Morsink 1999: 145). The American Declaration of the Rights and Duties of Man notes the relevance of property to human dignity in its Article 23, which states “Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.”

As discussed above, property ownership contributes to the capacity to support oneself; this capacity, in turn, helps protect human dignity. While the state is obliged to fulfill economic human rights such as adequate food when individuals cannot support themselves, reliance on it can be demeaning, even when eventually the state can and does provide enough resources for minimal subsistence. Citizens are obliged to conform to the state’s conditions for assistance, often having to endure intrusive questions and investigations by bureaucrats before such assistance is forthcoming. Moreover, many governments lack both the physical and the institutional resources to support the poor, who are then left reliant on family, charity, or indeed street begging to fulfill their subsistence needs. The more the poor as well as the rich can support themselves, the more their sense of dignity is enhanced.

Locke’s discussion of property created through labor supports the argument that dignity is enhanced through property. Locke argued that “every man has a *property* in his own person . . . The *labor* of his body and the *work* of his hands . . . are properly his” (Locke 1995: 397, emphasis in original). He continued, “[man] hath by nature a power . . . to preserve his property—that is, his life, liberty and estate—against the injuries and attempts of other men” (Locke 1995: 399). Thus, according to Locke, it is contrary to nature to deprive an individual of that which he has created with his own labor; one has a human right to that which one has created through the work of his own hands. Without resorting to arguments about natural law, one can agree that dignity is enhanced when individuals create their own property through their own labor, thus enjoying the ability to support themselves through their own work.

Another aspect of human dignity not mentioned when the core human rights documents were formulated is the right to social recognition. Individuals should be recognized by others as valuable in their own right, regardless of their origins, their various collective attributes (such as race, ethnicity, gender, or sexual orientation), or their personal choices of how to live their lives (Taylor 1994: 25–73). An individual’s identity is a core aspect of her being; at the same time, however, identity is fluid and is often self-created or re-created. Identities are bound up with personal property, such as one’s clothing, furnishings, and home. Who an individual is depends in part on how she lives and on the objects she accumulates around herself. Even tiny children identify themselves in part by stressing what is theirs, what appertains to them, not to other people. Without personal property, it may be asserted, an individual is not fully human.

For many people, land is a fundamental aspect of identity. Although it is common to discuss the attachment of indigenous peoples to their land, one can equally discuss the attachment of peasants and farmers to the land they occupy or own. And even those who are not farmers may well experience a sense of attachment to the land on which their home is built and the neighborhood in which they live. Both the natural and the built environments have social and emotional meanings. Just as we would not assume that indigenous peoples’

attachment to their land is solely a result of its utilitarian meaning, so we should not assume that their small plots of land, their homes, and their personal possessions have merely utilitarian meaning for nonindigenous individuals. For those fortunate enough to own property in land or housing, it is part of their identity; thus, its protection via the human right to own property constitutes protection of their human dignity.

The right to own property is also an essential aspect of the right to privacy, as enunciated in Article 12 of the UDHR: “No one shall be subjected to arbitrary interference with his privacy, family, *home* or correspondence” (United Nations General Assembly 1948, emphasis added). Privacy includes the right to choose, within one’s means, how one will live. Private property means an individual may build or acquire a home with some assurance that if she pays for it, it will be hers; with this assurance comes the necessary stability to invest in that home; a stability that applies as much to the less as to the more well-off. Private property also means the right to choose the objects among which one wishes to live one’s life, without instruction from outsiders. Respect for private property, argues Machan, is a “precondition for . . . [individuals’] flourishing” (Machan 2000: 8): Individuals have a right to choose how they will live, and to have, in effect, a “sphere of sovereignty” over their lives. Individuals lack agency if they are always obliged to ask a higher authority—whether it be the state, the community, or the family—if they can acquire or use an item, as occurred under extreme Communist systems such as Maoist China (Machan 2000: 9).

Without the human right to own property, moreover, the family loses some of its meaning. The family is a social unit protected by the UDHR in Article 16(3) that states “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (United Nations General Assembly 1948). Families are transgenerational entities, and the human tendency to accumulate property in order to pass it down to younger generations in a family may well be universal. The form of the family varies, as do the rules about who is considered a legitimate heir; hence, for example, disputes in Africa about whether wives can inherit and disputes in Muslim societies about whether daughters may inherit as much as sons. But in almost all societies, there is an assumption that continuity of the family implies retention of its accumulated property. Such family property also has a strategic value. It reduces reliance on the state or other authorities by helping support those who cannot support themselves, such as the elderly, children, the disabled, and those whose principal obligations are to care for others.

Cruft argues that property also facilitates civic engagement. By providing a zone of noninterference by the state, he argues, property helps the individual to act as an agent in the public realm, that is, to have “full membership of the moral community” (Cruft 2010: 150). There may be some validity to Cruft’s position. Citizens may be more willing to enter public life if they know that the state cannot confiscate their property if they offend their rulers. Those who are confident that in the event of difficulties in public life they can retreat to their private domain may be more likely to participate in public affairs than those who have no such confidence.

Conversely, an argument against private property is that it promotes and entrenches inequality. For example, blacks and whites at the same income and educational levels in the United States have radically different life outcomes in part because whites have accumulated far more wealth from their ancestors than have blacks (Feagin and O’Brien 1999: 417–421). There is no human right to material equality in international law; there is only equality of legal and political status. Nevertheless, there are good arguments for reducing material inequality, ranging from the social and political disenfranchisement suffered by the extremely poor to the negative development outcomes in societies in which

inequality is so severe that there is hardly any market for consumer goods. But equality based on abolition of private property undermines not only social individuality and family relations and continuity but also individuals' capacities to support themselves without reliance on the state. Redistribution of wealth via taxation is a better option than abolition of the human right to own property.

A “Negative” or “Positive” Right?

If ownership of property should be a human right, the question arises whether it should be negative or positive. Generally speaking, “negative” human rights are assumed to be those that require state forbearance, while “positive” human rights require active fulfillment by the state. Thus, for example, the right not to be tortured is thought to be negative, in the sense that the state can simply forbid torture, while the right to food is thought to be positive, in the sense that the state must supply food to those who cannot supply it for themselves. This is a simplistic distinction, however; the right not to be tortured also requires that the state invest resources in training its police forces, while the right to food also requires that the state forbear from dispossessing food producers of their property, as in Zimbabwe and Venezuela.

Nevertheless, the right to own property does raise the question of forbearance versus fulfillment. Above, I defend the rights of individuals to protection of their property from state expropriation. In this sense, the right to own property is a “negative” right; the state must forbear from confiscatory activity. But some might argue that if there is a right to own property, then it is the duty of the state to assure that every individual has some (Ajzenstat 2011), that is, that it has a duty of positive fulfillment of individuals' right to own property. Further questions arise, such as the minimum amount of property that an individual should have. The “positive” principles required to assure that every individual owns property would differ from the normal “negative” principles of protection against unfair or arbitrary expropriation, as in Venezuela, protection against discriminatory expropriation, as in Zimbabwe, or protection against collective expropriation, as in the case of indigenous peoples.

The difficulty here is whether the verbs “own” and “have” are synonymous. If they are synonymous, then the right to own property implies the right to have some property to own. If they are not synonymous, then the right to own property simply means that those who have property own it: The state cannot remove ownership arbitrarily (UDHR, Article 17(b)). In this sense, the right to own property is analogous to the right to work. Article 23(1) of the UDHR states that “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” A negative interpretation of this right would mean that it is a right to work without discrimination based on an individual's racial, ethnic, or gender identity, his political beliefs, or his class position. A positive interpretation of the right to work, on the other hand, would mean that the state must provide a job to everyone who wants one.

An argument in favor of a positive obligation to ensure that everyone has a job is that like property, labor also enhances individual dignity. It does so by enhancing an individual's sense of human worth. The individual who contributes to her own and her family's maintenance enjoys a sense of fulfillment and responsibility; she feels more worthwhile than the individual who depends entirely on other's resources to live. Work also provides the individual with a sense of belonging to the larger society. This is why it is so devastating for many people to live on welfare, even in those rare cases in which welfare provides enough resources to fulfill their basic needs. If they cannot work, they do not feel respected,

worthwhile members of the larger society. In this sense, in the modern world, a job becomes a form of property, a way to assert one's worth, in keeping with the UDHR's affirmation of "the dignity *and worth* of the human person" (United Nations General Assembly 1948: preamble, para. 5, emphasis added).

The state has both negative and positive obligations regarding both the right to own property and the right to work. Regarding its negative obligation, the state must forebear from arbitrary or illegal expropriation of property, just as it must forebear from discriminatory denial of work. Regarding its positive obligation, in so far as everyone has the right to own property, the state must fulfill that right through instituting property laws and procedures such as titling; similarly, the state must protect everyone's right to work with laws prohibiting discrimination or arbitrary deprivation of a job.

Nevertheless, these obligations do not suggest that the state is obliged to provide individuals with property or work in the event that they lack either or both; the state is merely obliged to fulfill those human rights that individuals cannot fulfill themselves because they lack work or property. If both property and work have merely strategic value, helping individuals to fulfill their economic human rights, then the state can substitute welfare support for their absence. However, if both property and work also have intrinsic value, contributing to human dignity, then the state has a positive obligation to provide individuals with both a minimal amount of property and a job of some kind.

This is the dilemma underlying early discussions, during the formulation of the UDHR, of everyone's right to personal property. It remains a dilemma today: If everyone is entitled to a minimum amount of property, then how is that minimum to be determined and how should the state distribute the property? In a market economy, the assumption is that individuals acquire income via their own work or via assistance from other sources; they then determine as autonomous citizens which property they wish to acquire and which to dispose of. The state must provide a minimum amount of income to those who otherwise have none, in order to fulfill their economic human rights, but it has no business determining how individuals translate that income into property: For example, it has no business dictating whether one should buy more food and fewer televisions sets, or more furniture and fewer clothes. I cannot resolve this dilemma here; suffice it to say that the logical implication of the argument that dignity requires that individuals *have* property is that the state must somehow ensure that everyone enjoys a minimum amount of it. This differs from the argument that individuals are entitled to *own* such property as they have accumulated. This article argues, in accordance with UDHR Article 17, that the state must protect ownership of property, even if it does not fulfill a right to have property.

Another question regarding a right to private property is whether there can be a limit on the amount of property an individual owns; this is one of the questions that bogged down discussion of the right to own property in the UDHR and the two 1966 Covenants. Some who oppose a human right to own property are concerned that in some jurisdictions, such as the European Union, corporations are considered legal persons (Weissbrodt and de la Vega 2007: 94). We can dispose of this concern by proposing that the right to own property be indeed a human right, confined to natural human beings, not a legal fiction applying to the property rights of corporations. When individual human beings constitute their shareholders, it is the shareholders, not the corporation, that have the human right to own property. Corporations should not have human rights in the economic world any more than states should have human rights in the political world.

This does not, however, solve the problem of whether there should be a human right for individuals to own any amount of property. Are the protections against expropriations

promised by the human right to own property of sufficient importance to risk the inequality occasioned by protection of the property rights of the rich? I propose that these protections are indeed of sufficient importance to do so. The state's powers of taxation and redistribution are better means to curb inequality than the power to violate property rights. The state must respect individuals' human right to own property, as long as they pay their taxes and otherwise conform to nonarbitrary rules concerning such ownership.

Some Suggestions for a Draft Convention on the Right to Own Property

If the arguments considered above are convincing, then perhaps it is time to consider an elaborated human right to own property and to draft a Convention on such ownership. Such a Convention would have to take considerable care to protect those now considered not to own property, in the sense that they do not possess formal property titles. It would also have to take considerable care to protect vulnerable groups or collectivities. The Convention could include, as a start, the following principles.

- Everyone has the human right to own property;
- Collectivities as well as individuals have the human right to own property;
- Everyone has the right to seek and acquire property without discrimination;
- No collectivity may be deprived of property because of its collective ethnic, national, or racial identity;
- No one (either individual or collectivity) may be deprived of property without due process of law and without adequate compensation as determined by law;
- No one (individual or collectivity) may be deprived of property on discriminatory grounds;
- Traditional possession and use of property must be taken into account when deciding who has rights—individual or collective—over a particular property;
- Corporate private property is not covered by this human right, as a corporation is not a human being.

In conformity with Article 17(b) of the UDHR, the Convention should also include some clauses protecting states' rights to control property, namely:

- Nothing in this Convention precludes governments' rights to tax property;
- Nothing in this Convention precludes governments' rights to expropriate property for public purposes, in accordance with the rule of law, so long as they pay adequate compensation for any property they take over. (United Nations General Assembly 1948)

Finally, a draft Convention on the right to own property should include punishments for violation of that right. Above, I showed that massive discriminatory and arbitrary violation of the right to own property in Zimbabwe since 2000 resulted in severe deterioration of the food supply, causing malnutrition, disease, and famine. It also resulted in individuals' losing their houses and businesses, thus not being able to support themselves and their dependents in the cities. Similarly, massive and arbitrary deprivation of property in Venezuela resulted in deterioration of the food supply.

Schaber suggests that "Massive violations of people's property rights, particularly when they affect their fundamental rights, should be prosecuted" and suggests the International Criminal Court (ICC) as the appropriate venue for such prosecution (Schaber 2011: 194). Schaber's concern is massive deprivation of the property rights of an entire people (nation) in oil concessions, but his suggestion could apply to all states that massively expropriate

property, whatever the reason. It could also apply when such massive expropriation is limited in a discriminatory manner to particular categories of owners.

When such massive expropriation undermines absolutely basic human rights such as the right to be free from hunger, there is good reason to bring its perpetrators before the ICC. At the moment, state-induced famine is not specified as a particular crime in the long list of crimes against humanity in the Rome Statute of the ICC. Famine would qualify merely as an “other inhumane act . . . intentionally causing great suffering, or serious injury to body or to mental or physical health” (International Criminal Court 1998, Article 7(1)(k)). Yet, there is certainly justification for including intentional famine (deliberately using famine as means of extermination) and reckless creation of famine (continuing policies despite evidence of famine) as specific crimes (Marcus 2003: 246–247). Mugabe in Zimbabwe could be tried for reckless if not intentional creation of famine, via deprivation of property rights. Chávez in Venezuela could not, as food shortages there have not reached famine proportions nor is there evidence of massive malnutrition.

In other cases, especially regarding indigenous peoples, massive expropriation of property in land can also cause famine. In such cases, the expropriation is directed against specific national or ethnic groups and as such fits the definition of genocide in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (UNGC). According to the UNGC, genocide includes “causing serious bodily or mental harm to members of the group” and “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” (Article 2(b) and (c)). Massive expropriation of land causes both bodily and mental harm to indigenous peoples deprived of their ability to cultivate food and risks their physical destruction in whole or in part. The UNGC definition of genocide also includes “imposing measures intended to prevent births within the group” (Article 2(d)); deprivation of land can cause starvation, which in turn renders women infertile. The UNGC requires proof of intent in order to make a finding of genocide: There may be cases in which intent can be proven when states deprive indigenous peoples (or other categories) of the property that permits them to feed themselves.

Thus, I propose two additional clauses to a Covenant on the right to own property:

Massive, arbitrary expropriation of property that causes famine or mass malnutrition is a crime against humanity;

Massive, arbitrary expropriation of property on grounds of race, religion, ethnicity, or nationality that causes famine is a crime of genocide.

To conclude, there are both strategic and intrinsic reasons to reinforce the principle that there is a human right to own property. Had this been a principle during the early twenty-first century, the people of Zimbabwe might not have been malnourished and the people of Venezuela subjected to food shortages. Indigenous groups, peasants, women, and the poor might have had more security in their use of land. Moreover, people’s dignity and privacy, their identities, and their sense of themselves and their families would have enjoyed greater protection. With the security of private property, individuals, families, marginalized groups, and collectivities would have been in a stronger position to act politically to protect themselves against both the state and more powerful private actors. It would seem appropriate to begin drafting an elaborated Convention on the human right to own property.

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