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# Why the West Is Perceived as Being Unworthy of Cooperation

*Gorik Ooms*

Natural selection generated a natural sense of justice. This natural sense of justice created a set of natural rights; rights humans accorded to each other in virtue of being members of the same tribe. Sharing the responsibility for natural rights between all members of the same tribe allowed humans to take advantage of all opportunities for cooperation. Human rights are the present day political emanation of natural rights. Theoretically, human rights are accorded by all humans to all humans in virtue of being humans; however, the idea that the corresponding responsibility is now shared among all humans is not broadly accepted. The natural sense of justice creates an ambiguity: on the one hand humans consider the nation they belong to as the social system that should guarantee their human rights (and likewise they do not consider themselves as having responsibility for the human rights of inhabitants of other nations); on the other hand, as cooperation between nations intensifies, expectations of global mutual responsibility increase as well. As the West does not feel responsible for the human rights of humans in the rest of the world, not even for their most basic survival needs, the West is perceived as unworthy of cooperation. If human rights are understood as conditions for the well-functioning communities, then lifting the responsibility for the human rights of all humans to the global level can be understood as a condition to take full advantage of all opportunities globalization presents, or as a condition to adequately address all challenges globalization presents. However, this would have to happen without disregarding the particular feelings of mutual responsibility nations embody; we need a sliding scale of responsibility. The first step would be an acknowledgement that all humans are responsible for meeting the very basic survival needs of all humans, which could be achieved through a Framework Convention on Global Health and a Global Health Fund.

## **Introduction**

People do not always behave rationally. If someone offers you 10 dollars, and you do not have to do anything in return, it would be rational for you to accept the offer. In certain circumstances, it is likely that you would not. These circumstances could be that the person offering you 10 dollars received 100 dollars, without having to do anything in return, except share a part with you; the size of which he or she was free to deter-

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**Gorik Ooms, J.D., Ph.D.**, is a human rights lawyer, doctor in medical sciences, researcher at the Institute of Tropical Medicine in Antwerp, adjunct professor of law at Georgetown University in Washington, D.C., and former executive director of Médecins Sans Frontières Belgium.

mine. Those particular circumstances were part of the “Ultimatum Game,” and the results have troubled social scientists for 25 years. If you were in the position of responder, it is likely you would reject a 90/10 deal, even if you received nothing as a consequence. If you were in the position of proposer, it is likely that you would propose a more equal deal than 90/10 to your responder, as if anticipating that your responder would behave irrationally and reject a 90/10 deal.

hunter who contributed an equal amount of physical effort would not have been deemed worthy of future cooperation. The 100 dollars of the Impunity Game are like the prey hunted by two hunters: proposers and responders made equal efforts to obtain it (in the Impunity Game: none), but proposers are in the position of being able to impose their view on sharing, as if they were the physically stronger hunter. Responders to whom very unequal deals are proposed do not reject

**In this paper, I explore the continuities and discontinuities between a natural sense of justice (and the corresponding natural rights that I postulate resulted from 2.5 million years of natural selection), and the present day theory and practice of international human rights law. I argue that the West is no longer considered worthy of cooperation by the rest of the world, and address why and how it must change that.**

Scholars argued that rejecting a 90/10 deal is not irrational behavior, even if the result is that you do not receive anything, because you are teaching the proposer a lesson: you lose once, but next time you will receive a better proposal. This hypothesis was verified in the “Impunity Game,” which allowed proposers to keep the share they allotted themselves regardless of acceptance or rejection by their responders. The deals proposed became more unequal, but many responders still rejected very unequal deals, although they were no longer in a position to teach “unfair” proposers a lesson. Some scholars argued that these responders were again trying to teach “unfair” proposers a lesson: even if the proposers were allowed to keep the share they allotted themselves, they would feel guilty. In the “Private Impunity Game,” responders were told that proposers would not even be informed about the responses. Even under these conditions, many responders rejected very unequal deals. Toshio Yamagashi and colleagues conclude that they did so out of “anger and moral disgust.”<sup>1</sup>

This behavior could be the result of at least 2.5 million years of natural selection, applied to an animal that was living (for 99 percent of those 2.5 million years) in small hunter-gatherer tribes. Natural selection gave this animal — the human — a skill to enhance the benefits of cooperation: an instinctive capacity to distinguish between others worthy of cooperation and others unworthy of cooperation, which evolved into an awareness of what it takes to be perceived as worthy of cooperation. Any hunter that kept 90 percent of the kill following a hunt with a fellow

the deal in itself (which is always better than nothing); their morality encourages them to refuse any cooperation with persons unworthy of cooperation.

What I understand about natural evolution is what any interested lay person can understand after reading a couple of books on the subject, and my intention is not to contribute to the science of natural evolution. My interest in Ultimatum and Impunity Games was triggered because their outcomes seem to echo the feeling of resentment I often encounter when working with people from the poorest countries of the world on global health issues: a growing resentment about the very unfair “deal” that the global order imposes. This “deal” results in growing inequality; it results in a small part of the human population accumulating unprecedented levels of wealth, and in a growing part of the human population not being able to meet its basic survival needs. This deal, and the consequent poverty of a huge part of the world’s population, is perceived as “the denial of human rights and an affront to human dignity,” using the words of Irene Khan, the Secretary General of Amnesty International.<sup>2</sup> Thomas Pogge argues, “There are surely enough poverty deaths for a full-sized crime against humanity: as many every seven months as perished in the Nazi death camps.”<sup>3</sup> However, not all who agree poverty is a denial of human rights would agree with the existence of a global responsibility for the present state of affairs.

In this paper, I explore the continuities and discontinuities between a natural sense of justice (and the corresponding natural rights that I postulate resulted from 2.5 million years of natural selection), and the

present day theory and practice of international human rights law. I argue that the West is no longer considered worthy of cooperation by the rest of the world, and address why and how it must change that.

### 1. How Morality Evolved

Before starting to explain how natural selection generated a natural sense of justice, common to all humans, I need to challenge some biologists' opinion about morality. Richard Dawkins summarized what I will term "biologicalist"<sup>4</sup> negativism about human morality in his book *The Selfish Gene*, using these words: "Be warned that if you wish, as I do, to build a society in which individuals cooperate generously and unselfishly towards a common good, you can expect little help from biological nature. Let us try to teach generosity and altruism, because we are born selfish."<sup>5</sup>

These words seem to exclude the possibility of any form of morality resulting from human evolution. To be fair, in later books, notably *The God Delusion*, Dawkins accepts and explains his belief in the natural roots of morality and calls the idea that "goodness" is incompatible with the theory of the selfish gene a "common misunderstanding of the theory — a distressing (and, with hindsight, foreseeable) misunderstanding."<sup>6</sup> Even so, it is a huge and persistent misunderstanding. The idea of selfish genes creating selfish "gene machines" is living a life of its own; and in debunking it I propose to explain how morality may have evolved.

Biologists try to explain the world of genes. Genes are the elements of organisms that define certain characteristics of their carriers (how tall they are, which color of skin they have, and at times how they behave), and that are transmitted to the offspring of their carriers. By definition, any gene that increases the reproductive fitness of its carriers will spread itself to future generations of host organisms. Biologists do not have a word to describe how genes behave, so they borrowed one from the humanities: selfishness. Genes are called selfish because their only "intention" is to replicate themselves. But as a matter of fact, genes have no intentions whatsoever. They are incapable of having intentions. As long as biologists understand that genes are not really selfish, only metaphorically selfish, and as long as they make that clear to their audiences, there is no problem. As Dawkins explained: "I am not concerned here with the psychology of motives. ... My definition is concerned only with whether the effect of an act is to lower or to raise the survival prospects of the presumed altruist and the survival prospects of the presumed beneficiary."<sup>7</sup> But then a retro-translation error happened, as for most readers, "we are born selfish" is a statement about human motives and intentions.

Elliott Sober explains the retro-translation error in these words: "Even if various aspects of our behavior (e.g., parental care) are *evolutionary* selfish (i.e., were molded by individual selection), it is not immediately obvious why *psychological* egoism should have been the proximate mechanism that evolution provided to implement the behavior. Quite the contrary; it is rather puzzling why creatures whose fitness depends on the welfare of others and who are capable of forming beliefs and preferences about a wide range of propositions should be so constituted that they care only about themselves."<sup>8</sup>

If we accept that various aspects of human behavior are influenced by the genes humans carry and if humans carry those genes only because they helped their genealogical ancestors<sup>9</sup> to be successful procreators, can we then expect some aspects of human behavior to be motivated by morality?

The carriers of genes nudging their carriers to share the kill of a successful hunt were probably more likely to be invited to future collective hunting parties than the carriers of genes nudging their carriers to keep as much kill for themselves as possible. Over time the former would eat more, and they would be fitter for survival and reproduction. Likewise, the carriers of genes nudging their carriers to nurse fellow tribe members suffering from a fever were probably more likely to be nursed whenever they had a fever: natural selection would have encouraged the proliferation of these genes. Biologists will argue that this kind of behavior is *ultimately* selfish or self-interested. But the capacity to make such calculations is probably a relatively recent fruit of our natural evolution. Our genealogical ancestors needed something else to benefit from cooperation: a desire to cooperate. That would have been the *proximate* causation of kill-sharing and nursing.

Once we understand that "generous" hunters increased their chances of participating in future hunting parties, can we still believe that their "other-interestedness" is genuine, or real? Allow me to illustrate with a different example. Why do animals have sex? The *ultimate* causation is obviously that without having sex, most animals cannot have offspring. The *proximate* causation is that animals have a desire to have sex. The only animal that understands how having sex often leads to offspring (the human) tried hard to find ways of having sex without having offspring, as soon as it understood the ultimate causation. Once we understand that animals inclined to have sex have a better chance of having offspring than animals without that inclination, do we consider the inclination to have sex to be false?

The respective inclinations of "generous" hunters and nurses would survive natural selection only if they

somehow increased the reproductive fitness of the original carriers of genes for these inclinations. The first humans born with the genes for these inclinations would not have received a reciprocal response, and if having these genes would have encouraged them to invest in cooperation without receiving cooperation in return, it would have reduced their reproductive fitness. How could an inclination to cooperate have established itself, if the original carriers of the genes for this inclination would have reduced their reproductive fitness due to engaging in cooperative behavior?

The answer requires different steps. The first step is related to the true meaning of reproductive fitness. Genes that increase the survival chances of individuals carrying them are not necessarily the genes that will proliferate: only genes that increase the chances of having reproductive offspring will. A mother with an inclination not to breastfeed her children would have had a much better chance to survive a period of drought than a mother born with an inclination to breastfeed her children, because breastfeeding extracts a serious toll on the mother. But an inclination not to breastfeed would have decreased her chances of having surviving children. We can assume that for all animals that invest time and resources in parental care the advantages of the investment outweigh the disadvantages.

An inclination to help one's children could easily have evolved to an inclination to help one's brothers and sisters as well. To understand this, we must recognize that some of the "generous" nurses in our genealogy paid for their inclination to nurse their feverish siblings with their lives (and because they caught deadly viruses, often before they had children themselves). It thus seems unlikely that the genes inclining one towards this kind of behavior would have escaped natural selection. But if these nurses helped several siblings survive, some of whom carried the same genes and passed them on to their offspring, then these genes would have escaped natural selection. This process is known as kin selection.

The next step could have been a natural evolution from an inclination to help one's children and one's siblings, to an inclination to help all tribe members. If all tribe members were also members of the same kin, kin selection would explain such an evolution. However, it seems plausible that some individuals migrated from one tribe to another. If a tribe consisting of carriers of the gene inclining members to help all other members of the tribe was infiltrated by an individual who did not carry the same gene, the infiltrator would have been a very successful procreator. This free-rider would benefit from the help provided by others but would not give any help in return: maximum benefits at minimum costs.

Therefore, it is difficult to imagine how an inclination to cooperate could have established itself as an unconditional inclination. It could, however, have established itself as a conditional inclination: an inclination to cooperate with others who are willing to cooperate. It seems plausible that the condition of reciprocity was added to the inclination to help one's children, and siblings, before it evolved into an inclination to help other members of the tribe. Some individuals would have helped their younger siblings as long as they showed signs of willingness to return the favors; that would no longer have been an inclination to *help* one's siblings, but an inclination to *cooperate with* one's siblings (conditionally). Then some of the children of these individuals would have been born with an inclination to cooperate with all other members of the tribe. The costs of this expanded conditional inclination would have been limited, because those having it would invest in cooperation with every other member of the tribe only once (until realizing that the cooperation was not reciprocated). Still, it would cost the cooperating individual. It might have originated many times, and died out almost as many times, until two members of the same tribe, belonging to a different kin, responded to each other's inclination. The advantages of their cooperation would have outweighed the costs. Furthermore, as soon as an individual without the inclination to cooperate would infiltrate the tribe, the infiltrator would not be a successful free-rider, as the absence of the cooperation inclination would have been recognized and would have triggered the condition: no cooperation with others who are not inclined to cooperate!

The inclination to cooperate thus required an ability to recognize others with a similar inclination. We can imagine how this ability to recognize others with a similar inclination could have started as specifically related to specific forms of cooperation: I will share my kill with you if you will share your kill with me; I will nurse you if you will nurse me. As long as it relied on genetic inclinations, it might have remained as unsophisticated as barter. Gradually, however, humans would have become aware of the ways their subconscious minds judged others, thus understanding, now consciously, how others judged them. The barter trading would have become more sophisticated: I will share my kill with you if you will nurse the son of my sister, who happens to be very good at making fire but not at nursing, which is good for both of us, and so on. Our genealogical ancestors would have developed some kind of track record for all members of the tribe; not a very detailed one, but rather a continuously adjusted general opinion about others.

The so-called “Golden Rule” — or “do to others what you expect them to do to you” — would then represent a natural sense of justice, which evolved because of natural selection. Gradually, humans came to understand what was right to do (what made them worthy of cooperation, in the eyes of others) and what was wrong to do (what made them unworthy of cooperation, in the eyes of others). With this understanding came the ability to consciously choose to do right or to do wrong, namely morality.

If this is how morality evolved, we could expect approval of behavior that is only selectively cooperative: cooperation with others who have something useful to contribute and non-cooperation with others with nothing to contribute would not be wrong. However, I think morality approved cooperation with all other members of the tribe, for two reasons. First, when the barter trading became more sophisticated, the intention to cooperate would have become a more important criterion than the short-term benefits of cooperation. A would cooperate with B as long as B displayed willingness to reciprocate; even if B had nothing to offer in the near future, that might change later. Second, when the barter trading involved the whole tribe, it would have been wise to “err” on the side of willingness to cooperate, rather than on the side of unwillingness to cooperate. If A would not cooperate with B because B had nothing to offer in return, then C would be reluctant to cooperate with A, as long as C was not sure that A would appreciate C’s contribution as sufficient to justify reciprocation.

To avoid misunderstandings: I do not think that all self-interested behavior was assessed as negative on the worthiness of cooperation track record, or as immoral behavior. Spears, axes, and fire-making tools might have been invented by individuals who played endlessly with sticks and stones, with no other purpose than self-interestedly enjoying the fun of their play. Other members of the tribe would have tolerated that; they might even have encouraged that. Likewise, not all other-interested behavior was deemed positive. A member of the tribe who continuously sacrificed his or her own interests might have been convenient to a certain point, but would also become a burden for the tribe, even a liability (on top of being a rather unlikely candidate for successful parenthood). Tribe members would have expected balanced behavior from each other: self-interested at times, other-interested at other times.

That does not mean, however, that only genes for cooperative behavior survived natural selection. The ability to recognize free-riders, presented above, would not have been infallible. At best, it would have generated more sophisticated free riding inclinations, like a

conditional inclination to take advantage of the other, as long one can get away with it. Getting away with taking advantage of the other could have meant cheating (pretending to help the other, without trying hard) or making use of physical strength to enforce cooperation. Genes for such behaviors could have been transmitted from one generation to the next: their carriers would test their ability to cheat or to physically dominate other members of the tribe during their childhood: if it worked, if they got away with free riding, they would become cheaters or tyrants; if they found out they could not get away with it, they would shift to cooperative behavior. In fact, it seems plausible that all these genes became mixed, thus forming a modular inclination to take advantage of the other if one can get away with it and to cooperate if taking advantage of the other does not seem to work (and even this is most probably a simplified expression of much more sophisticated genetic modular inclinations). As depressing as it may sound, even if all humans inherited this inclination, it would not have stood in the way of the genesis of morality. For most humans, becoming a cheater or a tyrant would not have been a successful strategy, and therefore most humans needed to understand the difference between being worthy of cooperation and being unworthy of cooperation. They needed to understand the difference between right and wrong.

## 2. Natural Rights

Self-interestedness and other-interestedness are often understood as mutually exclusive motivations. They do not have to be. When we organize a party, we want to have fun: we are being self-interested. But we also want our invitees to have fun. In fact, if our invitees do not enjoy our party, or do not show up at all because they think they will not enjoy our party, the chances of our enjoying it are rather limited. Therefore, whenever we organize a party, we are self-interested and other-interested at the same time.

In the previous section, I argued that our genealogical ancestors would have developed some kind of track record for all members of their tribe; not a very detailed one, but rather a continuously adjusted general opinion about others. It seems likely that these track records were more sophisticated than simple sums of positive points for other-interestedness and negative points for self-interestedness. I imagine these track records as mind maps composed of clusters of marks with a double value; a value for other-interestedness and a value for self-interestedness. Figure 1 tries to visualize such mind maps, illustrating the behavior of cooperators; every act is given a double mark, one value for self-interestedness and a different value for other-interestedness.

It is important to notice that there should be marks all over the upper-right quadrant of the graphic. Two individuals living at the same time and interacting several times per day would have hundreds or thousands of marks on each other's track records; they would form clouds rather than clusters of marks; and perhaps only a few specific marks would be remembered. The cloud for a cooperator, then, would have to cover most of the upper-right quadrant, and ideally not spill over into the other quadrants. An individual with a very narrow cloud, stretched along the horizontal axis (mostly self-interested, hardly ever other-interested) would be a pseudo-cooperator, and others would be reluctant to cooperate with him or her.

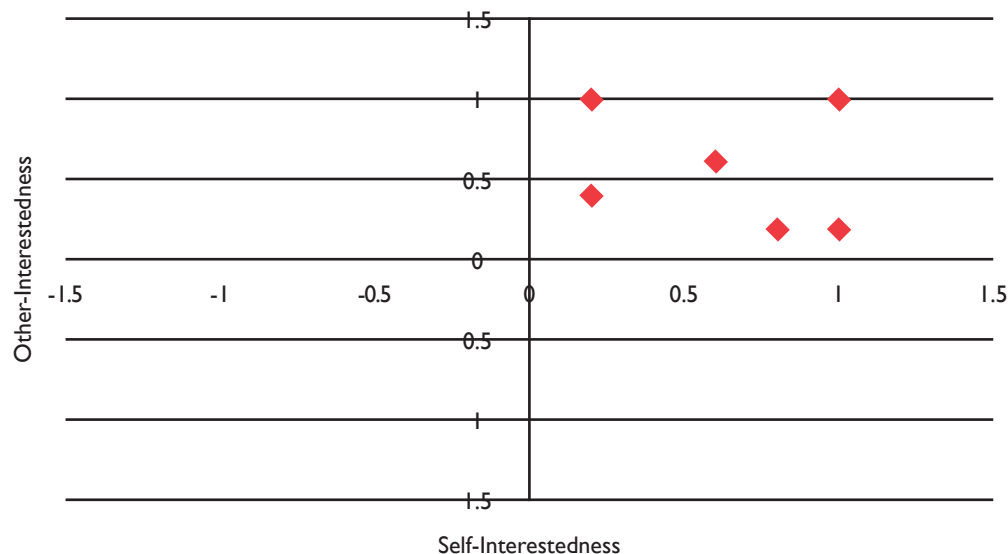
To understand the plausibility of most members of a tribe displaying behavior that is self-interested and other-interested at the same time, or at least perceived as such, we need to briefly examine other theoretical behavior patterns. It is possible that some individuals were born with an inclination to help the other and at the same time to sacrifice themselves; they might even have had a morality according to which only self-sacrificing behavior is right. We can call them martyrs: sharing food with others while not eating themselves, taking care of the others while neglecting themselves. Nature would have been intolerant of martyrs, as would other members of the tribe because their behavior would have led to physical weakness making them a burden and a liability for the tribe. Nature could have been kinder to tyrants: individuals trying to achieve the best for themselves, while at the same time harming others; not merely abstaining from helping

the others, but actively harming them. Such individuals could have established strong leadership positions, with all mating privileges and benefits from the hard work of others. However, without an armed security force, they would need exceptional physical strength to maintain their position and to stop tribe members from running away. Furthermore, being the leader of a tribe of injured and otherwise weakened members would not have been the most successful strategy when it came to hunting, gathering, or defending a territory. Last but not least, there would not be a place for two tyrants in the same tribe: most tribe members would still be cooperators. Although difficult to imagine — except as the result of brain damage or insanity — the fourth possible pattern of behavior would be the combination of martyrs and tyrants: individuals born with an inclination to harm themselves and the others as much as possible. I suspect they would not have been able to manage themselves beyond early childhood. Cheaters — individuals feigning to help others, while in fact harming others (since we can consider cheating as a form of harming) — would have been perceived as real cooperators as long as they were successfully cheating, but once unmasked as cheaters, their track record would become similar to the track records for tyrants.

Now, if most if not all members of a tribe behaved like cooperators — self-interested at times, other-interested at other times, most often both at the same time — then each member of the tribe would hold expectations of tolerance of his or her self-interestedness and some other-interestedness from all the other members

Figure 1

### Cooperators



of the tribe, in return for his or her own other-interest-ness and tolerance of the self-interestedness of others. Would these expectations have created rights?

Jeremy Bentham would probably have called this suggestion “nonsense on stilts”; for Bentham, only positive law can create rights.<sup>10</sup> However, for an alternative position, allow me to borrow this definition from Henry Shue’s book *Basic Rights*<sup>11</sup>: “A moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats.” Let me try to apply this definition to a few potential natural rights: first, a right to physical integrity; second, a right to food security; third, a right to freedom of opinion and expression.

Standard threats to physical integrity could have come from within the tribe (a violent attack by a tribe member), or from the outside (an attack from other animals, or from humans belonging to a different tribe). Social guarantees against such threats would have been guarantees that other tribe members would actively intervene as soon as one of them was about to use physical force in an excessive manner; and that tribe members would collectively defend themselves against external threats. Standard threats to food security could have come from unsuccessful hunting and gathering efforts. Social guarantees would have been guarantees that other members of the tribe would share what they were able to hunt or gather, if needed. Standard threats to freedom of opinion and expression would have come from within the tribe, in the form of the use of violence against individuals expressing ideas others disapproved of. The social guarantee against such threats would have been a shared tolerance of self-interestedness. Thus we can imagine that such basic rights existed, but can we move beyond just imagining it?

To argue that natural rights indeed existed, most probably, I will use two sources. The first is a detailed description by historian Alan Taylor<sup>12</sup> of the customs of the Iroquois confederacy known as the Six Nations at the end of the 18th century: a social system relying predominantly on hunting, gathering and fishing, even if its members occasionally practiced horticulture. Now, by no means do I want to imply that the Iroquois lived in a “state of nature.” I use this source because of the following comments by Taylor: “The Iroquois possessed neither the state apparatus nor the legal culture collectively to arrest, try, convict, and punish murder. They had no police, no courts, no jail, and no gallows.”<sup>13</sup> And: “Kinship and conversation framed the obligations, duties, and norms of an Indian village. Authority ultimately lay in the constant flow of talk, which regulated reputation through the variations of

praise and ridicule, celebration and shaming.”<sup>14</sup> This is how I imagine morality was enforced (and perhaps still is enforced) in social systems small enough for each member to keep a track record of every other member. If the Iroquois had rights (in the sense of rational bases for justified demands that the enjoyment of certain goods be socially guaranteed against standard threats), based on the fact that others would risk their reputation if they did not honor those demands, then we can refute Bentham’s “nonsense on stilts” critique.

My second source of arguments is a description by biologist De Waal about the behavior of chimpanzees, and is illuminating for a very different reason. The “rational basis for a justified demand” seems out of place when thinking about chimpanzees: as far as we can tell, their behavior is still predominantly influenced by instincts and emotions, rather than rational choices. In that case, chimpanzee behavior displays at best a form of proto-morality: behavior that could be qualified as “right” or “wrong” in a metaphorical sense only, but that is driven by instincts, not by rational choices. This proto-morality of chimpanzees could be very similar to the proto-morality of our genealogical ancestors — those living at the stage at which humans instinctively knew which behavior was worthy of cooperation in the eyes of the other, immediately before the stage at which they consciously understood which behavior was right or wrong. It could have created proto-rights: social guarantees against standard threats to certain goods, without the element of a “rational basis for a justified demand.”

In other words, I am trying to create and use a forceps, with one end representing instinctive proto-morality, and the other end representing morality regulated through direct approval and blame, to deliver the idea of natural rights. If the instinctive behavior of an intelligent, social, but nonhuman animal generates proto-rights, and if a highly sophisticated social system like the Iroquois at the end of the 18th century can ensure rights without using codified rules, police, courts or jails, then the existence of natural rights seems plausible.

I will start with the proto-morality end of the forceps. What, if anything, can chimpanzees tell us about the right to physical integrity, the right to food security, and the right to freedom of opinion and expression?

In his book *Chimpanzee Politics*, De Waal describes two consecutive power takeovers in the chimpanzee colony of the Arnhem Zoo in the Netherlands.<sup>15</sup> During the first, Luit takes over power from Yeroen, with the help of Nikkie. During the second, Nikkie takes over power from Luit, with the help of Yeroen. These takeovers had violence and intimidation. But chimpanzees seem to have “rules” about acceptable and unaccept-

able violence. As De Waal narrates:<sup>16</sup> “If Nikkie had thrown himself wholeheartedly into this struggle with the females — that is, if he had used his dangerous teeth — he would definitely have forced them into submission earlier. As it was, he abided strictly by the rules, fighting only with his hands and feet and never biting with his canines.” Nikkie had a strong incentive to use his physical strength to end the conflict, rather than letting it last for weeks. But he did not. The *ultimate* causation for the restraint he displayed probably stemmed from the fact that if the male chimpanzees used their canines without restraint, they would weaken the tribe on which they rely for their survival and their procreation. The *proximate* causation probably is that male chimpanzees have a strong instinct not to use their canines against female chimpanzees. This instinct provides a social guarantee against standard threats to the right to physical integrity of chimpanzees. Bizarre as it may sound, chimpanzees seem to have a proto-right to physical integrity.

In *Good Natured*, De Waal describes food-sharing behavior of chimpanzees<sup>17</sup>: “Consider an enigma that has intrigued me for a very long time: chimpanzees are quite good about sharing prey, but hopeless when it comes to favored plant foods.” De Waal’s initial hypothesis for the enigma is that capturing prey requires concerted action between several chimpanzees; and sharing prey would be a condition for future hunting parties.<sup>18</sup> Discovering bananas, however, does not require concerted action, and therefore sharing bananas would not be a condition for future banana gathering. Then De Waal develops several other hypotheses, based on the observation that food that is typical for food sharing is: “1. Highly valued, concentrated, but prone to decay; 2. Too much for a single individual to consume; 3. Unpredictably available; 4. Procured through skills and strengths that make certain classes of individuals dependent on others for access; 5. Most effectively procured through collaboration.” So the second hypothesis for food sharing is an inclination to make sure that everyone gets a share of scarce but highly valued food. This hypothesis seems to be confirmed by the fact that male chimpanzee hunters share prey with females (unlikely candidates for future hunting); and not with males who did not participate in the hunt (who have the ability to procure their own prey).<sup>19</sup> If so, then chimpanzees have a proto-right to food security.

Trying to assess whether chimpanzees also have a proto-right to freedom of opinion and expression is probably far-fetched: if we assume they make instinctive and emotional choices, rather than conscious and rational choices, can we imagine anything like freedom of opinion and expression? In the power takeover

between Yeroen and Luit, mentioned above, all adults seem to have played a role. For a while, Yeroen was able to maintain his position because he had the support of the females. Luit was only able to attempt the power takeover because he had the support of Nikkie. Ultimately, it was the conflict between the females and Nikkie that tilted the balance in favor of Luit. As De Waal describes<sup>20</sup>: “Over several months Nikkie’s confrontations with the females gradually decreased as more and more female began to ‘greet’ him. The last females to acknowledge his new position were Mama and Puist. They did not ‘greet’ Nikkie until October.” How should we understand the shifting alliance of the females, symbolized by the “greeting”? Were they surrendering to Nikkie’s violence, however restrained? Or were they convinced by the Luit-Nikkie “election campaign”; did they freely change their opinion, and express it, one after the other? De Waal describes how Mama, one of the last female supporters of Yeroen, was pregnant and therefore less prepared to interfere, “so that the way was clear for Puist and the others to give vent to their ‘true feelings.’” If those were their true feelings, they somehow voted for the new leader. But De Waal’s quotation marks around “true feelings” indicate that we can never know how true or false or imposed such feelings are. We can only consider this a proto-right to freedom of opinion and expression in the sense of the “very earliest form of” such a right.

Now let us turn to the other side of the forceps: the Iroquois at the end of the 18th century, a social system in which the “constant flow of talk, which regulated reputation through the variations of praise and ridicule” served as the regulator of morality.

With regards to the right to physical integrity, the Iroquois practice of “covering the grave” seems enlightening. Taylor describes, “Rather than execute a murderer, the chiefs sought to restore the harmony by persuading the kin of the dead to accept gifts from the kin of the killer. Delivered in public ceremony, such gifts “covered the grave,” obscuring the painful memory of the death.”<sup>21</sup> Was this a social guarantee against standard threats to physical integrity? The custom of blood revenge surely was not. Citing Taylor again,

Murders involving a killer and killed from different nations were especially dangerous and called for special exertions by the chiefs of both peoples. Otherwise, the feud between families could escalate into a war between nations. During the fifteenth century, such bloody conflicts had nearly consumed the Iroquois nations, inducing them to form their confederacy, which primarily served to cover graves as an alternative to war.<sup>22</sup>



At least we should acknowledge that the Iroquois made collective efforts to guarantee each other's rights to physical integrity, even for murderers. The protection was accorded to all members of the social system; in fact the social system was expanded (from six independent nations to a confederacy of six nations) mainly to expand the protection it offered. Furthermore, as long as the Iroquois considered the settlers as their allies, the settlers fell under their protection as well. Taylor writes, "Although Indians executed enemies by

deliberations failed to reach an acceptable consensus, the people agreed to disagree." We can safely assume that the Iroquois had a right to freedom of opinion and expression.

Using my forceps, I hope to have convincingly argued that the emergence of a natural sense of justice did most probably generate natural rights for each and every member of the tribe. These natural rights existed before attempts we made to codify them. The three potential rights I explored are by no means exhaustive; there must have been many more. Like the mind maps of the behaviors of others would have been clusters or clouds of unspecified marks, natural rights would have been the result of unspecified expectations of mutual other-interestedness and mutual tolerance of self-interestedness, perhaps combined with mutual intolerance of negative other-interestedness (intentions to harm another) and mutual expectations of absence of negative self-interestedness (intentions to harm the self).

The resulting rights would have been different depending on the environment in which the tribe lived. For a tribe living in an environment where water was scarce, the right to water would have been the most important one, while in a natural environment with plentiful water it would have been irrelevant. For a tribe living in an environment where many predators lived, the right to collective defense against predators would have been important. Perhaps the basic rule was simply to allow one another to be dignified members of the tribe — "to allow" being used in its etymological sense, as in "allowance," thus including both a sense of (passive) tolerance and (active) contribution.

Thus my understanding of natural rights supports the Arthur Dyck's approach to trying to answer "the question of what makes communities possible," or "a question of what is logically and functionally necessary, and universally so, for the existence and sustenance of communities,"<sup>29</sup> in order to find out what fundamental rights really are. Jack Donnelly argues that any such attempt must fail "because there is very little that is empirically universal about, and almost nothing that is truly logically necessary for the existence of, human communities."<sup>30</sup> I disagree with Donnelly on this issue. I believe we are only beginning to understand the extent to which natural selection has given humans common social characteristics.

**Pogge argues that the "[r]esponsibility for a person's human rights falls on all and only those who participate with this person in the same social system." This is in line with my understanding of natural rights. Then it would have been (and still is) is of vital importance to clarify the boundaries of social systems. What would have happened to natural rights, when tribes became settlements, then cities?**

torture (and killed suspected witches among their own people), they balked at assisting in the formal trial and execution of one of their colonial allies."<sup>23</sup>

About the right to food security, then. "No one starved in an Iroquois village unless all did so."<sup>24</sup> Iroquois shared what they had, instead of accumulating reserves. "They cherished the collective security maintained by expecting generosity from the fortunate to the needy." That was indeed a social guarantee against standard threats to food security (but not against widespread famine). As they did with the practice of "covering the grave," the Iroquois included the settlers in their collective food security system, both in terms of willingness to share food with the settlers, and expectations that settlers would share their food with the Iroquois. "In alienating land, the Indians sought a long-term symbiotic relationship with particular settlers. Indians anticipated enduring benefits from helping farmers who should then feed their Indian benefactors when hungry."<sup>25</sup>

Finally, did the Iroquois have a right to freedom of opinion and expression? Taylor describes how each village was subdivided in clans, how a clan consisted of several extended families, were related through the maternal line, and how the senior women of the clan chose the chief who represented their clan at the village council.<sup>26</sup> Furthermore, "the Iroquois dreaded contention and coercion, preferring the deliberative search for consensus, however elusive,"<sup>27</sup> and "if those

To conclude this section, I have to mention that on at least one element, my understanding of natural rights does not correspond with Shue's understanding of basic rights. The element is not included in his definition mentioned above; he adds it later, in these words: "Basic rights, then, are everyone's reasonable demand upon the rest of humanity."<sup>31</sup> Natural rights, as I understand them, clearly do not entail demands upon the rest of humanity; they entail demands upon members of the social system one belongs to. Perhaps human rights do; perhaps the conception of human rights is based on a conviction that all humans now share the same social system. That will be the central question I address in the rest of this paper.

### 3. From Natural to Human Rights

Pogge argues that the "[r]esponsibility for a person's human rights falls on all and only those who participate with this person in the same social system."<sup>32</sup> This is in line with my understanding of natural rights. Then it would have been (and still is) is of vital importance to clarify the boundaries of social systems. What would have happened to natural rights, when tribes became settlements, then cities?

Colin Tudge estimates that the first human settlements were created around 8000 BC.<sup>33</sup> Tudge holds a climate change responsible for this evolution: the end of an ice age and the subsequent rising of sea levels forced hunter-gatherer tribes to move inland, into the so-called "Fertile Crescent," a region including the Levant and Mesopotamia.<sup>34</sup> Agriculture, which according to Tudge had already began 30,000 years earlier, was not the cause of human settlement, but the solution that allowed it. We must imagine two, three, or even more tribes, which had lived separately with distinct social systems of natural rights and corresponding duties, now forming a single social system. For a limited period, the inhabitants probably remembered which tribe their parent and grandparents used to belong to, but gradually they would have formed a single cohesive social system. Would natural rights have survived this transition?

Settlements would have become too big for each individual to keep track records for the behavior of every other individual. The "constant flow of talk, which regulated reputation through the variations of praise and ridicule," might have worked as a morality regulation system for Iroquois, living in small villages or clans, but would not have worked to regulate morality in the city of Ur with 200,000 inhabitants in 4000 BC.<sup>35</sup> The new environment would have created new opportunities for cheaters; they would feign altruism, and as soon as they would have been unmasked as a cheater by one section of the city, they

would have moved their business to another section. The new environment would create new opportunities for tyrants too.

As agriculture originated before cities allowing them to thrive, religion was not a result of cities, but (combined and intertwined with hierarchy) would have assisted with regulating morality in the city. Religion turned the Golden Rule into a divine rule: do to others what you expect them to do to you, not because that behavior is needed for a good life in the city, but because you will be punished by God if you do not. Religion also turned rulers into divine rulers. As Bruce Dickson argues, "[T]he sacred or divine kingship was a theoretical claim of inviolable sovereignty for the apparatus of the state and a practical coalition of royal military power and religious authority. This is a powerful political formula, and it seems to have worked at Ur."<sup>36</sup> It is indeed such a powerful formula that various forms of divine kingship can be found throughout the world and, according to Dickson, many of them became "theatres of cruelty." Referring to the remains of servants, who were killed and buried together with their kings, Dickson argues, "[I]t is clear from these remains that Ur was socially stratified, occupationally specialized and possessed of a political organization powerful enough to compel — or convincing enough to induce — people to sacrifice themselves on behalf of the collective."

It thus looks as if natural rights disappeared together with the tribes they originated in. But let us remember the first element of Shue's definition of basic rights: "the rational basis for a justified demand." Even if "the actual enjoyment of a substance" is no longer "socially guaranteed against standard threats," as long as the 'rational basis for a justified demand' stands, the right stands. To understand the subtle difference, we could think about slavery in the United States of America, prior to the American Civil War (1861-1865). Slaves did not have any social guarantee against standard threats to their freedom, but they did have a rational basis for a justified demand that the enjoyment of their freedom be socially guaranteed; at least among their peers, the members of their social system. The long history of slave rebellions and the abolitionist movement are testimony to the fact that as long as slavery existed, the rational basis for a justified demand to end slavery existed as well. Dickson's history of "theatres of cruelty" surely is part of human history. But so is the history of attempts to establish democracy; so is the history of slave rebellions; and so is the history of efforts to establish minimum levels of human dignity for all. In my opinion, natural rights survived the transition, even if they were seriously oppressed.

They were not invented in the 17th century; they were resurrected.

When did natural rights become human rights? To answer the question, we have to agree on what human rights are. Pogge argues that the “moral concept of human rights has six rather uncontroversial elements that any plausible understanding of human rights must incorporate.”<sup>37</sup> First, human rights express *ultimate* moral concerns: they are not derived from a different moral concern, like a willingness to accept democratic decisions; they stand even if no democratic choice affirmed them. Second, they express *weighty* moral concerns. Third, they are focused on *humans*. Fourth, they are considered to be *granted to all humans equally*, regardless of their status within their society. Fifth, they are conceived as *binding on all humans equally*, regardless of culture or religion. Sixth, they are considered as *broadly sharable*; to endorse them as a human right, one must expect most other humans to be willing to endorse them as such too.

Several codifications of rights in human history can be considered as containing the first, second, and third essential elements of human rights. But the fourth, fifth, and sixth are more demanding. The American Declaration of Independence of 1776 proclaims, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.” But it is a declaration that pertains only to the rights of the inhabitants of the U.S., and only to the rights of some of these inhabitants: slaves were not considered to be endowed with the unalienable rights to life, liberty, and the pursuit of happiness. Likewise, France’s Declaration of the Rights of Man and Citizen of 1789 is not a human rights declaration as it was perceived to be perfectly compatible with holding colonies and thus, the rights it declared were not granted to all humans equally. In my opinion, even the Universal Declaration of Human Rights (Universal Declaration) of 1948 fails as a declaration of human rights. In its preamble it mentions that all shall promote human rights “both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction.” This explicit acknowledgement of colonialism flies in the face of the declaration, in article 21(3), that “[t]he will of the people shall be the basis of the authority of governments; this will shall be expressed in periodic and genuine elections.” At least some of the ratifying states must have understood it as a declaration of the rights of “civilized” humans, not as a declaration of the rights of “peoples of territories under their jurisdiction,” who were considered unable to

govern themselves. But let us accept that the Universal Declaration was at least partially inspired by the gross violations of human rights in Nazi Germany, to which the preamble refers, and thus an acknowledgment that the principle of national sovereignty had its limits.

Does that mean that since the adoption of the Universal Declaration we have had a single global social system, in which all humans are responsible for the human rights of all? The Universal Declaration contains some elements of international responsibility. Article 28, for example, states, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” The two International Covenants, one on Economic, Social and Cultural Rights, the other on Civil and Political Rights (considered, together with the Universal Declaration, as the International Bill of Human Rights) are more explicit. Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) mentions: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant” (underlining added). Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), however, mentions: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Based on the texts, one would expect countries to feel responsible for the realization of economic, social and cultural human rights in other countries, and less so for the realization of civil and political human rights. In practice, it seems to be the other way around. The West is promoting civil and political rights everywhere. It is even willing, reluctantly perhaps, to accept that it has a “responsibility to protect,” or duty to live up to “a new international security and human rights norm to address the international community’s failure to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity.”<sup>38</sup> What about economic, social, and cultural rights? The human rights organizations that originated in the West — like Amnesty International and Human Rights Watch — have traditionally focused on civil and political rights. To be fair, Amnesty International’s “Global Campaign for Human Dignity,” launched in 2005, starts address-

ing “positive” solidarity rights. Its *Primer on Economic, Social and Cultural Rights* mentions that “there is little awareness that international assistance is a human rights obligation, and not merely a question of charity or enlightened self-interest,” and then that “countries that are genuinely committed to realizing minimum essential levels of rights, and have taken all reasonable measures to do so, should be provided additional resources from those states ‘in a position to provide assistance.’”<sup>39</sup> As Philip Alston mentions, “Despite the concerns expressed by some governments, it must be emphasized that no UN body, nor any group of governments, has accepted the proposition that any given country is obligated to provide specific assistance to any other country.”<sup>40</sup>

To the question above, the answer clearly is negative: we do not have a global social system, in which all humans are responsible for the human rights of all. Perhaps we should have one, perhaps international human rights law prescribes one, but in reality we do not yet have one.

#### 4. Controversies in Contemporary Human Rights Doctrine

If the first, second, and third sections of this paper provide an account of natural rights and corresponding duties, and how they evolved over time to become human rights, could those discussion help us to settle obstinate controversies in contemporary human rights doctrine?

Before trying to answer the question, I must heed the warning against “the fallacy of deducing values from facts,” as expressed by Singer.<sup>41</sup> Or, borrowing words from Richard Joyce, I must admit that I am on the verge of shifting from *descriptive* evolutionary ethics to *prescriptive* evolutionary ethics<sup>42</sup> — on the verge of shifting from describing how natural evolution generated a natural human sense of justice to prescribing what justice should be from an evolutionary perspective. So let me explain first why it would be dangerous to step over the verge, and then why flirting with the verge is so interesting.

Although I tend to agree with Marc Hauser that all humans “share a universal moral grammar,”<sup>43</sup> the legitimacy of a universal moral grammar does not follow from its universality. For if all humans are born with an inclination to take advantage of the other if one can get away with it, and to cooperate conditionally if taking advantage of the other does not seem to work, such an inclination could vindicate Friedrich Nietzsche’s *Beyond Good and Evil*,<sup>44</sup> as much as it could vindicate John Rawls’ *Theory of Justice*.<sup>45</sup> I could argue that any society that focuses on the first lemma of such an inclination (allowing, and even encouraging strong

individuals to take as much advantage of the other as they can) can only satisfy the expectations of a limited number of its members, and would necessarily frustrate the majority of its members. I could argue that societies that adopt Rawls’ prescriptions (tolerating inequality but only to the extent needed to improve the situation of the least advantaged group) would perhaps frustrate minorities, but could satisfy the natural expectations of vast majorities. I could therefore argue that I would rather live in a society designed by Rawls than Nietzsche; that based on what we seem to know about human nature, most humans would probably prefer to live in a society designed by Rawls; and even that based on what we know about Nietzsche himself (and his fragile health), he might have preferred to live in a society that was not designed in accordance with his own statements. Making plausible statements about values shared by most humans comes as close as one can get to “true or false” qualifications of values. We can argue that Nietzsche’s values were wrong, but we cannot argue that Nietzsche was a liar; we must assume he truly believed what he wrote. The essential argument for Rawls’ conception of justice (that most rational and reasonable people, if they did not know at which end of the society they would end up living, would prefer a relatively egalitarian society) would not have convinced Nietzsche; he would consider it as evidence that Rawls was a protagonist of “slave morality”; the morality of the vast majority of mean people who are trying to paralyze the noble aristocrats in their pursuit of becoming the *übermensch*. In the end, every conception of right and wrong requires an endorsement, even if one can trace a particular conception back to human nature.

This epistemological objection to stepping over the verge between descriptive and prescriptive evolutionary ethics is not the only objection. Even though we can argue that most humans are born with an inclination to cooperate, we can also agree with Singer that all humans are born with “a disposition to join in group acts of violence against people who are not members of our own group.”<sup>46</sup> The gradual expansion of social systems (from tribes, to cities, to nations) is a very recent event in the history of human nature. Our genes are not well prepared for helping us living peacefully and cooperatively in a social system of seven billion people. One only has to think of Darfur, Rwanda, Srebrenica, or the Holocaust to understand how limited our inclination to cooperate is.

The third objection to stepping over the verge between descriptive and prescriptive evolutionary ethics is described by Donnelly: “Given that philosophical anthropologies are so controversial, there are great dangers in tying one’s analysis of human rights

to any particular theory of human nature.<sup>47</sup> Indeed, there are risks in trying to expose the ethical foundations on which the human rights edifice was built, for if they are controversial — more controversial than the human rights edifice appears to be — then they might destabilize the human rights edifice. However, failing to expose those ethical foundations means abandoning the search for alternative grounds for the international consensus that keeps the human rights edifice standing. It requires faith in the position expressed by a member of the UNESCO Committee on the Theoretical Basis of Human Rights and reported by another member, Jacques Maritain: “[W]e agree about the rights but on condition that no one asks us why.”<sup>48</sup> Then if the international community, *de facto* and in an apparently consensual manner, holds a position according to which the right to health or food security is not a human right but merely a human aspiration, which will have to wait until all nations have developed an economic basis strong enough to guarantee health and food security to its inhabitants, one is deprived of arguments. It is just so because it is what the international consensus dictates.

That is why flirting with the verge between *descriptive* and *prescriptive* evolutionary ethics is, in my opinion, not only interesting, but also important. If current international human rights policy dictates that there only national responsibilities, not international responsibilities for the fulfillment of the right to health and other essential social rights, while *descriptive* evolutionary ethics would tell us that parents who see their children starving to death are more than likely holding expectations of other-interested behavior from humans living in other countries, then there would be an additional problem. The death of these children would then not be the only problem; the fact that their parents (and uncles and aunts, and the politicians representing them) would be angered by the indifference would be an additional problem. As Hauser explains it, “[W]hen policy and intuition conflict, policy is in trouble.”<sup>49</sup>

I will tie my understanding of human rights to my understanding of human nature, with moderation. Borrowing Singer’s metaphor, I approach human nature like a wood carver approaches a piece of wood: respectful of the grain of the wood — i.e., without fear to carve against the grain if needed, but mindful of the fact that continuities between the grain of the wood and the desired object make the object stronger, while carving against the grain makes for fragile objects.<sup>50</sup> In this manner, I will first address the controversy surrounding the question whether “positive” rights (or rights that require positive efforts from others) can be human rights, or whether only “negative”

rights (rights that require mainly negative efforts from others, efforts to refrain from doing something) can be qualified as human rights. Then I will address the controversy about the geographical scope of the duties arising from human rights: are these duties confined to inhabitants of a country towards other inhabitants of the same country, or do some of them extend beyond the borders of countries? The argument that only “negative” rights can be human rights was made by Maurice Cranston, among others. He writes,

The traditional ‘political and civil rights’ can (as I have said) be readily secured by legislation; and generally they can be secured by fairly simple legislation. Since those rights are for the most part rights against government interference with a man’s activities, a large part of the legislation needed has to do no more than restrain the government’s own executive arm.<sup>51</sup>

However, “[f]or a government to provide social security it needs to do more than make laws;” so argues Cranston, it needs to “have access to great capital wealth,” and obviously a willingness to redistribute at least a part of it.

The main flaw in Cranston’s argumentation is that government interference is not the only (and perhaps not even the main) threat to “negative” rights. Historical situations, in which the government was the predominant murderer, enslaver, or thief, are quite exceptional. Now, one can argue that if a car is stolen, or if a young woman is murdered by her brother because she is suspected of adultery, these cases are not human rights violations. If and only if these events occurred within a context of “official disrespect,” like a government tacitly tolerating “honor murders,” or a government turning a blind eye to criminality in some parts of some cities, they would constitute violations of human rights.<sup>52</sup> That also means that a government cannot secure “negative” human rights through enacting legislation only. At the very minimum, a government will have to hire, train and pay the salaries for a police force, so as to enforce the law and to be able to do so, it will have to raise taxes. Then if a government is obliged to raise taxes to protect young women against “honor murders,” there is a priori no reason why it would not have to raise taxes to protect young mothers against the consequences of a bad harvest, namely her children starving.

Furthermore, to argue that a society should only guarantee “negative” human rights cuts against the grain of human nature. Cooperation requires a shared understanding and acceptance of expectations, expectations of tolerance of self-interestedness and expect-

tations of other-interestedness. Imagine a young boy, growing up in any given society. He will intuitively understand, and be instructed, that he has to respect the self-interestedness of others and show some other-interestedness to others; in return he will receive tolerance for his own self-interestedness and benefit from the other-interestedness of others. That is the natural “deal,” the fine print on the back of any enduring cooperation between humans; the fine print on any explicit or implicit social contract. Now if this boy grows up in misery, surrounded by humans who display their private wealth and their unwillingness to share it, while nonetheless expecting him to keep his hands off their private property, the deal becomes unstable. If he feels that society is giving him a reasonable chance to climb the social ladder, perhaps he will accept the deal. But if on top of experiencing misery day after day, he feels that no reasonable chance is given to him, I suspect he will not feel bound by the deal, whatever instruction he receives from his parents. The social contract he had has been broken; he no longer has any obligation towards the individuals or groups who broke it.

I am not suggesting that all poor boys grow up to be thieves, nor am I trying to justify theft. The point I am trying to make is that for a society to provide a social guarantee against standard threats to the enjoyment of property, it has to go beyond enacting legislation against theft and creating a police force, it needs cooperation from most if not all members of society. Even if only a small group of youngsters growing up in misery surrounded by wealth will go as far as stealing, a much larger group will feel they have no moral obligations to the victims of theft. Every time a wealthy human demonstrates unwillingness to share with needy humans, the implicit message is, “You do not belong to my tribe, and I have no reason to help you.” Then when the situation is reversed, whenever a needy human is in a position to assist a wealthy human, he might think, “You do not belong to my tribe, and I have no reason to help you.” This is the reason why all wealthy nations have some form of social protection (and thus recognize “positive” human rights as well as “negative” human rights); not only because they have the wealth that allows it, also because they cannot uphold the “negative” human rights without upholding the “positive” human rights. There can be no cooperation without both groups of rights.

Now let me turn to the second controversy, the one about the extent of duties arising from human rights. I have already mentioned that the ICCPR prescribes national responsibilities only, while the ICESCR prescribes national and international responsibilities, but that in reality, the opposite is happening: the West is promoting civil and political rights everywhere, and at

the same time refuting responsibility for the realization of social, economic, and cultural rights. Kishore Mahbubani forcefully denounces this partial approach:

...from the viewpoint of many Third World citizens, human rights campaigns often have a bizarre quality. For many of them it looks something like this: They are like hungry and diseased passengers on a leaky, overcrowded boat that is about to drift into treacherous waters, in which many of them will perish. The captain of the boat is often harsh, sometimes fairly and sometimes not. On the river banks stand a group of affluent, well-fed, and well-intentioned onlookers. As soon as these onlookers witness a passenger being flogged or imprisoned or even deprived of his right to speak, they board the ship to intervene, protecting the passengers from the captain. But those passengers remain hungry and diseased. As soon as they try to swim to the banks into the arms of their benefactors, they are firmly returned to the boat, their primary sufferings unabated.<sup>53</sup>

As I mentioned throughout this paper, natural rights are rights accorded by members of a tribe or social system to each other, by virtue of being members of the same tribe. If natural rights are indeed the earliest emanation of what we now understand as human rights, then descriptive evolutionary ethics do not seem to encourage a global human rights policy in line with Shue’s comment that “[b]asic rights, then, are everyone’s reasonable demand upon the rest of humanity.”<sup>54</sup> On the contrary, it seems as if this would be an attempt to carve against the grain of human nature. This is not only a matter of “rich versus poor” countries. While the state seems to be the preferred social system for mutual responsibility for human rights, this is only true when state identity is the same as national identity. As soon as people feel that they belong to a nation that is different from the state they live in, or that they are forced to share a state with another nation, they are likely to start looking for solutions to “decentralize” mechanisms of social protection. Daniel Béland and André Lacours explain, “[I]t is intrinsic to the nature of contemporary (sub-state) nationalism that it puts forwards claims about the existence of a national unit of solidarity where co-nationals have a natural obligation to each other’s welfare, which is viewed as being best fulfilled by having control over social policy.”<sup>55</sup>

At the same time, I have argued that natural rights are the fine print on the back of any enduring cooperation between humans, or the fine print on any explicit or implicit social contract. The World Trade Organization (WTO) and the International Labor Organiza-

tion (ILO) in a joint report estimate that “[b]y 2007, global trade had reached more than 60 per cent of world [Gross Domestic Product], compared with less than 30 per cent in the mid-1980s.”<sup>56</sup> If 60 percent of all global trade has an international dimension, is it not time to merge all national social systems into a single global one? Does the Millennium Declaration, for example, and in particular its preamble in which signatory countries declare that “in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level,”<sup>57</sup> signal the start of a willingness to move towards a global social system of mutual responsibility for essential social rights?

The least one can say is that the present situation is one of utmost confusion and uncertainty. Global health practitioners in rich and poor countries constantly switch between hammering on national responsibility and advocating for global responsibility. Global health programs that cannot possibly be sustained by the countries in which they are taking place — like WHO’s “3 by 5” effort, aiming for three billion people receiving AIDS treatment by 2005, most of them living in countries that are manifestly too poor to accommodate the costs of AIDS treatment in their domestic budgets — have been launched with international funding, but without a clear commitment to the continuity of this funding, without an explicit acceptance of a global responsibility. The lack of an explicit and motivated acceptance of global responsibility for the fight against AIDS makes global health practitioners question why other urgent global health issues (like reproductive health) do not benefit from a similar acceptance of global responsibility, and ultimately it leads to charges that the fight against AIDS receives too much attention and too many resources. Likewise, global education practitioners could wonder why global health benefits from an implicit acceptance of a global responsibility, while global education does not.

I fear that our natural sense of justice is unable to guide us in these real and urgent matters. It stands on “tilt”; it leads us to two very different directions. It leads us to emphasize national responsibility, as nations remain the primary units of solidarity; it leads us to global responsibility, as international cooperation intensifies and brings expectations of other-interestedness beyond borders along. Ultimately, the present situation requires a political, rational, and level-headed decision: does humanity want to move towards global responsibility for social rights, or does it want to move backwards to strictly national responsibility?

Perhaps the binary option that results from attributing responsibilities for a person’s human rights to

*those and only those* who participate with this person in the same social system, is not sophisticated enough. Perhaps it worked to expand social systems from tribes to cities to nations; perhaps the step from nations to the globe is too big. Let us have a look at the right to health, and consider the level of public health expenditure of a state (financed with taxes, collected in accordance with relative wealth, and spent in accordance with relative needs) as an expression of all inhabitants of a state being responsible for the right to health of all the inhabitants of that state. The highest level of public health expenditure is shared by the inhabitants of Luxembourg: US\$5,912 per person per year (in 2006).<sup>58</sup> The lowest level is shared by the inhabitants of Burundi: less than US\$1 per person per year. In the binary option, the inhabitants of Luxembourg and the inhabitants of Burundi either share the same social system (with all other humans); or they do not. If they do, the result would be a dramatic increase of public health expenditure in Burundi — from US\$1 to US\$400 per person per year, more or less — and an equally dramatic decrease in public health expenditure in Luxembourg. But if they do not share the same social system, then they are not at all responsible for each other’s right to health. The first option would be deemed unjust by most inhabitants of Luxembourg. From their perspective, the primary social system remains the country of Luxembourg — even though it is a tiny little country that obtains most of its wealth from trading financial products coming from and going to all corners of the world. The inhabitants of Luxembourg feel they have particular duties to each other, and those duties are, in my opinion, entirely legitimate. The second option, however, would lead to the conclusion that the inhabitants of Luxembourg are not at all responsible for the right to health of the inhabitants of Burundi. They can continue drinking coffee grown in Burundi, for example, without having to worry about the fact that the average coffee grower in Burundi is unable to pay for the health care needs of his or her children.

My conclusion is that we need a more sophisticated solution than the binary option; we need a solution that provides a sliding scale reflecting the degree of responsibility for human rights, in accordance with the degree of cooperation. We already seem to have a sliding scale, or the beginnings a sliding scale, for civil and political human rights, in the form of the “responsibility to protect” project (Project).<sup>59</sup> The level of realization of civil and political human rights this Project seeks to support beyond borders is far more modest than the level of realization of civil and political human rights prescribed by international human rights law; the Project acknowledges that realizing

human rights beyond borders is not a simple matter. I think we need a similar project for the realization of essential social rights, not only to boost the credibility of the Project (that would be a useful side-effect) but because the global community, the global social system, cannot function if humans are not willing to share a responsibility for the realization of the most essential social rights.

### 5. What the West Could Do, to Be Worthy of Cooperation, and Why

“It is undoubtedly true that development rarely takes root without security; it is also true that security does not exist where human beings do not have access to enough food, or clean water, or the medicine they need to survive.”<sup>60</sup> With these words (and others), President Barack Obama accepted the Nobel Peace Prize in December 2009.

Mahbubani writes,

It does not serve Pakistan’s interest to see the battle against Osama bin Laden end with a swift decisive victory. If this happens, Pakistan would once again become less relevant to American interests (...).

This is the real cost of the breakdown in trust and confidence between the American and Pakistani establishments. America has shown that it is an unreliable ally.<sup>61</sup>

Just as the young boy growing up in misery next to a wealthy city might not inform the police when he sees a stolen car being hidden somewhere, the average inhabitant of Pakistan might not inform the authorities when he or she witnesses Al-Qaeda activities. Why would he, or she, as long as Al-Qaeda is not a threat to his or her well-being? He or she might understand that Al-Qaeda poses a great danger to hundreds if not thousands of humans living in the West. But precisely these people have made her or him understand that they do not belong to the same social system and they feel no responsibility for the fact that one out of every ten children born in Pakistan dies before reaching the age of five.

In December 2009, the West reacted with dismay when developing countries walked away from the Copenhagen Conference on Climate Change. “The draft agreement,” according to Louise Gray, “was interpreted by developing countries as setting unequal limits on carbon emissions for developed and developing countries — meaning that people in rich countries would be permitted to emit nearly twice as much.”<sup>62</sup> It is not entirely unreasonable to expect developing countries to aim for a more ecological path to eco-

nomie growth than high-income countries did; in some ways it is analogous to many developing countries skipping the landline telephone stage and aim-

**How can we “fix” that? I suggest that Lawrence Gostin’s proposed Framework Convention on Global Health provides a starting point to a solution; a first step in a global project for the realization of essential social rights.**

ing for cellular phones. For once, developing countries are in a position to assist the West in addressing an issue that seems important to the constituencies of the West. But why would they, if they do not belong to the same social system?

The previous paragraphs may sound like threats or warnings but are not intended as such. Threats are poor arguments for cooperation: they are morally poor, and most often ineffective. They are only intended to illustrate the opportunities for global cooperation that we are not using, because we have not been able to find a way of defining a global social system in which all members accept a degree of responsibility for each other’s human rights, without abandoning national social systems as the primary units of responsibility for human rights.

How can we “fix” that? I suggest that Lawrence Gostin’s proposed Framework Convention on Global Health provides a starting point to a solution; a first step in a global project for the realization of essential social rights.<sup>63</sup> Gostin, however, keeps his distance from the human rights approach I am proposing. So let me try to reconcile our approaches. In determining the point at which point health inequalities between societies are unjust, and what wealthier societies owe as a matter of *justice* (not charity) to the poor in other countries, Gostin’s first answer is that the “violation of human rights” argument, used as such, is “just another rhetorical device without explanatory power,” and that “the text of an international legal instrument cannot be read as a principled *ethical* argument that State A owes a duty to improve the health of State B’s population.”<sup>64</sup> I tend to agree, but only to a certain extent: as long as we follow the advice of Donnelly (and others) to steer clear from tying consensual human rights treaties to “foundational assumptions,”<sup>65</sup> we are left with the compelling power of the international consensus, which has been rather disappointing when it comes to clarifying international duties. However, if we do tie human rights to ethical foundations, using



Dyck's question of "what is logically and functionally necessary, and universally so, for the existence and sustenance of communities"<sup>66</sup> as I do, then one can read human rights treaties as guidelines to enable the functioning of national communities and the global community. The right to health, in the form of a justified demand that the enjoyment of health be socially guaranteed against standard threats, thus appears as a condition for functional national communities, and for a functional global community. The ethical argument for international assistance for the realization of the right to health then arises from a claim to a functional global community — a claim all humans have. This interpretation of health as a human right approaches, in my opinion, what Gostin considers the "strongest claim that health disparities are unethical,"<sup>67</sup> namely a "theory of human functioning."<sup>68</sup> In my opinion, not only is personal health a condition for the functioning of individuals, and not only is population health a condition for the functioning of societies; a shared responsibility for each other's health is a condition for true and lasting cooperation, even across borders; a shared responsibility for each other's health is a condition for a functional global community.

However, as I argued at the end of the previous section, we should not ignore strong feelings of mutual responsibility that define nations. We cannot expect the inhabitants of wealthier nations to share their financial contributions for the health of their co-nationals with the rest of the world, if that would come at the detriment of their fellow nationals' health. It would be an unrealistic expectation, and it would go against their natural sense of justice. If cooperation is the source of mutual responsibilities for human rights, then as long as most cooperation takes place at the national level, mutual responsibilities for human rights will remain the most intense at the national level. As mentioned before, we need a sliding scale.

I quoted Pogge to explain the binary option and, in fairness, I should mention that he was the first (to my knowledge) to propose a sliding scale of responsibility for human rights. For if "human rights are moral claims on any coercively imposed institutional order,"<sup>69</sup> then the stronger the coercive nature of an institutional order is, the stronger the claims on this order would be. For the average inhabitant of Burundi, the most coercive institutional order would be the state of Burundi; the second most coercive institutional order would be the multifaceted international institutional order. Hence the primary duty-bearer for his or her human rights would be the state of Burundi; the secondary duty-bearer would be the international institutional order. In this vein, Pogge mentions the agreement on Trade-Related aspects of Intellectual

Property Rights (TRIPs) — to which all members of the World Trade Organization (WTO) must adhere if they want to enjoy the membership advantages — as an example of a coercively imposed institutional order. Because of TRIPs, developing countries can no longer purchase generic equivalents of new medicines, while the price demanded by the patent-owner is most often not within their reach. Therefore, all parties that were involved in the coercion now have a responsibility to make sure that poor people benefit from the advantages of technical innovations in medicines. Pogge proposes a Health Impact Fund: a scheme under which as many countries as possible would contribute to rewarding pharmaceutical companies for their innovations, which would then be sold at the lowest feasible cost of production.<sup>70</sup>

While I support Pogge's proposal for this specific problem, I fear that the underlying approach of attaching responsibilities for human rights to coercively imposed institutional orders creates an unnecessary burden of proof for potential rights-holders; and, moreover, a burden that might be difficult to overcome. There is no deficiency of coercively imposed institutional orders that explain why the average coffee grower in Burundi does not receive a decent share of the price of a cup of coffee sold in Luxembourg. Burundi was colonized, first by Germany, and then by Belgium (formally Burundi was a "protected territory" of Belgium, not a colony). We cannot blame the inhabitants of Luxembourg for that, but Luxembourg did and does benefit from the trading capital that extracted from Burundi when it was a colony of Germany and then Belgium. Today, Burundi has a large international debt. Surely, some bankers in Luxembourg are benefiting from that debt. The European Union, of which Luxembourg is a member, does not provide subsidies for coffee grown in Europe. It does, however, provide subsidies for corn grown in Europe, and these subsidies make the option of switching from growing coffee to growing corn economically unattractive for farmers in Burundi. This is only one reason why they have to accept a price for their coffee that is insufficient to allow them to send their children to school, or to a health center when needed. But the real problem, in my opinion, while borrowing an example from Darrel Moellendorf,<sup>71</sup> is that the mathematical genius born to a coffee grower in Burundi may obtain a university degree in financial management but has no chance whatsoever of finding a job in a Bujumbura-based investment bank that is competing with Luxembourg-based investment banks. If she or he can overcome all the hurdles and obtain the university degree, then his or her best shot would be a job in an investment bank in Luxembourg, London, or

New York, where she or he will buy coffee at the lowest possible price and sell it at the highest possible price. What or where is the coercive institutional order that imposed this?

In 1968, Robert Merton coined the expression “Matthew Effect” to describe injustice in science.<sup>72</sup> Scientists with a long-standing reputation, Merton argued, are more likely to get their papers published than junior scientists. There is no bad faith involved; senior scientists are not trying to keep junior scientists out of scientific journals. It just happens. When I look at the evolution of the economic growth between 1978 and 2000, of countries ranked in deciles in accordance to their average wealth in 1978, as calculated by Branko Milanovic,<sup>73</sup> I cannot avoid thinking that there is a Matthew Effect behind this evolution. Rich countries are becoming richer, poor countries are becoming poorer (see Figure 2). There is a trend of increasing inequality, not of decreasing inequality. There might be many coercive institutional orders contributing to this evolution, but I fear that even if we could neutralize all of them, rich countries would still become richer, poor countries would still become poorer, and the global community would become even more dysfunctional than it already is. Therefore, I do not agree that it is a condition for an institutional order to be coercively imposed, to give rise to responsibilities for the human rights of its members. Any institutional order — coercively imposed or not — gives rise to responsibilities for the human rights of its members.

We need a sliding scale that is different to the one proposed by Pogge. Ideally, it would be based on the degree of cooperation. But we do not have anything like that. At present, the only sliding scale — with some legal authority — of responsibility for the realization

of social human rights, is the one that distinguishes the “minimum core” of social human rights from the “highest attainable level” of human rights.

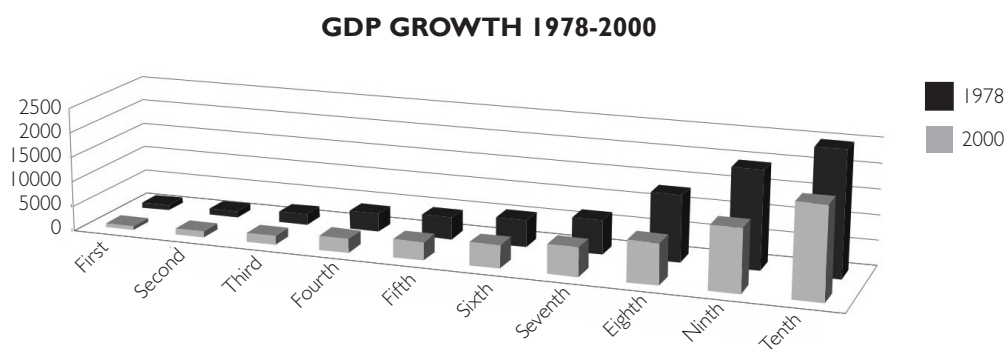
Esin Öricü argues that the way civil and political human rights norms are applied depends on contextual factors, which may or may not allow for achieving the highest possible standards. There can be “legitimate limitations.” As an example, Öricü provides a ruling by the Turkish Constitutional Court, according to which in order to preserve secularism, freedom of expression can be limited.<sup>74</sup> Öricü does not take a position on this particular limitation, but she argues that there must be “limits of limits” to rights; if those are not respected, the rights themselves become meaningless. In the same vein, the Committee on Economic, Social and Cultural Rights (the Committee) embraced the concept of “core content” to address a serious flaw in the ICESCR, namely that it only obliges countries to “take steps with a view to achieving progressively” the rights recognized in it. The Committee argues, in its third general comment, that “[i]f the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.”<sup>75</sup> In its 14th general comment, on the rights to health, the Committee prescribes the “minimum obligations” countries have in view to achieving the right to health, without which the right to health itself would be meaningless.<sup>76</sup>

But what if some countries simply lack the means to do so? The Committee clarifies this question: “[T]he Committee wishes to emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide ‘international assistance and cooperation, especially economic and technical’ which enable developing countries to fulfil their core and other obligations indicated in paragraphs 4.3

Figure 2

### Uneven Economic Growth

Adapted from B. Milanovic, *Worlds Apart: Measuring International and Global Inequality* (Princeton: Princeton University Press, 2005): at 57.



and 44 above.”<sup>77</sup> This approach not only mitigates the problem of “duties without the capacity to live up to them,” it also creates the beginning of a sliding scale. As I understand it:

- The primary responsibility for the realization of the core content of the right to health remains a national responsibility;
- The secondary responsibility for the realization of the core content of the right to health is a global responsibility, particularly incumbent on wealthy countries;
- The responsibility for the realization the right to health beyond its core content would be national again.

The Committee provided basic definitions of the core content of the rights to adequate food, education, health, and water. It should not be too difficult to agree on what the most essential social rights are, for a human to be able to function in dignity as a member of the global community. To be able to meet one’s basic survival needs would obviously be the first condition. In a different paper, I have argued how we could use the existing Global Fund to fight AIDS, Tuberculosis, and Malaria, by expanding its mandate to become a Global Health Fund, to regulate the relationship between national and global responsibility.<sup>78</sup> I will not go into details, but my basic assumptions are that developing countries should contribute the equivalent of 3 percent of their GDP to health, while they would need at least US\$40 per person per year; the gap between both would be a global responsibility, to be shared by all wealthy countries. This would require about US\$40 to 50 billion per year, or the equivalent of only 0.1 percent of the GDP. Present international human rights instruments are arguably not explicit enough to support those assumptions, let alone impose them. Gostin proposes a Framework Convention on Global Health.<sup>79</sup> Indeed, a convention around these lines might be needed to make the idea of Global Health Fund a reality. Similarly, the idea of a Global Health Fund illustrates the feasibility, if not the urgency, of a Framework Convention on Global Health, which standing alone would generate many questions about practical issues.

The result would still be far from the ideal of a sliding scale for responsibilities for human rights in accordance with the degree of cooperation between humans. But it would be a serious step closer to a functional global community. The doctrine of “containment,” as proposed by Ian Shapiro and others — i.e., the idea that the West should not wage wars in the name of realizing civil and political rights elsewhere, but focus

on the preservation of these rights at home — might go a long way in polishing the blazon of the West. But a truly effective strategy against global terror might require the opposite of “containment” in the field of economic, social, and cultural rights; it might require an explicit commitment to help realize these rights for all humans. It might be the cheaper strategy as well as the most effective one.

#### Acknowledgements

This paper was written during a fellowship with the Global Justice Program of the Whitney and Betty MacMillan Center for International and Area Studies at Yale, generously supported by the Institute of Tropical Medicine (Belgium), the Research Foundation (Flanders), and a Fulbright scholarship of the Council for International Exchange of Scholars (USA). The author also thanks Thomas Pogge and David Álvarez García for their useful comments, but remains entirely responsible for the viewpoints and arguments in this paper.

#### References

1. T. Yamagishi, Y. Horitaa, H. Takagishia, M. Shinadaa, S. Tanidaa, and K. Cook, “The Private Rejection of Unfair Offers and Emotional Commitment,” *Proceedings of the National Academy of Sciences* 106, no. 28 (2009): 11520-11523.
2. I. Khan, *The Unheard Truth: Poverty and Human Rights* (New York, London: W.W. Norton & Company, 2009): at 3.
3. T. Pogge, *World Poverty and Human Rights*, 2nd ed. (Cambridge and Malden, MA: Polity Press, 2008): at 31.
4. Negativism about natural morality is not, in my opinion, biological: the science of biology does not support it. Many biologists, however, seem to support it. That is why I believe it should be called biological negativism about morality.
5. R. Dawkins, *The Selfish Gene*, 2nd ed. (Oxford, New York: Oxford University Press, 1989): at 3.
6. R. Dawkins, *The God Delusion* (New York: Mariner Books, 2006): at 246.
7. See Dawkins, *supra* note 5, at 4.
8. E. Sober, *From a Biological Point of View* (Cambridge, MA: Cambridge University Press, 1994): at 24-25.
9. With “genealogical ancestors,” I refer to all individuals who would figure in our common genealogy (if it were possible to elaborate it); I thus mean to exclude our ancestors in the broad sense who do not have descendants in the 21st century, i.e., ancestors whose genes have been filtered out by natural selection.
10. H. Hart, *Essays on Bentham, Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982): at 79-80.
11. H. Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton: Princeton University Press, 1996): at 13.
12. A. Taylor, *The Divided Ground. Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Alfred A. Knopf, 2006).
13. *Id.*, at 29-30.
14. *Id.*, at 21.
15. F. De Waal, *Chimpanzee Politics*, 25th Anniversary ed. (Baltimore: The Johns Hopkins University Press, 2007).
16. *Id.*, at 96.
17. F. De Waal, *Good Natured, The Origins of Right and Wrong in Human and Other Animals* (Cambridge: Harvard University Press, 1996): at 140.
18. *Id.*, at 140.
19. *Id.*, at 141.
20. See De Waal, *supra* note 15, at 97.
21. See Taylor, *supra* note 12, at 29-30.
22. *Id.*, at 30.

23. *Id.*, at 31.
24. *Id.*, at 17.
25. *Id.*, at 37.
26. *Id.*, at 19.
27. *Id.*, at 20.
28. *Id.*, at 20.
29. A. Dyck, *Rethinking Rights and Responsibilities, The Moral Bonds of Community* (Cleveland: The Pilgrim Press, 1994): at 123.
30. J. Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca and London: Cornell University Press, 2003): at 19.
31. See Shue, *supra* note 11, at 19.
32. See Pogge, *supra* note 3, at 72. Underlining added.
33. C. Tudge, *Neanderthals, Bandits & Farmers. How Agriculture Really Began* (New Haven and London: Yale University Press, 1999): at 29.
34. *Id.*, at 35-41.
35. D. Ziegler, S. Brunn, and J. Williams, "World Urban Development," in S. Brunn, J. Williams, D. Ziegler, eds., *Cities of the World, World Regional Urban Development*, 3rd ed. (Lanham, MD: Rowman and Littlefield, 2003): at 21.
36. B. Dickson, "Public Transcripts Expresses in Theatres of Cruelty: The Royal Graves at Ur in Mesopotamia," *Cambridge Archeological Journal* 16, no. 2 (2006): 123-144.
37. T. Pogge, "Human Rights and Human Responsibilities," in P. De Greiff and C. Cronin, *Global Justice & Transnational Politics* (Cambridge: The Massachusetts Institute of Technology Press, 2002): at 159.
38. International Coalition for the Responsibility to Protect website, available at <<http://www.responsibilitytoprotect.org>> (last visited July 16, 2010).
39. Amnesty International, *Human Rights for Human Dignity: A Primer on Economic, Social and Cultural Rights* (2005), at 22, available at <<http://www.amnesty.org/en/library/info/POL34/009/2005>> (last visited July 16, 2010).
40. P. Alston, "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals," *Human Rights Quarterly* 27, no. 3 (2005): 755-829.
41. P. Singer, *A Darwinian Left* (London: Weidenfeld & Nicolson, 1999): at 12.
42. R. Joyce, *The Evolution of Morality* (Cambridge: Massachusetts Institute of Technology Press, 2006): at 143-177.
43. M. Hauser, *Moral Minds: How Nature Designed our Universal Sense of Right and Wrong* (New York: Harper Collins Publishers, 2006): at 426.
44. F. Nietzsche, *The Genealogy of Morals*, republication of a standard edition of the 1913 translation by H. B. Samuel (Mineola: Dover Publications, 1887).
45. J. Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Belknap, 1999).
46. See Singer, *supra* note 41, at 12.
47. See Donnelly, *supra* note 30, at 17.
48. The position is often contributed to Maritain himself. C. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009): at 21.
49. See Hauser, *supra* note 43, at xix.
50. See Singer, *supra* note 44, at 41.
51. M. Cranston, *What Are Human Rights?* (New York: Taplinger Publishing Co., 1973): at 66.
52. For an extensive elaboration of "official disrespect," see Pogge, *supra* note 3, at 65-69.
53. K. Mahbubani, *Can Asians Think? Second edition* (Singapore: Times Books International, 2002): at 59.
54. See Shue, *supra* note 11, at 19.
55. D. Béland and A. Lacours, *Nationalism and Social Policy: The Politics of Territorial Solidarity* (Oxford: Oxford University Press, 2008): at 7.
56. ILO & WTO, *Globalization and Informal Jobs in Developing Countries* (Geneva: WTO Publications/ILO Publications, 2009): at 9, available at <<http://www.ilo.org/public/english/bureau/inst/download/globalinform.pdf>> (last visited July 16, 2010).
57. General Assembly of the United Nations, *United Nations Millennium Declaration* (2000), available at <<http://www.undemocracy.com/A-RES-55-2.pdf>> (last visited July 16, 2010).
58. "Programmes and Projects, National Health Accounts, Updated Country Information (2010)," World Health Organization website, available at <[http://www.who.int/nha/country/nha\\_ratios\\_and\\_percapita\\_levels\\_2002-2006.xls.xls](http://www.who.int/nha/country/nha_ratios_and_percapita_levels_2002-2006.xls.xls)> (last visited July 16, 2010).
59. International Coalition for the Responsibility to Protect website, available at <<http://www.responsibilitytoprotect.org>> (last visited July 16, 2010).
60. B. Obama, Remarks by the President at the Acceptance of the Nobel Peace Prize (2009), available at <<http://www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize>> (last visited July 16, 2010).
61. K. Mahbubani, *Beyond the Age of Innocence: Rebuilding Trust between America and the World* (New York: Public Affairs, 2005): at 33.
62. L. Gray, "Copenhagen Climate Summit: Developing Countries Warn of 'Absolute Devastation,'" *Daily Telegraph*, December 9, 2009, available at <<http://www.telegraph.co.uk/earth/copenhagen-climate-change-confe/6764877/Copenhagen-climate-summit-developing-countries-warn-of-absolute-devastation.html>> (last visited July 14, 2010).
63. L. Gostin, "Meeting Basic Survival Needs of the World's Least Healthy People: Toward a Framework Convention on Global Health," *Georgetown Law Journal* 96, no. 2 (2008): 331-392.
64. *Id.*
65. See Donnelly, *supra* note 30, at 21.
66. See Dyck, *supra* note 29, at 123.
67. See Gostin, *supra* note 63, at 343.
68. *Id.*, at 344.
69. See Pogge, *supra* note 37, at 165.
70. A. Banerjee, A. Hollis, and T. Pogge, "The Health Impact Fund: Incentives for Improving Access to Medicines," *The Lancet*, 375, no. 9709 (2010): 166-169.
71. D. Moellendorf, *Cosmopolitan Justice* (Boulder: Westview Press, 2002): at 49.
72. R. Merton, "The Matthew Effect in Science," *Science* 159, no. 3810 (1968): 56-63.
73. B. Milanovic, *Worlds Apart: Measuring International and Global Inequality* (Princeton and Oxford: Princeton University Press, 2005): at 57.
74. E. Özücü, "The Core of Rights and Freedoms: The Limits of Limits," in T. Campbell, ed., *Human Rights: From Rhetoric to Reality* (New York: Blackwell, 1986): 53.
75. Committee on Economic, Social and Cultural Rights, General comment 3, "The Nature of States Parties Obligations," at Paragraph 10 (1990) (underlining in original).
76. Committee on Economic, Social and Cultural Rights, General comment 14, "The Right to the Highest Attainable Standard of Health," at paragraphs 43 and 44 (2000).
77. *Id.*, at paragraph 45.
78. G. Ooms and R. Hammonds, "Correcting Globalisation in Health: Transnational Entitlements versus the Ethical Imperative of Reducing Aid-Dependency," *Public Health Ethics* 1, no. 2 (2008): 154-170.
79. See Gostin, *supra* note 63.
80. I. Shapiro, *Containment: Rebuilding a Strategy against Global Terror* (Princeton: Princeton University Press, 2007).