

On Rights, Human Rights, and Property: A Response

ROWAN CRUFT

ABSTRACT *This article responds to papers by Joseph Bowen, Simon May, Zofia Stemplowska, and Nick Sage, focused on my monograph, *Human Rights, Ownership, and the Individual* (OUP, 2019). The book develops a new account of the nature of rights: as duties governed by ‘addressive’ norms of first- and second-personal thinking. This account has implications for both human rights and property rights. It implies that human rights in law should be founded on pre-legal moral rights grounded in how they serve the individual right-holder. And it implies that much property, which is morally grounded only as a system serving collective goods, would be beneficially reconceived in non-rights terms. The article defends the ‘addressive’ account of rights against Bowen’s and May’s arguments for the rival ‘Interest Theory’, and against May’s circularity charge. In response to Stemplowska (who builds on O’Neill), the article defends the place for pre-legal moral rights to goods and services as foundations for socioeconomic human rights. In response to Sage, the article defends the view that while human rights are morally grounded for the right-holder’s sake, most property rights constituting individual wealth in modern markets are not – and this throws doubt on such property’s status as a right.*

1. Introduction

There are many evaluative and normative concepts: good, value, permission, reason, duty, goal, obligation. In *Human Rights, Ownership, and the Individual* (hereafter *HROI*), I assess our use of the concept of a right. Many rights are constituted by directed duties, where this means duties owed to someone. When a duty is owed to someone, that party has a special relation to it: they are wronged if it is violated, and, *ceteris paribus*, they hold standing to demand its fulfilment in their own name. What could justify giving such a status to a particular party, in relation to a duty? By focusing our attention on a particular party, the rights concept might be distorting, drawing attention away from people who are intimately affected by duties, but who do not qualify as right-holders. Different versions of this concern underlie Confucian, feminist, Marxist, and conservative worries about rights, as highlighting right-holders at the expense of the wider group.¹ In *HROI*, I develop a new ‘addressive’ account of rights and directed duties, and examine its implications for the ideas of human rights and property rights. I defend the ‘rights’ aspect of the concept of human rights. At the core of human rights are duties morally grounded primarily on a particular party’s good, duties ‘naturally’ owed to that party, constituting her natural rights. It is important to use the rights concept here to draw attention to the party whose good works largely on its own to ground these duties and rights. But I also argue that much

modern property would be beneficially reconceived as duties whose violation wrongs the community at large, rather than the specific owner. The result is a partial vindication of rights, justifying the concept's role in relation to human rights, but favouring a new non-rights conception of much property.

I am grateful to Joe Bowen, Simon May, Nick Sage, and Zofia Stemplowska for their insightful commentaries, to Bowen and Massimo Renzo for compiling this symposium, and for the workshops on which it draws. It has been a joy to work with everyone. In what follows, I discuss Bowen's and May's comments on the 'addressive' account of directed duties (Sections 2–4 below), before going on to Stemplowska on human rights (Section 5), and Sage's doubts about my doubts about property (Section 6).

2. Legal-Conventional Rights Contra Interest and Will Theory

Bowen and May favour a 'justificatory interest theory', according to which a duty is owed to some party iff that party's interests play a central role in justifying it.² I believe this is an accurate account of 'natural' directed duties, whose direction obtains independently of anyone's recognition. But the justificatory interest theory cannot explain the directedness we deliberately create through law or convention. Just as valid law-making processes enable the creation of undirected legal duties at the legislature's say-so, I think such processes enable the creation of legal directions for duties, and the consequent creation of legal rights, as the legislature wishes, independently of the location of interests or powers. In *HROI*, I say that lawmakers have leeway to create legal-conventional rights or duties untethered by people's interests or powers. This rules out any 'interest' or 'will' theory for legal-conventional rights.³

In discussing British parents' legal right to child-benefit payments, May finds interests that both children and parents have in parents being paid child benefits, and he uses this to defend the justificatory interest theory (May, p. 200). Now I am happy to accept that in the British system, the state's duty to make child-benefit payments to parents is owed to both parents and children, as rights for both. But May's account implies that the law has to make them so owed, if it recognises children and parents as holding the interests outlined. I dispute this. Even if lawmakers recognise these interests, they can still decide to make the state's duty to pay child benefits to parents owed to whomever they choose – perhaps to neighbours, or to the village cat as its right – and not to either parents or children. This would be odd: nonpayment to parents of child benefits would legally wrong neither parents nor children, but rather would wrong the neighbours or the village cat. Yet in my view lawmakers are free to create this oddity. Just as they can choose whether to create the relevant duties in the first place, they can also choose to whom they are owed as their rights, independently of the interests they recognise.⁴

If this is correct, we should reject theories which make a duty's direction depend on factors, such as rights-independent interests, that are not directly subject to lawmakers' say-so. Yet as both Bowen and May observe, this negative argument does not compel adoption of my 'addressive' theory; my reasons for this new theory are distinct, given in *HROI*, sect. 4.2–4.4 and Chapter 7.

3. Rights as Addressive Duties

Bowen and May summarise the ‘addressive’ theory nicely. It says a duty takes the form of being owed to someone P if and only if for the duty to be a paradigm of its form, the duty-bearer must conceive the dutiful action second-personally, as ‘to be done to P thought of as “you”’. The theory also says that if P is a capable party, then for the duty to be a paradigm of its form, P must conceive the dutiful action first-personally, as ‘to be done to me’. Such conceptions are also required, by the duty’s form, if the duty-bearer and P are to be fully virtuous (*HROI*, Chapter 4).⁵ Where reasons and undirected duties have one logical place for the first person (one place for the person or people who should think of the relevant action as ‘mine to do’ [*HROI*, sect. 4.3]), directed duties have two logical places, one for an agent and one for a subject. Directed duties connect the two parties first- and second-personally as ‘acting/acted on’. This relation can occur naturally but is also createable anywhere through lawmaking.

Bowen wonders how the normativity of the paradigmatic can be ‘part of what it is to hold a right against another’. He writes: ‘as Cruft acknowledges, were one to fail to satisfy this condition [requiring first-/second-personal thinking], this does not mean the right and correlative duty do not exist. Rather, it shows only that the case is non-paradigmatic. But, if it is possible for the right and correlative duty to exist without first-personal thought, the first-personal thought is not partly constitutive of the duty’ (Bowen, p. 189). Bowen goes on to raise similar concerns about my parallel use of the normativity of virtue. These should not be concerns. My account says that a duty’s being owed to someone is constituted by its being paradigmatic, and required by virtue, for the duty-bearer and the relevant ‘someone’ to think of the dutiful action in the specified first- and second-personal ways. The norm that such thinking is paradigmatic and virtuous is what constitutes the duty’s direction, not the thinking itself. Compare Foot on Thompson’s Aristotelian categoricals: ‘the deer is an animal whose form of defence is flight’.⁶ Deer who fail to prance away in defensive flight are still deer. The defensive flight is not constitutive of being deer. Rather, falling under the norm – that, given the kind of animal one is, one in some sense ‘should’ take flight as defence – is partly constitutive of being a deer, at least in modern ecosystems.⁷ Similarly, I argue that people’s falling under the relevant addressive norm – that, given the kind of duty applying to one, one ‘should’ think in the relevant first- and second-personal ways, both for paradigmaticity and for virtue – is constitutive of the duty’s direction. The fulfilment of the norm is not constitutive of the duty’s direction; the norm itself is.

May objects that my first- and second-personal normative conditions hold only because of the logically prior direction of the duty, rather than themselves constituting it:

Subira, [who owes Obadiah a duty to return a concertina] must retrieve the concertina from third party Thurgood before she can return it to Obadiah. The addressive theory states that Subira must regard this course of action as something she does to Obadiah, and that Obadiah must regard it as something she does to him. In contrast, Subira does not need to regard how she treats Thurgood second-personally nor does he need to regard how she treats him first-personally. But what explains the addressive difference between Obadiah and Thurgood [...]? If it holds only because Subira’s duty is owed

to Obadiah and not to Thurgood, then the addressive theory is circular.
(May, p. 196)

Note that the difference in the norms bearing on Subira's first- and second-personal thinking is more complex than May suggests. I think Subira should conceive both Obadiah and Thurgood second personally, because we have substantive moral reasons to conceive any person with whom we interact in this second-personal way (*HROI*, p. 46). The addressive difference between the way Subira should conceive Obadiah and Thurgood in her actions returning the concertina is that the form of her duty constitutes an additional normative requirement to conceive Obadiah second-personally, on top of her substantive moral requirement to conceive persons on whom she acts second-personally, which applies equally to Obadiah and Thurgood. May should be read as asking whether this additional and formal requirement 'holds only because Subira's duty is owed to Obadiah and not to Thurgood'.

HROI offers three possible explanations for the direction-constituting addressive difference in Subira's relationship to Obadiah and to Thurgood that do not simply advert to the duty's direction as logically prior. First, it might be that through processes of valid lawmaking, we have created the relevant formal addressive norms distinguishing Subira's relationship to Obadiah and to Thurgood (*HROI*, sect. 5.1; also pp. 66–67). Or it might be that these addressive norms are naturally generated by the relative importance of Obadiah's good as served by Subira's action: this would make Subira's duty's direction 'natural' and uncreated (Chapter 7). Finally – and this was a brief suggestion (*HROI*, p. 132) – if Subira's duty is a promissory one, then the addressive, direction-constituting norms might be directly generated by the addressive nature of the act of promising. The first and third of these stories refer to certain social facts (about who said what when, independently of the location of any interests) on which the existence of the relevant addressive norms (formally requiring first- and second-personal thinking) supervene. The second refers to the importance of Obadiah's good's relation to Subira's action, on which again the relevant addressive norms supervene along the lines outlined in sect. 7.6. Most likely for this case, the first or third explanation is correct. But whichever we go for, we do not have to say circularly that the addressive norms, which the theory tells us are constitutive of directedness, hold simply because of the logically or explanatorily prior direction of the relevant duty; instead, the relevant addressive norms supervene on independent facts as outlined.

4. The Centrality of the Justificatory Interest Theory?

Bowen's final comments are suggestive. *HROI* Chapter 7 argues that when A's good morally grounds a duty, the duty-bearer B will necessarily be required by the duty's form to think of A second-personally as 'an addressable "you" on whom I am to act'. Thus, natural, recognition-independent rights and directedness are best accounted for by the justificatory interest theory, even though created, legal-conventional rights are not.

On this basis (and his scepticism about what we can learn from paradigmatic-normativity, discussed earlier), Bowen suggests:

Cruft could maintain that [the] justificatory version of the Interest Theory explains both directionality and the resulting Addressive Theory. He could then suggest that, when we have an instance of someone holding a right for which their wellbeing is not the grounds of the duty [...] the directionality of the duty is a non-core instance of right-holding. It resembles, emulates natural directed duties and rights. Its existence is, to some extent, a fiction – a positivistic affair. (Bowen, p. 191)

While I find this attractive, it overlooks the ubiquity of the many legal-conventional rights that wear on their face their justification in goods other than the right-holder's. Consider teachers' rights that work be handed in on time, judges' rights against political interference in sentencing, managers' rights that their decisions be respected, parents' rights to discipline their children.⁸ In none of these cases is it tempting to regard the right-holder's own good as playing a major role in the justification of the relevant duties. Instead, certain values (education, justice, efficiency) and the good of particular further parties (students, victims, and perpetrators, market participants, children) do most of the work in justifying the relevant duties. In Chapter 14, I argue that we often have good reason to regard these as rights because they protect the right-holder's interest in doing her morally justified duty – even though this interest does not morally ground the rights in question. Bowen's suggestion would compel us to see all these as nonstandard cases, in which our use of the rights concept fictively posits or constructs right-holders' interests as the relevant duties' grounds. This is unpersuasive, given how plainly the rights in question are grounded independently of the right-holder's interests. Thus, I reject Bowen's suggestion, despite its dialectical attractions.

5. Human Rights, Humanity, and Imperfect Duties

On my account, a human right must be either a pre-legal, recognition-independent natural right (hence existing primarily for the right-holder's sake) that is also 'everyone's business', or else it must be a legal institutionalisation of such a right (*HROI*, Chapters 9 and 10). As Stemplowska notes, on my account recognition-independent natural rights give practical form to Rawls's thought about the moral 'separateness of persons': such rights are morally founded on a particular party's good, largely independently of the good of others.⁹ Human rights encompass that subset of pre-legal natural rights whose fulfilment is morally demandable by anyone on the right-holder's behalf (Chapter 10), plus legal rights founded on the latter.

Stemplowska alludes briefly (Stemplowska, pp. 204–05) to an important area of concern: about how exactly law institutionalises recognition-independent natural rights. In what sense should the institutionalisation be necessary for or just conducive to securing the underlying right? How conscious should people be of this relationship? If we make it too easy for a legal-conventional right to specify a natural right, then we end up with implausibly many legal-conventional human rights. There is more to say on this than I do in the book.¹⁰

However, the institutionalisation idea is spelt out, my approach will encounter O'Neill's claimability problem, which I address in Chapter 9. O'Neill's challenge is to make sense of pre-institutional rights to goods and services. It is unclear how someone

can hold a pre-institutional right to food, when in the absence of institutions it is indeterminate who bears what duties to ensure that food is provided for that person – and hence indeterminate from whom they can claim food.¹¹ On my account, the status as human rights of any legal rights to goods and services depends on their giving institutional form to such pre-institutional rights. So I need to make sense of pre-institutional rights to goods and services, even though they do not seem pre-institutionally claimable.

In *HROI*, I have two complementary responses. Let me call the first the Humanity's Duty response. This maintains that for any individual, her interest in food is sufficiently important on its own to ground duties, borne by humanity at large, to ensure she has food: humanity is the party from whom she can naturally, pre-institutionally claim food on her own behalf as right-holder. Someone who goes unfed in our wealthy modern world is wronged by humanity, on this account. This wrong marks the violation by humanity of a duty grounded simply on that person's interests, naturally constituting the relevant person's right, independently of the existence of institutions (*HROI*, pp. 153–56).¹²

I will call the second response the Allocation Principles response. This maintains that each individual's interest in food plays a major role alongside allocative principles (such as fairness, efficiency, proximity) in grounding pre-institutional duties borne by individual agents, requiring each duty-bearer to do what the allocation principles tell her to in serving the interest (*HROI*, pp. 157–60). What exactly each duty demands of an agent, and from whom a claimant can pre-institutionally demand it, depends on which are the appropriate allocative principles.¹³ On this approach, a given individual's interest in food succeeds in grounding a duty borne by a particular agent only by working in conjunction with the relevant allocation principles. Because of this, *HROI* Chapter 8 tells us that the duty's status as naturally owed to the individual interest-holder is diminished. (Chapter 8 says that a duty's being naturally directed comes in degrees: the larger the duty-grounding role played by an individual's interest, the more the duty in question is naturally owed to that individual.) Nonetheless, as Stemplowska notes, in *HROI* I 'accept [...] that [on the Allocation Principles approach] "it is only the relevant party's interest that makes it the case that the party is to be served", even if another factor determines who will serve [and what exactly they should do]' (Stemplowska, p. 209). I argue that this means the moral duty retains some status as naturally owed to the party as her pre-institutional right, even if it would be more fully naturally owed to her if it were grounded wholly on her good (*HROI*, pp. 158–60).

Stemplowska rejects the Humanity's Duty response and favours the Allocation Principles response, giving it an 'imperfect duties' twist.¹⁴ She writes:

[S]ocioeconomic human rights are, in fact, claimable by the right-holders. They are claimable if we accept that the right-holder can pursue delivery against anyone she wishes [...] who has failed to take any reasonable steps to exercise [...] the imperfect duties generated by people's socioeconomic needs. [...] [O]n my view, each individual is under a duty to take some reasonable steps towards providing others with the object of those socioeconomic rights, say nourishment.¹⁵

Later, she says ‘it is not obvious to me that we have to concede that rights cannot correlate with imperfect duties’ (Stemplowska, p. 209). In the next three paragraphs, I argue that while Stemplowska’s Allocation Principles approach is attractive, we should not give it the ‘imperfect duties’ interpretation she proposes. Afterwards, I defend my Humanity’s Duty response, as a position to maintain alongside the Allocation Principles response.

What is the distinction between perfect and imperfect duties? In earlier work, Stemplowska writes: ‘perfect duties are duties whose content is (largely) specified, and imperfect duties are duties that leave (significant) room for the duty-bearer to choose how to discharge them, especially regarding which right-bearers’ rights to meet’.¹⁶ To this definition, we should add that the room for choice definitive of a duty’s being imperfect is internal to that duty. It is not the room for choice generated when that duty conflicts with another. Thus, my general duty of beneficence is imperfect because I have to choose to whom to direct my beneficence. By contrast, my duty to meet you as promised is perfect, even if I must choose whether to respect it in conflicts with duties owed to others. My room for choice in the beneficence case is internal to the duty, making it imperfect, unlike the promissory case.

So understood, I believe Stemplowska’s imperfect duty to take reasonable steps to provide others with nourishment cannot correlate with a natural, pre-institutional right. This is because this imperfect duty cannot plausibly be grounded primarily by any particular party’s good. How could my good plausibly be a primary ground for your duty to take reasonable steps to provide some with nourishment, when this duty allows you to focus your efforts on anyone among the billions of other humans, rather than me? It is doubtful that my good could play a major role in grounding such a duty that need do nothing for me. But if my good does not play a major role in grounding your duty, then Chapter 7 tells us the duty cannot be naturally owed to me as my right. The same reasoning would exclude it from being naturally owed to any other individual either.

We should not reject Stemplowska’s Allocation Principles approach. Instead, contrary to her interpretation, we can take it as identifying perfect duties correlating with natural, pre-legal socioeconomic human rights. Stemplowska’s proposal implies that for any human, each individual agent has a duty to provide that human with food, if the agent has not done (or is not currently doing) enough for others already. So long as we include the latter condition, this does not leave any room for choice: I must provide you with food if I have not done (or am not now doing) enough for others already; I must provide your neighbour with food if I have not done (or am not now doing) enough for others already and so on. So understood, each duty seems groundable largely by the recipient individual’s interest in food. On this picture, your interests work largely on their own to place me under a duty to ensure that you are fed, if I have not already done or am not currently doing enough for others’ subsistence. Your neighbours’ interests do the same, as do the interests of each other individual. Each party’s interest has to be supplemented by Stemplowska’s allocative condition in order to generate my perfect duty. But this supplementation does little to dilute the important grounding role played by the party’s interests; so the duties in question are to a significant degree naturally owed to the relevant party. This means that on Stemplowska’s proposal, each party A has a natural right against each and every other party B, that B ensure A is fed unless B has done or is doing enough for others already.

The general form of this approach – using allocative principles to identify individually borne perfect duties owed to each person as her natural, preinstitutional socioeconomic rights – constitutes my Allocation Principles response to O’Neill’s challenge. There are versions of this response based on allocative principles other than Stemplowska’s, and I think many such principles are plausible.¹⁷ As noted earlier, I defend the Allocation Principles response to O’Neill alongside an alternative, Humanity’s Duty response. One reason to support the Humanity’s Duty response is that if, as I contend, each individual’s interest unsupplemented generates a duty for humanity to feed that individual, then that duty will be more fully naturally owed to the individual (as her natural right), than on the Allocation Principles response, which requires supplementary allocative principles. A related reason is that Stemplowska’s Allocation Principles response does not deliver natural rights whose fundamental content is ‘to be fed’. Instead, their content is ‘to be fed by you unless you have done enough for others’. Alternative allocative proposals deliver similarly conditional contents: e.g. ‘to be fed by you if you can do this at least cost compared to others’.¹⁸ This is a disadvantage. Our pre-legal human rights are plausibly conceived as taking simple contents serving the right-holder’s good: not to be killed, to freedom, to be fed. The Allocation Principles response makes socioeconomic natural rights complex compared to natural rights to liberty. We avoid this with the Humanity’s Duty approach. A further reason for this approach is that it underpins my thesis that human rights are everyone’s business: as members of humanity, we are all part of the agent ultimately responsible for the duties in question and that is why they are everyone’s business.

Stemplowska argues against the Humanity’s Duty approach. She thinks ascribing to humanity a moral duty to ensure I am fed fails feasibility conditions.¹⁹ I agree that a duty cannot ask for the impossible, nor for what is possible only through chance rather than planning (as in Stemplowska’s Buttons case). But Stemplowska imposes more:

[B]y attributing the duty to humanity we need to either stipulate, at least roughly, the individual duties that would correspond to the individual rights – [if] the duty can be discharged by individuals acting in an uncoordinated fashion [...] – or we need to outline the coordination that is to take place. (Stemplowska, p. 208)

I disagree. We think a duty for an individual (or well-structured group) is feasible even when we have little conception of how the parts of that individual (or group) might work together to ensure they do what the duty asks. For example, parents have duties to bring up their children well, even though most parents in my experience have little conception of how they can work together, integrating and maintaining the various aspects of their lives and the inchoate possibilities for what a ‘good’ parent is in order to ensure that their children are well brought up. Parental duties bind even those for whom it is very unclear individually how to coordinate the multiple aspects of their lives to be a good parent. Sometimes we can be confident a person cannot fulfil their parental duties, perhaps because a person’s parts are too disunified (e.g. multiple personality disorder), or because they are too financially impoverished. But until we get to that point, we see parental duties as appropriately feasible even if we have little sense of how the duty-bearer could fulfil them.

Why demand more from duties for humanity? We have a rough sense of what it would be for humanity to act through planning rather than chance – e.g. of what it

would be for humanity to develop international institutions to prevent a repeat of colonialism and world wars. When it comes to ensuring any particular individual has food, we have a rough sense of what it would be for humanity to do this, even if there are many possibilities and the precise individual actions comprising humanity's agency are unclear. I do not see why this makes the duty unfeasible, unless we are imposing a more demanding feasibility condition on humanity's duties than on those borne by individuals or structured groups.²⁰ Nonetheless I recognise this is a sketch, and I see the seriousness of Stemplowska's concern.²¹

6. Property

The final third of *HROI* examines property. Some property rights are morally grounded for the right-holder's sake, comprising pre-legal natural rights (*HROI*, sect. 12.2–12.4). But I argue that most property under modern conditions is not like this. For example, property arising from voluntary exchange need do nothing for the resulting owners, for voluntary exchange respects exchangers' agreement independently of their good (*HROI*, pp. 221–26).²² As the examples from this article's Section 4 above made clear, there are many legal-conventional rights that are not grounded for the right-holder's sake; but in most such cases, they wear on their face their justification in goods other than the right-holder's. Property is an exception. For good reason, there are no duties of office specially attached to property ownership (*HROI*, pp. 246–47).²³ Because of this, unlike the judge's right to sentence or the manager's right to make decisions, property rights do not clearly display their ground in the common good. Instead, we are liable to misconceive each person's property as justified primarily for the good of that person. (We are especially liable to do this because some property rights are so justified.) To avert this danger, I recommend that most property of those who are comparatively wealthy be reconceived as 'controllership' rather than 'rights': controllership is like ownership in that the controller is permitted to use (and transfer) something where all others are duty-bound to exclude themselves from it; but unlike ownership, the relevant trespassory duties are not owed to the controller. Instead, when they are violated, the controller has no special status as wronged; rather, violation wrongs the wider community (*HROI*, pp. 241–43).²⁴

Sage worries that my doubts about natural rights over external property will apply to natural rights over the body:

[T]o determine whether [rights over the body] are *natural* rights we [...] presumably have to apply [the] calculus of interests [according to the taxonomy developed in Ch. 8]. And it seems doubtful the calculus will recommend extensive personality rights of the kind we currently enjoy. (Sage, p. 214)

I would dispute the last sentence. I think our interests in controlling our bodies and minds (as opposed to their external products) are of such great importance that they constitute rarely defeasible grounds for duties protecting our bodies and minds, grounds that are normally undefeated even by the vital interests of others.²⁵ Sage claims '[w]ere the brain, technical nous, and dogged efforts of Bill Gates and Rowan Cruft at the disposal of others with very little, those others might no longer be impoverished' (Sage, p. 214). But even if this is true, Gates's interests in control over and

noninvasion of his body and mind still seem to me sufficiently important to ground duties of non-interference, even if this carries major costs. Indeed, I argue that for *some* external property, similar things are true (*HROI*, sect. 12.2–12.4): your interest in control over the goods necessary for your survival, or those tightly bound up with your life's work, might ground trespassory duties giving you control of these goods, even at the expense of others' vital interests. My claim across Chapters 12 and 13 is simply that much modern property in external goods is not like this: the trespassory duties that prevent others from using my shed do too little for me for them to be groundable primarily by my interests; but my rights over my body are still groundable for my sake in this way.

Money seems a particularly important modern item of property. Sage notes that in regarding money in bank accounts as property, I misconceive its legal reality:

In the eyes of the law, the account holder's rights are [...] not proprietary but contractual. When you deposit [...] coins at your bank, you retain no property right over those physical objects – they become the bank's, and it is entitled to deal with them as it likes. Having given up your relevant property rights, you are left with a contract with the bank. This contract contains various enforceable promissory obligations on the bank's part and yours, including its obligation to repay you (upon the presentation of an appropriate demand) an equivalent sum to that which you have deposited (plus interest, etc.), or to pay the same amount to a third party you have nominated, and so forth. (Sage, p. 215)

I make two points in response. First, if we stick to the legal facts, bank accounts are entirely constituted by contracts and therefore fall on the 'non-natural' side of my division between natural and created rights. For all contractual rights are recognition-dependent in my sense, existing only if at least someone somewhere has thought that they exist. Some contractual rights map onto underlying natural rights: e.g. suppose you promise me not to assault me. But it is unlikely that the complicated contractual structures constituting bank accounts will map onto natural rights in this way. Reflection on the legal reality of money in banks should therefore support *HROI* Chapters 12 and 13's doubts about natural market rights, at least in relation to money.

Secondly, where Sage points out that markets on close inspection are constituted by much more than strictly property rights (including the legal contractual relationships that constitute bank accounts, and also antitrust regulators, consumer protection), I regard the trespassory duty as nonetheless the core moral feature of markets. One of the best justifications for the market is what I call the 'classical liberal' view of Hume, Smith, and Hayek: that markets 'harness our limited altruism, limited knowledge, and limited resources to deliver an efficient, productivity-generating allocation' (*HROI*, p. 234). The market also delivers other goods: e.g. the intrinsic value of the interpersonal connection contract constitutes; the freeing of market agents from feudal social roles. But because I take the classical liberal case for markets' efficiency as their core justification, I regard the trespassory duties constitutive of property rights (or of controllership) as what really matter in markets. These are what make the classical liberal case work: market agents' motivation is driven by the prospect of getting control of goods and services, protected by trespassory duties against others; and post-exchange efficient distributions are themselves constituted by constellations of trespassory duties.

To put it crudely, on this picture who gets to exclude whom from what stuff (including services) is what really matters in a market: it is what drives market agents, and it is what constitutes the distributions we assess as efficient.²⁶ If Bill Gates's contractual relationship with JP Morgan could never lead to his excluding others from anything, it would not deserve the focus I give it. This fundamental feature of money – as power to alter others' and one's own trespassory duties – is analysed in *HROI* Chapter 11.

So I decline Sage's invitation to regard property as less central to markets. Instead, property-qua-exclusion is at their moral core. On this perspective, all taxation is about property, not just that which taxes on the basis of ownership, as Sage narrowly construes it (Sage, pp. 216–17). Income taxation or sales taxes alter a (counterfactual) pretax distribution of property, by changing who has access to what. Even if the taxes work through 'taking' money held in banks, construed in Sage's contractual terms, such taxes' key result is that different people or institutions are excluded from items or services, compared to what would have been the case without the tax.

7. Conclusion

There is more to say. I have not addressed Bowen's argument for the redundancy of what he calls the Right-Holder Condition in my 'addressive' account; nor have I offered an account of how the relevant formal addressive norms supervene on the direction-independent facts to which I advert in responding to May; nor have I offered to Stemplowska my own account of the feasibility conditions on duties borne by humanity or examined the value of the non-property aspects of markets for Sage. These are on my to-do list, and I cannot promise to address them to my own or my commentators' satisfaction. But I am so grateful to each of them for their thoughtful, probing work.

HROI starts from the premise that the historical-cultural contingency of the concept of a right is not a reason to reject it, but rather a reason to seek justification for it. I stand by my conclusions that its use within the concept of human rights is justifiable, given their ground in the right-holder's own good, but that it is more dangerous in relation to property, given markets' ground in the common good.

Rowan Cruft, University of Stirling, Stirling, UK. rowan.cruft@stir.ac.uk

NOTES

1 For Confucian concerns about over-use of the idea of rights in non-individualistic contexts, see Ihara, Craig K. 2017. "Are Individual Rights Necessary? A Confucian Perspective." In *Confucian Ethics: A Comparative Study of Self, Autonomy, and Community*, edited by K.-L. Shun and D. B. Wong. Cambridge: Cambridge University Press. For a summary of feminist doubts about human rights, see Reilly, Niamh. 2009. *Women's Human Rights*. Cambridge: Polity, p. 3. For the classic Marxist case against rights, see Marx, Karl. 2000. "On the Jewish Question." Reprint in *Karl Marx: Selected Writings*, 2nd edn., edited by D. McLellan, 46–70. Oxford: Oxford University Press. And for conservative worries about socioeconomic human rights, see Cranston, Maurice. 1973. *What Are Human Rights?* London: Bodley Head.

2 See Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Clarendon, Chapter 7.

- 3 Cruft, Rowan. 2019. *Human Rights, Ownership, and the Individual*. Oxford: Oxford University Press, *HROI* hereafter, p. 27. For the interest/will debate, see Kramer, Matthew H., Simmonds, N. E., and Steiner, H. 1998. *A Debate Over Rights: Philosophical Enquiries*. Oxford: Oxford University Press. Note that legally created rights might be morally justified or unjustified. I argue (*HROI*, sect. 5.4) that it is rare though possible for a legal-conventional right to be morally justified yet serve no independent interest of the right-holder. I also assume that morally unjustified legal-conventional rights and directed duties should be analysed along the same lines as their justified fellows: for disagreement, see Buchanan, Allen, and Gopal Sreenivasan. 2021. "Review of R. Cruft, Human Rights, Ownership, and the Individual." *Ethics* 131(2): 383–90, p. 385. I am wary of taking our unjustified legal creations to be 'not really rights' or 'not rights in the way that justified rights are rights'.
- 4 May also discusses the military duty to salute: May says that if lawmakers decide to make the duty owed to officers, this must involve ascribing to officers duty-grounding interests in being saluted as a matter of honour. But it seems to me that such interests are created by the duty's direction, rather than independent of it (*HROI*, sect. 2.4). May also discusses the Prime Minister's right to declare war, which protects a duty of office: see *HROI*, Chapter 14.
- 5 In discussing an example in which Ann promises Ben that she will meet him at the pub, Bowen slightly mischaracterises my view: he claims that when Ann's duty is owed to Ben, my theory will say that Ben is required by the duty's directed form to think first personally of Ann's duty as owed to him. Instead, my account says that when Ann's duty is owed to Ben, he is required by the duty's directed form to think first personally of Ann's promised action or its nonperformance (meeting or failing to meet at the pub) as done to him. See *HROI*, p. 47 including note 6, on promising as a special case to which Bowen's reading might apply as well as my own.
- 6 Foot, Philippa. 2001. *Natural Goodness*. Oxford: Clarendon, p. 34, drawing on Thompson, Michael. 1995. "The Representation of Life." In *Virtues and Reasons*, edited by R. Hursthouse, D. Lawrence, and W. Quinn, 247–96. Oxford: Clarendon.
- 7 It is unclear whether, in their use of the idea of a 'life form', Foot and Thompson would endorse the constitutive claim made here; I suspect they would. Whatever their view, my account of directedness makes falling under addressive norms constitutive of a duty's direction.
- 8 See Wenar, Leif. 2013. "The Nature of Claim-Rights." *Ethics* 123: 202–29, for an account of rights initially centred around roles like these.
- 9 Rawls, John. 1971. *A Theory of Justice*. Oxford: Blackwell, p. 27.
- 10 For more on this topic, see my "Is there a Right to Internet Access?" In *Oxford Handbook of Digital Ethics*, edited by C. Veliz. Oxford: Oxford University Press, forthcoming.
- 11 O'Neill, Onora. 1996. *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. Cambridge: Cambridge University Press, and O'Neill, Onora. 2000. *Bounds of Justice*. Cambridge: Cambridge University Press.
- 12 For an early version of this proposal, see Wringer, Bill. 2005. "Needs, Rights, and Collective Obligations." *Royal Institute of Philosophy Supplement* 57: 187–208.
- 13 In *HROI*, I reference proposals in: Barry, Christian. 2005. "Applying the Contribution Principle." *Metaphilosophy* 36: 210–27; Kamm, Frances. 2007. *Intricate Ethics*. Oxford: Oxford University Press, Chapters 11 and 12; Miller, David. 2007. *National Responsibility and Global Justice*. Oxford: Oxford University Press; Stemplowska, Zofia. 2009. "On the Real World Duties Imposed on Us by Human Rights." *Journal of Social Philosophy* 40: 466–67; Tasioulas, John, and Effy Vayena. 2016. "The Place of Human Rights and the Common Good in Global Health Policy." *Theoretical Medicine and Bioethics* 37: 365–82; Wenar, Leif. 2007. "Responsibility and Severe Poverty." In *Freedom from Poverty as a Human Right*, edited by T. Pogge, 255–74. Oxford: Oxford University Press/UNESCO.
- 14 Stemplowska also discusses a further response I develop: that each individual's interest grounds recognition-independent, natural rights against her own state (*HROI*, pp. 160–61). I develop this partly to show that there are pre-institutional rights reflected in the statist structure of human rights law. But I take Stemplowska's point that this cannot accommodate stateless people.
- 15 Stemplowska, p. 7, Zofia. 2022. "Is Humanity Under a Duty to Deliver Socioeconomic Human Rights?" *Journal of Applied Philosophy* 39(2): 202–11, p. 208. For the original proposal, see Stemplowska 2009 op. cit.; compare Ashford, Elizabeth. 2015. "A Moral Inconsistency Argument for a Basic Human Right to Subsistence." In *Philosophical Foundations of Human Rights*, edited by R. Cruft, S. M. Liao, and M. Renzo. Oxford: Oxford University Press.

- 16 Stemplowska 2009 op. cit., p. 481. Compare Hope, Simon. 2014. “Kantian Imperfect Duties and Modern Debates over Human Rights.” *Journal of Political Philosophy* 22: 396–415, p. 403.
- 17 See note 13.
- 18 Wenar op. cit.
- 19 She also says ‘the duty imposed on humanity does not seem perfect either’ (Stemplowska 2022 op. cit., p. 210), but I do not see this: humanity’s duty correlative to your right to food requires an action (ensuring you are fed) from a determinate agent (humanity), that gives the agent no choice of to whom it is to be enacted (it is to be enacted to you).
- 20 In correspondence, Renzo challenges: ‘while in the case of parents we have an idea of what they concretely need to do (put food on the table, call the doctor when the child is sick, send the child to school), in the case of international institutions people [...] have very different ideas (aid works vs. aid doesn’t work; gas emissions must be reduced vs global warming doesn’t exist)’. But in both cases, it is clear what the relevant right demands: on the one hand, a child whose parents have brought up to be healthy, happy, educated; on the other, a person for whom humanity has seen to it that they have food. In both cases, there are disputes internal to the group agent (parents, humanity) about what exactly the duty demands from individuals, about how to interpret the required group action, and how to perform it. (Debates for some contemporary parents-as-agent include: home-schooling vs. institutional education; how to discipline; two parents vs. multiple parents?).
- 21 Compare Brownlee, Kimberley. 2018. “Dwelling in Possibility: Ideals, Aspirations, and Human Rights.” In *Human Rights: Moral or Political?*, edited by Adam Etinson. Oxford: Oxford University Press; compare my reply in the same volume. I have not discussed Stemplowska’s examples of acts feasible only through immorality (Stemplowska 2022 op. cit., p. 206); I would argue that in her Singer-style case, the group of 10 adults has fulfilled its duty, qua group agent, albeit in a way that is internally grossly unfair.
- 22 This is one version of Nozick’s point that voluntary exchanges generate ‘unpatterned’ distributions (*Anarchy, State, and Utopia*. Oxford: Blackwell, 1974, pp. 160–164).
- 23 The common good is served best by letting owners do what they want with their property, within familiar limits. For an interesting form of dissent, see Katz, Larissa. 2013. “Spite and Extortion: A Jurisdictional Principle of Abuse of Property Right.” *Yale Law Journal* 122: 1444–83.
- 24 Compare Ihara’s Confucian conception of game-wrongs (2017 op. cit.).
- 25 See the STRONGEST and STRONG A roles an individual’s interest can play in grounding a duty, outlined in *HROI* Chapter 8. Note that I am saying that the case for the existence of a duty can rarely be outweighed, even if the duty itself can be (*HROI*, p. 124).
- 26 Even trading in which nobody wants delivery of the final product (e.g. speculative commodities trading) is still motivated ultimately by traders’ desires for control over stuff: for housing, luxury cars, or the pure potential control of stuff in the abstract, delivered by wealth for wealth’s sake.