## 1AC CHP

### Framework

#### Meta-ethics should start from reflective equilibrium—our convictions are better justified by rule util than act util

Hooker 17

Brad Hooker (Professor of Philosophy at the University of Reading). “Feldman, Rule-consequentialism, and Desert.” In The Good, the Right, Life and Death: Essays in Honor of Fred Feldman, by Jason R. Raibley and Michael J. Zimmerman. 2017. JDN. <https://www.taylorfrancis.com/books/e/9781315239323/chapters/10.4324/9781315239323-6>

In fact, I think it a mistake to think that how rule-consequentialism should be formulated is a consequentialist question. I am not suggesting Feldman ever made this mistake. A closely related mistake, which again I am not suggesting Feldman made, is to think that the best argument for rule-consequentialism is itself a consequentialist argument — for example, an argument starting from the consequentialist premise that the goal of morality is to produce the best consequences. The most important objection to that kind of argument for rule-consequentialism is that it stands in need of an argument for its initial consequentialist premise. (For discussion, see Hooker, 2000a, pp. 4–31, 100–101; Hooker, 2000b, pp. 222–223; Hooker, 2005a, sect. 2.) However, if one did make the mistake of thinking that the best argument for rule-consequentialism is a consequentialist argument, then one might naturally feel under pressure to formulate rule-consequentialism in whatever way would maximize good consequences. I think the best way of arguing for rule-consequentialism begins with the idea that, other things being at least roughly equal, a moral theory is justified to us if it identifies a fundamental moral principle that both explains why our more specific considered moral convictions are correct and provides some impartial justification for those convictions. We seek **reflective equilibrium** between abstract moral theory and more specific moral intuitions. Which moral theory can explain why our more specific considered moral convictions are correct and provide some impartial justification for them? **Rule-consequentialism proposes** itself as **the answer.** Now if rule-consequentialism is to be a plausible candidate, it will have to be formulated carefully. For example, it will have to eschew Brant’s reference to society, because of the problem of specifying which one. But if rule-consequentialism is not to be formulated so as to evaluate codes by the good that would result from their acceptance by the agent’s society, which group’s acceptance should be part of the rule-consequentialist criterion? I think that rule-consequentialism should be formulated so as to evaluate codes in terms of the expected value of their acceptance by the vast majority of everyone everywhere. One profound attraction of this answer is that **it** straightforwardly **reflects the intuition that the same** moral **principles apply to everyone.** Let us now see how Feldman’s other objections to rule-consequentialism fare. Remember that Brandt’s theory says an act of ours is wrong if forbidden by the particular code the acceptance of which would actually produce the best consequences (Code X). One of Feldman’s other objections was that Brandt’s claim that Code X determines which acts are wrong is very implausible when no one knows that the currency of Code X would maximize utility. I agree: that moral wrongness is determined by a moral code which agents and their societies are blamelessly unaware of is highly implausible. Here is an argument for that conclusion. Certainly, people are not blameworthy for failing to follow a code of which they are blamelessly unaware. Moral wrongness is normally thought to be closely tied to blameworthiness. If moral wrongness and moral blameworthiness are to retain this close tie, then since blameworthiness cannot be determined by a code of which people are blamelessly unaware, moral wrongness cannot be determined by a code of which people are blamelessly unaware. However, there is a way for rule-consequentialism not to get into the trouble Feldman highlights. Instead of determining wrongness by the code whose acceptance would actually produce the greatest value, rule-consequentialism should be formulated so as to determine wrongness by the code whose acceptance has the highest expected value. The expected value of a code is to be calculated by taking the value of each possible outcome of a code’s acceptance and multiplying that outcome’s value by the probability that the outcome will occur if the code is accepted. There are philosophical controversies about which probabilities come into play. But I gloss over those here. Even if probabilities were entirely unproblematic, the calculations of expected value would be inordinately complicated. This would be true even if there were not ineliminable imprecision and vagueness in the evaluative realm. But there is such imprecision and vagueness, and the calculations are anyway beyond any of us. Hence, really, at best we can but estimate very roughly and crudely how much good is likely to result from the acceptance of this or that moral code. Replace an established moral code with a completely different one and what would be the consequences? If we have seen how a code worked in one society, we might be able to estimate accurately how it would work in another society. At least sometimes, therefore, we can reasonably estimate the consequences of the establishment of a moral code with which we are already familiar. But what about codes with which we are not familiar? I have no confidence that a new moral code will have better consequences than the one it is replacing, except where the new code is in fact much like some code with which we are already familiar, though not necessarily much like the one being replaced. I fear the upshot of this is a kind of incrementalism (Brandt, 1979, p. 290). The right place for us to start is with the moral code already established in our society. We look for ways in which it could be improved. In rule-consequentialist terms, we look for changes to the established moral code that have higher expected value than sticking with the established code has. Where a change from the status quo does not have higher expected value, why change? Where a change from the status quo does have higher expected value, why not change? Rule-consequentialism formulated in terms of expected value has considerably more plausibility than rule-consequentialism formulated in terms of actual value. And if rule-consequentialism is formulated in terms of expected value, then rule-consequentialism sidesteps Feldman’s objection that the theory can require us to follow a code that no one can know. So let us turn to Feldman’s remaining objections. One of these was that rule-consequentialism says an act of ours is wrong if forbidden by the ideal code even though no one is our society currently accepts that code. I take it that Feldman meant to be alluding to the objection, made famous by David Lyons (1975, p. 141), that where the ideal code contains rules that are burdensome to follow, and where others in your society do not accept that code and are not following those burdensome rules, requiring you nonetheless to comply with those rules is seriously unfair. Here we have the old examples where everyone around you is taking the shortcut across the grass and yet the ideal code requires you not to do so, because it would be best if everyone refrained from walking across the grass. What resources does rule-consequentialism have to deal with this objection? Remember that rule-consequentialism was not formulated in terms of acceptance by absolutely everyone; it was formulated in terms of acceptance by the vast majority of everyone. The reason for this was to allow into the ideal code rules for dealing with people who do not accept the ideal code. To be sure, rule-consequentialism prescribes acceptance and compliance with the ideal code by everyone. Nevertheless, it evaluates codes by the expected consequences of acceptance by less than everyone. How much less? Brandt (1967, sect. 8) proposed 90 per cent of the agent’s society. I argued for 90 per cent of everyone everywhere (Hooker, 2000a, pp. 83, 173–174). There are difficulties about the figure of 90 per cent (Ridge, forthcoming). But the important point here is that, if rule-consequentialism evaluates codes in terms of the consequences of their acceptance by less than 100 per cent of everyone, then rule-consequentialism might endorse rules for dealing with people who do not accept the ideal code. For example, rule-consequentialism can endorse a rule for dealing with free-riders, by which I mean those who are not doing their fair share, or who refuse to reciprocate kindness or restraint shown towards them. The best way of encouraging people inclined to free-ride on the kindness or restraint of others is to make kindness and restraint towards them contingent on their doing their part. So the ideal code will contain within it a proviso that one is not required to restrain oneself, or make sacrifices, for the benefit of free-riders. We come now to the final objection to rule-consequentialism in Feldman’s introductory book. This is the objection that complying with the ideal code when others are not doing so can be useless or even harmful. Well, where it is useless and burdensome, then the answer may lie in the previous paragraph: burdensome requirements disappear when others refuse to reciprocate. Where complying with the ideal code seems useless but not burdensome, I cannot see that being required to follow the ideal code is objectionable. Perhaps this is because of the temptation to think that following the ideal code is hardly ever completely useless, since following it sets a good example. And what about cases where complying with a rule whose acceptance by the vast majority would maximize expected value would have very harmful consequences? If the vast majority accepted a rule requiring them to keep their promises, expected value would be very high. But suppose the only way to warn the region of the approaching tsunami is to break my promise to meet you for lunch. In such a case, breaking my promise is obviously the thing to do. Rule-consequentialism is implausible unless it can somehow agree. This objection has since been decisively rebutted by rule-consequentialists (Brandt, 1989 [1992], pp. 87, 88, 91; Hooker, 2000a, pp. 98–99). Our answer consists of pointing out that the ideal code — the code whose internalization would maximize expected value — would contain a rule for dealing with potential disasters. The rule would be ‘prevent disasters’. And this rule would override other rules within the idea code (with the exception of some rule about the maximum self-sacrifice that can be required of the agent). Section 3: Feldman’s Brand of Consequentialism Feldman is certainly a consequentialist: ‘I steadfastly insist that we should make the world as good as we can make it’ (Feldman, 1997, p. 14). His ‘world utilitarianism’ holds that what an agent should do is have the motives and do the acts contained in the best possible futures then accessible to the agent (Feldman, 1997, pp. 72–75). He first defended this view as far back as 1975 (see the first paper reprinted in Feldman 1997). It does seem to me the most attractive member of the broadly act-consequentialist family. Feldman accepts that hedonistic utilitarianism has been hammered by objections concerning promises, rights, and desert (Feldman, 1978, pp. 52–60; 1997, pp. 14, 158–174, 202–208). In order to get his consequentialism to come out with plausible implications, Feldman adjusts his axiology. In other words, he holds on to the consequentialist principle that each person should maximize intrinsic value, but he abandons a purely hedonistic theory of intrinsic value. In particular, Feldman includes considerations of justice into his theory of intrinsic value. Actually, his theory of justice reduces justice to giving people what they deserve. So his ‘justice-adjusted hedonism’ would be more revealing titled ‘desert-adjusted hedonism’. Whatever it is called, this theory adjusts the intrinsic value of a pleasure or pain in light of whether it is deserved. So the theory maintains: Positive desert increases the intrinsic value of pleasure. Negative desert decreases the intrinsic value of pleasure. Positive desert increases the intrinsic disvalue of pain. Negative desert decreases the intrinsic disvalue of pain. These factors operate to the point where some pleasures have no intrinsic value, because they are undeserved, and some pains are not bad, because they are deserved (Feldman, 1992, pp. 182–185; 1997, pp. 164–169). Now what does Feldman think grounds desert? One thing he mentions is excessive or deficient past receipt’ (Feldman, 1992, p. 183; 1997, pp. 158, 161–162, 170, 203). ‘Suppose the potential recipients are alike in all relevant respects except that one of them has already received far more of that good than the other. Then, since other things are equal, the one who has so far been short-changed has greater desert.’ (Feldman, 1997, p. 162) I guess that in effect this is the idea that, if two people are initially equally deserving or undeserving of some good but then one of them gets more of the good than the other, then, unless there is some other relevant change, the one who has gotten more so far is less deserving than the other person when the good is next distributed. Perhaps we could express this as a right to be treated the same as other equally deserving people. Someone who has had that right infringed thereby becomes more deserving, other things being equal, than those who had been equally deserving but treated better. More generally, Feldman explicitly mentions rights and claims as desert bases. Presumably, he means moral rights, not mere legal rights. Likewise, presumably he means legitimate moral claims. What moral rights and legitimate moral claims are there? Obviously, this is an immense topic. And Feldman says little about it. We might fill in the blanks as follows. A person’s genuine need is often thought to generate a moral claim on others. And promises give promisees moral claims on the promisors. Feldman also mentions conscientious effort as a possible source of desert (1997, p. 203; cf. 1992, pp. 201–4). Presumably, if conscientious effort is a basis or source of desert, it operates via moral claims, just as needs and promises do. That is, just as promises generate claims, which then are the source of desert, conscientious effort generates claims, which then are the source of desert. My suspicion is that, because Feldman takes moral claims to generate desert, he does not actually need refer to moral claims as a group. He could simply point to whatever generates the moral claims as directly generating desert. Feldman’s view is that desert can be based on rights, needs, promises, and conscientious effort. In addition, Feldman thinks people’s moral worthiness affects their deservingness (Feldman, 1992, p. 184; 1997, pp. 158–159, 162, 170, 203). So now we have rights, needs, promises, conscientious effort, and moral worthiness as sources of desert. And Feldman leaves open that there might be other sources of desert. Section 4: Feldman’s Desert-adjusted Hedonism versus Rule-consequentialism Note how varied Feldman’s desert bases are. Even more importantly, note how much moral background some of them presuppose. Many of the features that determine desert are explicitly moral features. This is clearest in the case of moral rights and moral worthiness. And other items on Feldman’s list of desert bases are things that his consequentialism has to postulate are morally relevant. Now one major traditional attraction of traditional utilitarianism was that it started with a conception of non-moral value, and then claimed that right and wrong are a function of that non-moral value. Traditional utilitarianism started with a non-moralized notion of pleasure minus pain. Because pleasure and pain were not moralized, evil (e.g. sadistic) pleasures counted as positive pleasures in the calculus, and even deserved pains counted as negatives. Traditional utilitarianism then claimed that moral requirements and prohibitions are some function of this non-moralized pleasure minus pain. Traditional act-utilitarianism of course claimed that an act is wrong unless it maximizes net pleasure. Traditional rule-utilitarianism used maximizing net pleasure as the test of whole codes of rules, rather than as a test of individual acts. Feldman’s theory is a very long way from traditional utilitarianism. Feldman’s theory still holds that things are to be evaluated in terms of resulting intrinsic value, and pleasure and pain figure centrally in his conception of intrinsic value. But he also takes intrinsic value to be heavily influenced by desert. And desert imports a variety of moral notions. So Feldman’s theory contains an axiology that relies partly on a number of moral concepts. In other words, Feldman’s theory begins with a number of moral postulates. I do not mean to suggest that that is a fatal objection to his theory, but it is a weakness. If some other theory can come out with just as plausible implications as Feldman’s theory does, but this other theory relies on fewer moral postulates, then this other theory will be able to explain just as much as Feldman’s but on the basis of less. Whereas Feldman’s theory needs to postulate moral rights, moral worthiness, and the moral relevance of needs, agreements, etc., **rule-consequentialism will explain why moral rights are needed, why agreements should be honoured,** needs prioritised, **and** conscientious **effort rewarded.** In all these ways, rule-consequentialism explains what Feldman’s theory instead postulates.

#### It's most actor-specific—act util is too informationally demanding for ILaw questions

Green 20

Fergus Green (Department of Philosophy, Ethics Institute, Utrecht University). “Global goals as global norms: What goal-based governance can learn from political theory?” Global Goals. 2020. JDN. <https://globalgoalsproject.eu/globalgoals2020/wp-content/uploads/2020/06/GlobalGoals2020_Green.pdf>

\*SDGs = United Nations Sustainable Development Goals

Whereas liberal-egalitarians seek to ensure a minimum threshold of well-being for each individual person, utilitarians seek to maximize the aggregate sum of expected well-being (also known as “utility”) across all persons globally, or at least all members of a polity.5 Figuring out what would maximize utility is an **informationally demanding** task, which requires many empirical assumptions about the likely impacts of our actions. A less informationally demanding form of utilitarianism that is also **more in keeping with the rule-based nature of rule-of-law** societies is “**rule util**itarianism”. Rule utilitarians seek to specify rules that would tend to maximize aggregate well-being, at least within a given polity. The SDGs and the specific targets accompanying them can be evaluated in the light of various principles and theories of distributive justice and against utilitarian ideals. In particular, if we think of global goals as norms that the **international community** is seeking to instantiate at national and subnational level, then both justice-based and rule-utilitarian standards can be applied to evaluate such norms. We can ask: are these norms that, if instantiated, would advance the cause of justice or utility maximisation?

#### Therefore, the standard is rule utilitarianism

### Advocacy

#### Thus, I advocate that the Common Heritage Principle is the correct principle of justice in outer space

#### Affirming the general principle alone is sufficient—the debate should not be about specific cases or exceptions

Noyes 11

John E. Noyes (the Roger J. Traynor Professor of Law, California Western School of Law). “The Common Heritage of Mankind: Past, Present, and Future.” 40 Denv. J. Int'l L. & Pol'y 447 (2011). JDN. <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1156&context=djilp>

IV. IMPLEMENTING THE **COMMON HERITAGE PRINCIPLE** IN TREATY LAW

**Legal principles have value even if left in general terms.** Indeed, it is not always desirable to convert broad principles into more concrete or determinate rules. Principles of international law57 may fill gaps in rules and provide decision makers with a guiding mindset - a reminder of basic objectives of the law - when they interpret or apply rules. Principles, when applied in good faith, also allow for, in David Caron's words, **"diversity within convergence."**5 8 That is, they may accord different states discretion to pursue a common objective in different ways, in line with particular domestic political and legal arrangements. **A** legal **principle need not be incorporated in** treaty **law** in order **to have significance.** Indeed, even as soft law, political concept, or "emerging customary international law," a principle may be used to influence debates and shape legal developments.

#### But, if exceptions do negate, they’re substantively wrong—the CHP applies to all states

Oduntan 5

Gbenga Oduntan (Lecturer in Law, Canterbury Christ Church University College, England; Legal Adviser to the Nigerian Government and Member, United Nations Nigerian/Cameroon Mixed Sub-Commission on the Demarcation of the Boundary between Nigeria and Cameroon) Imagine There Are No Possessions: Legal and Moral Basis Of The Common Heritage Principle In Space Law. Manchester Journal of International Economic Law, 2 (1). pp. 30-59. ISSN 1742-3945. 2005. JDN. https://kar.kent.ac.uk/1767/1/Imagine%2520There%2520are%2520No%2520Possessions.pdf

It is, therefore, inevitable to conclude that states are free to determine all aspects of their participation in the exploration and use of outer space. However, for the CHM principle to operate effectively, **all states** particularly those with relevant space capabilities should contribute to the promoting and fostering of international cooperation. This dictates an **abandonment of property claims** in outer space as well as the channelling of benefits of space exploration towards the interests of developing countries and countries with incipient space programmes (Declaration 2 and 3, Declaration on International Co-operation (1996).

As to the allegation that the CHM principle does not bind a withdrawing state from the treaties that incorporate it and that it also does not bind any of the Space powers, which does not ratify the Moon Agreement (1979), it must be said that these submissions again are based on an insufficient premise. In any event more and more states have ratified the Moon Agreement (1979) including at least one of the space powers. Furthermore, the regime of equal access to outer space created in the treaties has become part of **c**ustomary **i**nternational **l**aw. Therefore, a withdrawing party cannot legally gain ownership over what in effect belongs to all. Just as a party to the Chicago Convention (1944) cannot by withdrawing from that treaty unsettle the principle of exclusive sovereignty and jurisdiction of states in their airspace; so also cannot any state(s) undermine the status of outer space as the **common heritage** of mankind by inopportune withdrawal from treaty law or opportunistic approach to treaty ratification and accession.

#### The CHP is customary international law and prohibits appropriation

Oduntan 5

Gbenga Oduntan (Lecturer in Law, Canterbury Christ Church University College, England; Legal Adviser to the Nigerian Government and Member, United Nations Nigerian/Cameroon Mixed Sub-Commission on the Demarcation of the Boundary between Nigeria and Cameroon) Imagine There Are No Possessions: Legal and Moral Basis Of The Common Heritage Principle In Space Law. Manchester Journal of International Economic Law, 2 (1). pp. 30-59. ISSN 1742-3945. 2005. JDN. https://kar.kent.ac.uk/1767/1/Imagine%2520There%2520are%2520No%2520Possessions.pdf

To begin with it must be noted that the **common heritage principle** is fast becoming part of **c**ustomary **i**nternational **l**aw. It constitutes a distinct basic principle providing general but not specific legal obligations with respect to the utilisation of areas beyond national jurisdiction. It inherently conflicts with the principle of sovereignty since it operates from the basis of regarding an environment as 'international public utility' requiring the obligation to co-operate. 13 The CHM principle was first introduced to cover outer space by the words contained in Article 1 of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space of 1962.14

By the time the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Borders (1967)15 was drafted the resolve of states to render outer space a commons for all humanity had deepened. This led to the formulation of another interesting phraseology. In the discussion of the drafting of Article 1 of the Space Treaty (1967) the choice was between the terms ‘province of mankind’ and ‘common heritage’. Eventually the former phraseology was adopted because it was thought to reflect more closely the principles of the freedom of outer space and the **prohibition of appropriation.** However, it must be said that introduction of the newer phrase ought not to lead to any confusion nor does this prove that these phraseologies are mere declarations of intention as some writers have mischievously suggested.

Eventually, clear reference to this term was rendered in Article 11 (1) of the Agreement Governing the Activities of States on the Moon and other Celestial Bodies (1979). 16 It provided that: “The moon and its natural resources are the common heritage of mankind”. In addition to this, Article 4 (1) of the Moon Agreement combines the two terms in the following manner:

"The exploration and use of the moon shall be the province of all mankind and shall be carried out for the benefit and in the interests of all countries irrespective of their degree of economic or scientific development".

It would, therefore, appear that as used in the Moon Agreement (1979) both terms emphasise different things although they are geared towards achieving the same noble objective. Article 4 (1) emphasises the co-operation of states parties in all their undertakings concerning the moon and other celestial bodies; on the other hand Article 11 coupled with Article 5 in particular provide the CHM Principle with **legal teeth.**

#### There is no ambiguity—neg authors are opportunistic lawyers trying to dodge international law

Oduntan 5

Gbenga Oduntan (Lecturer in Law, Canterbury Christ Church University College, England; Legal Adviser to the Nigerian Government and Member, United Nations Nigerian/Cameroon Mixed Sub-Commission on the Demarcation of the Boundary between Nigeria and Cameroon) Imagine There Are No Possessions: Legal and Moral Basis Of The Common Heritage Principle In Space Law. Manchester Journal of International Economic Law, 2 (1). pp. 30-59. ISSN 1742-3945. 2005. JDN. https://kar.kent.ac.uk/1767/1/Imagine%2520There%2520are%2520No%2520Possessions.pdf

Such arguments as raised in the seven points delineated above may appear to be formidable and are indeed quite capable of attracting scholarly sympathy but again the correct view is that they are nonetheless insufficient. The arguments certainly do not justify any legal reasoning that limits the operation of the CHM principle in outer space in such a manner as to permit national or private appropriation and to recognise extensive property rights in space. Suggestions that sovereignty be introduced into outer space through a loose interpretation of the CHM principle or in any other form whatsoever is a form of legal heresy and should be dismissed for the following reasons.

In the first place it is **merely mischievous** to overstate the obscurity of meaning shrouding the term CHM. Doing so is clearly an undisguised attempt to avoid the legal validity of the CHM principle. Indeed it may be said with a lot of credence that **specific semantic certainty has been afforded to this term** in the works of many authors. R.P. Arnold impressively achieves this when he stated as follows:

“The word heritage suggests property or interests which are reserved to a person by reason of birth, something handed down from one's ancestors or the past. In defining mankind, it is necessary to make a distinction between mankind and man. Mankind refers to the collective group, whereas man refers to individual men and women…Mankind is not yet unified under one government, therefore the collective entity of mankind is represented by the various nations of the world. Thus the exercise of rights to the common heritage of mankind appertains to nations, representing mankind, and not individuals. The use of the phrase common heritage of mankind implies or prescribes worldwide ownership...46”

Furthermore, due to the fact that the primary subjects of international law are independent states, it is logical that they should decide together and as a singular community, inclusive of all, fundamental matters that concern all. This is, therefore, what is legalistically referred to as mankind.47 It has, therefore, become possible to identify some basic elements of the CHM principle:

(a) That the areas constituting a CHM cannot be subject to appropriation.

(b) That the use of such area and the resources thereof shall be subject to a common management system.

(c) That the concept in question implies an active sharing of the benefits derived from the exploration and exploitation of those areas;

(d) That the area be used exclusively for peaceful purposes;

(e) That the area be preserved for future generations in perpetual succession.48

In the light of these definitions and assertions **it is highly unlikely that any** possible **interpretation** of the CHM principle **allows for property rights in space.** The allegation that the existing space treaties recognise exploitation of outer space through the provisions permitting space exploration is yet another unsuccessful attempt to befuddle issues. The answer to this is that there is a **clear separation** in space law between the issue of the use of outer space resources in outer space for scientific experimentation on the one hand and that of exploitation or mining of outer space based resources with a view to repatriating the resources to earth for economic and monetary gain, on the other hand. Regarding the utilisation of space based resources in outer space itself there is little room for controversy. The reasonable use doctrine has been established in Space Law. The Moon Agreement in Article 6 (2) for instance, permits the usage of minerals and other substances of the Moon in quantities appropriate for the support of their missions. This very much falls short of permitting mining for purely monetary gains. Furthermore as will be later elaborated upon, the right to collect and remove substances and minerals from the moon is limited to "... scientific investigations and in furtherance of the provisions of the agreement" (Article 6 (2) Moon Agreement 1979). The phrase "in furtherance of the provisions of this agreement" covers many things. This includes of course the obligation to have due regard to interests of present and future generations as well as the need to promote higher standards of living and conditions of economic and social progress and development in accordance with the Charter of the United Nations (Article 4, Moon Agreement (1979).

### Contention

#### I contend that the Common Heritage Principle is a utility maximizing norm of international law

#### A. Future Generations—

#### The CHP would enshrine respect for future generations into space law

Joyner 86

Christopher C. Joyner (Professor of Government and Foreign Service at Georgetown University). Legal Implications of the Concept of the Common Heritage of Mankind. International and Comparative Law Quarterly, 35(01), 190–199. 1986. JDN. https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/legal-implications-of-the-concept-of-the-common-heritage-of-mankind/27C87188CE97BA536F9FE5DD8E048C78

Important, too, are the legal implications of "heritage" as presented in a CHM regime. Clearly, the concept of "heritage" conveys the proposition that common areas should be regarded as inheritances transmitted down to heirs, or as estates which by birthright are passed down from ancestors to present and **future generations.**33 A CHM regime would therefore designate that region as an international patrimony, much the same as a piece of property or estate inherited by one generation from its predecessor.34 Thus, a CHM regime would insist that all activities in or around the international area should respect the interests of future generations, **especially** in making decisions that affect whether, when and how the region's resources are to be used, exploited, developed and distributed. **In legal terms,** the concept of **"common heritage" would require** that **serious scrutiny** be given **to every activity in the area** in order to prevent resource waste and to preclude environmental abuse. To fail in the protection, conservation, preservation and prudential management of the region and its resources would breach the trust and legal obligation implicit in responsibly supervising the earth's heritage for mankind in the future.35

#### Integrating future generations into political structures is the only systematic solution to existential risks

Jones et al. 18

Natalie, Mark O’Brien, and Thomas Ryan (Researcher of Political Science at the University of Cambridge, United Kingdom). "Representation of future generations in United Kingdom policy-making." Futures 102 (2018): 153-163. //Elmer

Global catastrophic and existential risks pose central challenges for **intergenerational justice** and the structure of our current democracy. The Global Challenges Report 2016 defines global catastrophic risk as risk of an ‘event or process that, were it to occur, would end the lives of approximately 10% or more of the global population, or do comparable damage’ (Global Challenges Foundation & Global Priorities Project, 2016). A subset of catastrophic risks are ‘existential’ risks, which would end human civilisation or lead to the extinction of humanity (Global Challenges Foundation & Global Priorities Project, 2016). Catastrophic and existential risks may be categorised in terms of ongoing risks, which could potentially occur in any given year (e.g. nuclear war; pandemics), versus emerging risks which may be unlikely today but will become significantly more likely in the future (e.g. catastrophic climate change; risks stemming from emerging technologies). Ongoing risks have existed for some time now and are generally well-understood. However, emerging risks, particularly those arising from technological developments, are less understood and demand increasing attention from scientists and policymakers. These technological developments include advances in synthetic biology, geoengineering, distributed manufacturing and artificial intelligence (AI) (Global Priorities Project, Future of Humanity Institute, Oxford Martin School, Centre for the Study of Existential Risk, 2014). Although the impact of these technologies is still very uncertain, expert estimates suggest a non-negligible probability of catastrophic harm. In this article we rely on two main premises. The first is that **future generations are under-represented in current political structures** partly due to political ‘short-termism’ or ‘presentism’ (Thompson, 2010). Governments primarily focus on short-term concerns, which mean that they may systematically neglect global catastrophic risks and, accordingly, future generations (Global Priorities Project et al., 2014). The problem of presentism transcends political divisions: people across the political spectrum are concerned about its effects, and should care about mitigating global catastrophic risks. This situation is exacerbated in that the good of mitigating global catastrophic and existential risks is typically global.

#### B. Strong international law grounded in the CHP is key to check nuclear war

Krieger 1

David Krieger (President Emeritus of the Nuclear Age Peace Foundation). “Ending the Nuclear Weapons Threat to Humanity.” Waging Peace. 6 December 2001. JDN. https://www.wagingpeace.org/ending-the-nuclear-weapons-threat-to-humanity/

Our **Common Heritage**

Elisabeth spoke often of the oceans as the Common Heritage of Mankind, a phrase coined by Ambassador Arvid Pardo of Malta. Over the years I have come to see that the concept of Common Heritage applies not only to the oceans, but to virtually everything on our planet, as well as to the planet itself, its biosphere, atmosphere and **outer space.** The land is our Common Heritage as are the skies, the climate, the trees and the crops we plant. Our Common Heritage also includes our cultures, our languages, our art forms, our religions, and our understandings of the mystery and miracle of life.

It is part of the human condition that we do not stop often enough to recognize and appreciate the miracle of our lives. Each one of us is a miracle, unique and special. Every simple thing that we are capable of doing — everything that we take for granted such as walking, talking, thinking and creating – is a miracle. And, of course, we ourselves are miracles. We don’t know where we come from before birth or where we go after death. We don’t know why our hearts or brains work or why we are capable of breathing and doing so much more without conscious effort. Each of us is a miracle shrouded in mysteries we cannot understand.

We now share this incredibly beautiful planet with some six billion other miracles. I have often wondered how it is that miracles are capable of killing other miracles. Perhaps it is because we do not value ourselves highly enough that we are less appreciative of others. Perhaps there is some appreciation for the miracles of who we are and for life that is missing in our cultures and our educational systems.

The Glorification of War

Most of us on this planet live in cultures in which war is glorified and celebrated. Our history books are filled with stories and pictures of those who led us into battle. Our popular culture celebrates war and warriors. One has only to look at a culture’s movies, television programming and the video games that children play to understand from where the next generation of warriors will arise.

The 20th century was the bloodiest century in human history. Some 200 million people died in international and civil wars. One of the most striking things about the 20th century is that the number of civilians killed in warfare rose dramatically throughout the century. In World War I, soldiers fought each other in trenches. In World War II, civilian casualties rose as aerial attacks were directed against cities. By the end of that war, US bombers were destroying Japanese cities at will. It was not a large step from the fire bombing of Tokyo on the night of March 9-10, 1945, in which some 100,000 civilians were killed, to dropping atomic weapons on the cities of Hiroshima and Nagasaki in August of that year.

By the end of the 20th century over 90 percent of the casualties of warfare were civilians, and throughout the latter half of the 20th century the threat of **nuclear annihilation hung over all humanity.** The United States and the former Soviet Union engaged in a mad arms race in which they each developed the capacity to destroy humanity many times over. Somehow the world survived the insanity of the nuclear arms race, but **we are not yet safe.** There are still far too many nuclear weapons in the world, over 30,000, and even today a surprisingly large number of them, some 4,500, remain on hair-trigger alert.

The Influence of the Hiroshima and Nagasaki Peace Memorial Museums My goal is to help create a world free of nuclear weapons. I was deeply affected in this regard by a relatively early visit to Japan. I came to Japan in 1963, when I was 21 years old. During my stay in Japan, I visited the Hiroshima and Nagasaki Peace Memorial Museums. I learned something at these museums that I had neither seen nor heard before. It was the extent of the suffering of the people who were beneath those bombs. In school in the United States, we had learned a relatively simple lesson about the use of these bombs: Atomic bombs win wars. In the case of World War II, the US dropped the atomic bombs and won the war. There was little discussion of the large numbers of deaths of men, women and children, or of the terrible suffering caused by the bombs. In these museums, however, the people beneath the bombs were brought back into the picture. Surely, nuclear weapons are the least heroic weapons imaginable. Their power is such that they kill indiscriminately. Dropped on a city, nuclear weapons kill everything immediately within a broad radius, and spread their radioactive poisons that go on killing over a much broader area. My visit to those museums at a young age had a profound effect on me. It gave direction to my life. I did not know then exactly what I would do, but I did know that nuclear weapons were not really weapons at all. They were instruments of genocide, capable of destroying cities, civilization and even humanity itself. Nuclear weapons are also profoundly undemocratic. They concentrate power and take it away from the people. Nuclear weapons were born in secrecy and have always been shrouded in secrecy. The decisions to develop, deploy and use these weapons have always been in the hands of only a small number of individuals. Even today, a single leader, or at most a small group of individuals, could envelop the world in nuclear conflagration. The survivors of Hiroshima and Nagasaki had it right: Nuclear weapons and human beings cannot co-exist. If the cry of the atomic bomb survivors, “Never Again!” was to be realized, then nuclear weapons would have to be eliminated. The goal seemed tremendously distant in the face of the implacable hostility being expressed during the Cold War between the United States and the Soviet Union. Yet it seemed necessary. The intention of confronting nuclear weapons and seeking their elimination was set in my mind in 1963, nearly four decades ago. After leaving Japan, I joined the army reserves in lieu of being drafted into the army. A second major force that shaped my life in the direction of working for peace was being called to active duty in the army in 1968. The Vietnam War was at its height, and I soon found myself as a young 2nd lieutenant with orders to go to Vietnam. I was totally opposed to the war in Vietnam, thinking it was illegal, immoral and highly inappropriate for the US to be killing Vietnamese peasants on the other side of the world. I decided to fight against going to Vietnam and took the matter to court. Eventually I won, and was released from the army. My first job was teaching international relations at San Francisco State University. I felt that change was too slow as a teacher, and that is what led me to work with Elisabeth Borgese at the Center for the Study of Democratic Institutions. After that I worked for the Reshaping the International Order (RIO) Foundation in the Netherlands, coordinating a project on the relationship of dual-purpose technologies to disarmament and development. Then, in 1982, I was a founder of the Nuclear Age Peace Foundation. The Nuclear Age Peace Foundation It has been nearly twenty years since our Foundation was born. At that time, the leaders of the United States and Soviet Union were not talking to each other. The world situation looked grim. A small group of us in Santa Barbara believed that more needed to be done, and that citizen action was critical. We met weekly for a year, trying to develop a plan. From these meetings, we created the Nuclear Age Peace Foundation. The implication of the name was that peace is an imperative of the Nuclear Age. I became the president of this new Foundation. We had no resources, but large dreams. Even in those difficult days, I was filled with hope. Each day brought new challenges. Our small Foundation began speaking out and advocating for a world free of nuclear threat. In those early days, during the presidency of Ronald Reagan, we were viewed with some suspicion for our advocacy of nuclear disarmament. The tagline of the Nuclear Age Peace Foundation is Waging Peace. It is a concept that we believe is essential to ending the cycle of violence and building a culture of peace. Waging Peace implies an active commitment to changing the world. It means seeking non-violent means to resolve conflicts, and also working actively to prevent wars by creating the conditions of peace. This means active engagement in ending poverty and starvation. It means fighting against human rights abuses wherever they occur. It means fighting against corporate greed when there is human need. It means working for sustainable conditions of development and an environment that will sustain life on our planet.

There are four main areas in which we have worked. The first is for the abolition of nuclear weapons. We believe that the elimination of nuclear weapons is essential to ensure a human future. We were a founding member of the Abolition 2000 Global Network, a network that has grown to over 2,000 organizations and municipalities throughout the world. We were also a founding member of the Middle Powers Initiative, a small group of non-governmental organizations that has encouraged and supported middle power governments to play a leading role in nuclear disarmament efforts. The Foundation organized an Appeal to End the Nuclear Weapons Threat to Humanity, which has been signed by many world leaders, including 37 Nobel Laureates. I will discuss this Appeal in more detail in a moment.

The second area of our concern is international law and institutions. We believe that **international law must be strengthened** and that the United Nations and its specialized agencies must be empowered to do their jobs effectively. We have fought hard for the creation of an International Criminal Court, a court that can hold individuals accountable for the most serious international crimes. An International Criminal Court would bring Nuremberg into the twenty-first century. It would set a standard in the world that no one stands above international law, and that crimes against peace, crimes against humanity, war crimes and genocide will not go unpunished. To this list of crimes, the crime of international terrorism should now be added.

Without universal respect for and enforcement of international law, it will not be possible to effectively stop human rights abuses, destruction of the environment, and **weaponization of the planet and outer space.** Nor will it be possible to provide protection to the oceans, atmosphere, outer space and other areas of **Common Heritage** of Mankind.

#### C. Legal institutions have progressive anti-oppressive potential—affirmation of international legal norms is not inherently Western

Rose 4

Jonathan Rose (Arizona State University College of Law). “The Rule of Law in the Western World: An Overview.” Journal of Social Philosophy, Vol. 35, 2004. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1426343>

Perhaps. Thus, as many of the commentators suggest, adherence to the **Rule of Law is a matter of degree**, but certainly an aspirational democratic yardstick where the degree of consistency ought to be high and departures understood and justified. On balance, these questions may suggest that favoring the narrow, process oriented approach is preferable. It may be too difficult to incorporate content in a manner that is relatively clear and operationally satisfactory. A more limited role for the Rule of Law seems, on balance, a more useful approach. Developing a concept that guards against the arbitrary use of government authority, insures the protection of individual rights, and provides a mechanism for equitable dispute resolution is a laudable objective and no small accomplishment.

IV. Further Issues

Although the focus of the paper has been to explore the meaning of the Rule of Law and the differences between the two primary approaches, some further issues deserve mention. Apart from their inherent interest, some of these other issues have particular contemporary relevance.

A. Beyond Liberalism

This description and evaluation of the Rule of Law has been within the tradition of political liberalism. When one ventures outside that belief system, one encounters, not surprisingly, criticisms of a different kind. For example, civic republicans and communtarians have seen the Rule of Law’s association with rights-based liberalism as threatening or undermining communal values and elevating legalistic and individual values over community-based democracy. Such critics would reduce the Rule of Law to “ a much more humble position.”41 Post-modernists naturally view the Rule of Law at least with skepticism, if not outright hostility. One view asserts the need for an “internal” rather than an “external” view of the Rule of Law. It is connected to political action and must be experienced and lived.42 More radical post-modernists, members of the “Critical Legal Studies Movement such as Duncan Kennedy, Roberto Unger, and Morton Horwitz, reject rights based liberalism and the associated Rule of Law as “value laden” and “an ideological cloak,” an instrument to conceal hierarchies and implement exploitation.43

Interestingly some on the left, including Marxists, have taken a much more benign view, even lauding the Rule of Law. In a famous essay, Douglas Hay noted how in 18th century England, law had a become the dominant ideology, a secular religion displacing traditional religion, and that this ideology included the notion that the ruling classes were subject to the rule of law.44 Although he viewed “legal ideology” as a significant instrument of class domination, he also argued that general acceptance of the Rule of Law as an ideology required the ruling classes to accept a degree of self-limitation and to insure that both the ruling and working classes were subject to and acted in accordance with the Rule of Law.45 E.P. Thompson was more explicit and enthusiastic in his acceptance of the Rule of Law.

Although he said that law was “clearly an instrument of the de facto ruling class and that Rule of Law was “another mask for the rule of a class,” he believed that any complex society required law. Moreover, although he said it was necessary to “expose the shams and inequities” of law, he asserted that “the rule of law itself, the imposing of effective inhibitions upon power and the defence of the citizen from power’s all-intrusive claims, seems to me to be **an unqualified** human **good.**”46 Thompson’s characterization of the Rule of Law as “an unqualified human good” caused Morton Horwitz, a prominent scholar in the post-modern Critical Legal Studies movement, to react strongly: “I do not see how a Man of the Left can describe the rule of law as “an unqualified human good ”! Horwitz went on to state that while the Rule of Law created formal equality, it promoted substantive inequality and enabled “the shrewd, the calculating, and the wealthy to manipulate its [procedural justice’s] forms to their advantage” and ratifie[d] and legitimate[d] an adversarial, competitive, and atomistic conception of human relations.”47

As these criticisms confirm, the Rule of Law has been closely identified with classic liberal theory and its focus on individual rights. But is it necessarily associated with only this political view? It would seem useful to think about how the Rule of Law might apply in other political systems. In doing so, however, it is important to be sensitive to the possibility that the cultural and ideological aspects of other political systems might make the Rule of Law inapposite. Initially, consideration should be given to the propriety of adopting at least the narrow version in socialist or theocratic political systems. Recent scholars have discussed applying the Rule of Law more broadly. One recent work has pursued the relation between civil society and social networks in China to develop alternatives models regarding the relation of the individual and the state.48 While one might think that this may only be an outsider’s perspective, **such advocacy has come from within such countries.** In a most interesting development, several Chinese legal scholars “have created a sensation in Chinese intellectual circles” with a proposal to enforce constitutionally guaranteed individual rights and to “steadily advance the rule of law” in place of the current mere governmental “homage” to it.49 Another scholar has noted that **leaders and dissidents in both Western and non-Western countries have advocated** the **Rule of Law** as a governmental aspiration.50 He noted that they have exhibited “an extraordinary degree of agreement about one prescription that would benefit all, that is: the rule of law”51 and that “the touting of the rule of law is not just a mantra of lecturing Western liberal democracies,”52 as the “testimonials . . . have come from governing officials of various kinds of economic, cultural, and political and religious systems and societies.”53 Although he identifies several concerns about broadly embracing the Rule of Law, he answers the question posed by his title, The Rule of Law for Everone? “in the affirmative, at least conditionally” and that Rule of Law is a realizable “universal human good.”54 In terms of expanding its use, another question is its relevance to international law. A feature of today’s world is the increasing attention to global issues and disputes. Many of these disputes involve adjudicating the rights of individuals and trial of war criminals. Human rights have become a frequent concern. In expanding the Rule of Law outside the political system of a single state, the narrow approach seems much more feasible and appropriate. Such an expansion of the broader Rule of Law would only seem to compound the difficulties of the substantive approach, noted above. Thus, novel and interesting questions also arise as to how to apply or use the Rule of Law in developing and multicultural and multiethnic states as well as in relations between states..

B. Departures From the Rule of Law

Another interesting question is what, if anything, justifies departures from the Rule of Law. It would seem that the various conceptions of the Rule of Law implicitly recognize that adherence is not always possible nor even desirable. Although some of the various commentators explicitly recognize this possibility, the surveyed scholars do not provide much detail on this issue. Moreover, it seems likely the problem is more interrelated with the narrower, process oriented approach than with the broader content inclusive one as it seems more likely that the former is likely to coexist with conditions justifying departure. For example, how should one deal with the civil disobedience such as that by racial equality advocates in the American South? Although the existing conditions may fail the substantive test, they might well, as discussed above, comply with the procedural version of the Rule of Law. Thus, one must come to grips with the issue of whether the intentional violation of the law is justified.55 Perhaps, one way to view the matter is asymmetrically. In other words, it is government (and its officials) who must adhere to the Rule of Law. It is not relevant to measure individual behavior. On the other hand, individual behavior can undermine the Rule of Law . But perhaps the answer is that regimes that do not embody the Rule of the Good Law must abide by the Rule of Law in dealing with protesters.

A more general question of departures is raised by wars and other emergencies. War time measures often use summary procedures that derogate civil liberties and that would seem to depart from the Rule of Law. Threats to national security or public order in case of non-war emergencies are advocated as justifications for swift and harsh government action. Federal appellate judge and University of Chicago law professor, Diane Wood said that the recent terrorist attacks and the resulting policies and attitudes “call into question the extent to which any society can adhere to the rule of law when it perceives itself to be threatened by hostile powers or groups.” She noted that such events produce very contrasting attitudinal responses, one viewing the Rule of law as a “luxury item” and the other viewing it as taking on “heightened importance.”56 A famous historical example involves the Civil War abolition of habeas corpus. An interesting lesser known example involves Mau-Mau violence in Africa. Brian Simpson’s has recently revealed that the eminent conservative jurist Lord Devlin believed that the British colonial government’s adoption in Africa of emergency measures to maintain law and order in the face uprisings and violence violated the Rule of Law.57 On this question of departure, it would seem that the analysis ought to begin with the process by which the alleged departure from the Rule of Law occurred. Legislative and executive branch decisions in such matters ought to have a presumption of validity. Unlike local police action, they occur through a recognized constitutional and political process. On other hand, that does not immunize such decisions from criticism and being viewed as unjustified departures from the Rule of Law.

C. Terrorism and Other Current Events

Related to both expanding the Rule of Law to the international arena and emergency justified departures from the Rule of Law are the actions of the United States and other governments and organizations to current terrorism and the accommodation and understanding of world political changes. Two major international developments seem to be the catalyst. One is terrorism and the post 9/11 events. The other is the less recent, but continuing, transition of former socialist political and economic systems. On both these issues, it is interesting to note the surge in scholarship invoking the Rule of Law that has been prompted by these two types of recent events. With regard to the current terrorism, the United States government has adopted several measures, some of them extreme, which raise serious questions of compliance with the Rule of Law relying on the War Powers Resolution and the Constitution.58 Judge Wood, after reviewing many of the post World War II developments concluding with the recent terrorist attacks, asked “Where, if at all, does the rule of law fit into such a dangerous world?” Her answer was clear: “the rule of law not only can, but must, continue to be the guiding star for the United States and all other freedom-loving countries.” After reviewing numerous judicial decisions and legal developments occurring during the Cold War and Vietnam War, she concluded that “the lesson one can take from this history is that American institutions, especially the courts . . . on balance stood firm.”60 With regard to the current situation, she identified a number of the United States’ responses to international terrorism and asserted that they “pose[d] a significant threat to continued observance of the rule of law,” evaluating the propositions asserted by the government by using Professor Fallon’s criteria.61 Nevertheless, she believes that the “rule of law can be upheld even during times of stress.”62 Yale law professor Peter Schuck has pointed to September 11 as event critical to the rule of law. Viewing war as “incompatible with the rule of law,” he saw the consequences of fight terrorism and invading Iraq as raising serious questions for American constitutional law and the international rule of law.63 Others have connected the Rule of Law to the operation of the United Nations. One commentator asserted that a “‘rule of law’ approach to force was required by the UN Charter and was the best long term strategy for assuring the security of the United States.64 Also, an United Nations official saw the Kosovo’s hopes for democracy dependent on the Rule of Law.65 Other commentators have focused on transitional economies. One has suggested increased interest as a result of the Supreme Court’s decision in Bush v. Gore, the **emerging economies in Eastern Europe**, and the needs of the developing countries of **Latin America and Africa have enhanced the interest in the Rule of Law.**66 Another one commentator has suggested the relevance of the Rule of Law in developing monetary policy for the transition economies of former socialist states as it is the vehicle for “the translation of legal independence into actual independence.67

V. Conclusion

As the scholarship identified above and this and other conferences68 indicate, the contemporary debate about the Rule of Law continues. Three reasons seem possible. First, despite its ambiguity and excess baggage, Rule of Law remains a critically and fundamentally important ideal and concept. The author and public intellectual, Paul Johnson, called the establishment of the Rule of Law “**the most important political development of the second millenium**.”69 He said that “its acceptance and enforcement in any society is far more vital to the happiness of the majority than is even democracy itself.” Moreover, Hutchinson and Monahan say that the rule of law “has been under mounting pressure in modern society.”70

#### D. Global focus is good. It enhances rather than trades off with attention to local injustices.

**Monbiot**, M.A. in zoology and guardian columnist, **2004**

(George, Manifesto for a New World Order, pg. 11-13)

The quest for global solutions is difficult and divisive. Some members of this movement are deeply suspicious of all institutional power at the global level, fearing that it could never be held to account by the world’s people. Others are concerned that a single set of universal prescriptions would threaten the diversity of dissent. A smaller faction has argued that all political programmes are oppressive: our task should not be to replace one form of power with another, but to replace all power with a magical essence called ‘anti-power’. But most of the members of this movement are coming to recognize that if we propose solutions which can be effected only at the local or the national level, we remove ourselves from any meaningful role in solving precisely those problems which most concern us. Issues such as cli­mate change, international debt, nuclear proliferation, war, peace and the balance of trade between nations can be addressed only globally or internationally. Without global measures and global institutions, it is impossible to see how we might distribute wealth from rich nations to poor ones, tax the mobile rich and their even more mobile money, control the shipment of toxic waste, sustain the ban on landmines, prevent the use of nuclear weapons, broker peace between nations or prevent powerful states from forcing weaker ones to trade on their terms. If we were to work only at the local level, **we would leave these, the most critical of issues, for other people to tackle**. Global governance will take place whether we participate in it or not. Indeed, it must take place if the issues which concern us are not to be resolved by the brute force of the powerful. That the international institutions have been designed or captured by the dictatorship of vested interests is not an argument against the existence of international institutions, but a reason for overthrowing them and re­placing them with our own. It is an argument for a global political system which holds power to account. **In the absence of an effective global politics**, moreover, **local solutions will always be undermined** by communities of interest which do not share our vision. We might, for example, manage to persuade the people of the street in which we live to give up their cars in the hope of preventing climate change, but unless everyone, in all communities, either shares our politics or is bound by the same rules, we simply open new road space into which the neighbouring communities can expand. We might declare our neighbour­hood nuclear-free, but unless we are simultaneously work­ing, at the international level, for the abandonment of nuclear weapons, we can do nothing to prevent ourselves and everyone else from being threatened by people who are not as nice as we are. We would deprive ourselves, in other words, of the power of restraint. By first rebuilding the global politics, we establish the political space in which our local alternatives can flourish. If, by contrast, we were to leave the governance of the necessary global institutions to others, then those institutions will pick off our local, even our national, solutions one by one. There is little point in devising an alternative economic policy for your nation, as Luis Inacio ‘Lula’ da Silva, now president of Brazil, once advocated, if the International Monetary Fund and the financial speculators have not first been overthrown**.** There is little point in fighting to protect a coral reef from local pollution, if nothing has been done to prevent climate change from destroying the conditions it requires for its survival.

#### Only commitment to universal ideals can challenge oppression

Ouden 97

Bernard den Ouden 97, philo prof at the University of Hartford, “Sustainable Development, Human Rights, and Postmodernism”, PHIL & TECH 3:2 Winter

There are, however, limits to the postmodernist and social constructionist perspectives. To say that cultures are different and that they are undergoing continuing fragmentation is not necessarily to conclude that the members of humankind cannot have anything in common. We share a dependence on earth, air, fire, and water. We have relatively similar bodies. The deforestation and reforestation in which we engage have dramatic effects beyond all of our borders. The burning of high sulfur fuels affects everyone. The decreasing supply of fresh, potable water is now affecting and will increasingly affect all humankind. Furthermore, universal human rights are not only possible to articulate, but they are necessary to the human condition. We should have the right to personhood regardless of gender or culture. All humankind have the right to the fruits of their labors. We also have the right to due process in legal matters. In addition, individuals should have the right to marry or not to marry. They should be able to leave their country of origin or return to it. (I grant that in many countries or contexts this is only something that world citizens hope for in the future.) My argument is a simple one. Unless we understand and work with cultural differences and the best of indigenous values, economic and social development is not sustainable. However, we must infuse this process with the values and ideals of universal human rights for which all of us are responsible. Without creating or protecting fundamental human rights for our fellow world citizens, sustainable development will not occur. The fruits and benefits of improvement or the development of economic strengths will go to the wealthy and the powerful. Unless the rights and lives of the poorest of the poor in India and Nepal are attended to and protected, systematic deforestation will continue to occur at a traumatic rate in that region. Unless the water subsidies and privileges of agribusiness in California are carefully scrutinized, challenged, and changed in order to take into account all the citizens of the Western part of North America, access to potable water and to an environment even relatively safe from harmful chemicals will continue to be compromised. The economies of Russia and the many former Communist states may continue to grow, but a strong shared base of economic development will not occur unless and until Russia and its surrounding neighbors become societies based on just laws. Marxism has much to say about self-formation and a sense of common humanity. However, one reason why Marxist regimes failed is that they tried— even while retaining class and economic privilege for many party members—to change and improve material conditions in their societies while neither believing in nor genuinely implementing constitutions that respected personhood, cultural diversity, due process, or the right to leave the country of origin. One can create economic growth through cowboy capitalism and by means of economies of extortion. But without laws and respect for persons, economic development that is broad-based and sustainable will not occur. Human rights are tied to global responsibilities. We can, for example, discuss the rights of children, but it is imperative to have moral courage. When children are being enslaved or when they are "parts-out" or used for organ sales which are in turn sold on the black market, to take refuge in differing views of humanity and cultural values is to retreat from our responsibilities. Cultural difference needs to be understood; however, if tolerance is to be real it must have limits. No government or people, for example, should do or be allowed to do what European Americans have done to the people and cultures of the American Indians. **Conquest is not a right**, and no rights follow from conquest. Quite simply, much (though perhaps not all) of postmodernism ends in hopeless relativism and moral impotence. If we conclude and/or accept that all relations are purely power relations and that all values are historical, relative, and accidental, then today we could just as well be planning or implementing conquest and slavery rather than trying to extend human understanding or to contribute to the unending struggle against cruelty and barbarism. As Kwame Anthony Appiah says in an excellent essay entitled, "The Post-Colonial and the Postmodern" (1995), postmodernism suffers from the same exclusivity of vision it rejects and pretends to abhor. Although allegedly nothing can be said about all cultures, because all cultures are only fragments of difference and meanings, the claim is made for all cultures. Absolute cultural relativism legitimates genocide, sexism, and abusive power relations. Ethical **universalism need not be tied to European world views** or imperial domination. Appiah is looking for a humanism fully cognizant of human suffering; one which is historically contingent, anti-essentialist, and yet powerfully demanding. He bases his ethics in a concern for human suffering and asserts that obligations or responsibilities transcend cultural differences and national identity. To maintain that we live only in our cultural fragments is to inhabit what Kumkum Sangari (1995) calls "present locales of undecidability" and to live lives void of moral action. Sangari, in "The Politics of the Possible," offers an argument parallel to that of Appiah. She contends (1995, p. 143) that postmodern epistemology "universalizes the self-conscious dissolution of the bourgeois subject." Again, the same contradictory claims. There are allegedly no universal values or modes of knowledge, yet the truth of this assertion is made for all cultures. Sangari regards one of the most important weaknesses of postmodernism to be that it "valorizes indeterminacy as a cognitive mode, [and] also deflates social contradiction into forms of ambiguity or deferral, instates arbitrary juxtaposition or collage as historical 'method,' preempts change by fragmenting the ground of praxis" (Sangari, 1995, p. 147). Postmodernism universalizes cultures into insularity. It generalizes its own skepticism which is its dogmatic epistemological preoccupation. It instantiates the imperialism of relativism. It gives no philosophical or social place to political responsibility or ethical values. In this mode of discourse and inaction, we can only engage in involuted descriptions or in the articulating of ephemeral world pictures which are lost in themselves or at best captured in paralyzed discourses. Action in this mode is as valuable or as hopelessly tragic as inaction. Without the possibility and actuality of moral action, I would argue that we are at best what Dostoevsky referred to as "neurotic bipeds."

#### Don’t prioritize standpoint

Ghorayeb 20

(Mila Ghorayeb is a graduate student in political theory at McGill University doing research in the history of political thought and critical social theory) Liberal Currents, DOA 4/9/22, 6/23/20, <https://www.liberalcurrents.com/the-limits-of-standpoint-epistemology-for-politics/> NCS

In her book Invisible Women, Caroline Criado Perez repeatedly refers to the time Bernie Sanders said: “it’s not enough to say ‘I’m a woman, vote for me.’” This line seemed to irritate her. Later in the book, she concludes that it is enough to say such a thing, because having more women in power leads to greater attention to women’s issues. This is also the rationale behind Biden claiming the VP he chooses will be a woman, and the sentiment behind the phrase “elect women” in general. There is an implicit consensus here that i) women’s issues need particularized recognition and attention in politics, ii) women are more likely to address issues that are uniquely female and iii) therefore we need to, in the interest of women, elect more women. This is not a line of reasoning I am particularly sympathetic to; particularly in electoral politics. It is meaningless to me, for instance, if a woman fights for a particular class of women within her own state while advocating for bombing or sanctioning women in another state. But I do think it relies on a particular line of thought that requires acknowledging and addressing: namely, what philosophers have called “standpoint epistemology.” Like most frameworks, standpoint epistemology has legitimate uses and has also been perverted to gain an upper hand in political discourse. Its prevalence is significant enough to merit unraveling this phenomenon. While we rarely invoke the term “standpoint”, it’s implicit in identity politics discourse. To grasp what I mean, consider the use of the term “lived experience” where one centers on the experience of oppressed people when discussing the features of the oppression they face. For instance, when discussing sexism, women may counter men’s theorizing by claiming that men’s social situation qua men, doesn’t let them fully grasp sexism. We are all, to an extent, epistemologically deficient when it comes to understanding how others experience structural barriers. We do not have the lens that gives us the same insight into how oppression is experienced phenomenologically in every circumstance. Theorizing that centers experiential knowledge is not a new feature of contemporary identity politics or of “postmodernism.” Early modern philosophers also spoke of socially situated knowledge. In Discourse on Method, René Descartes argued that diversity of opinion arises from different experiences. As such, those with different experiences will bring us different perspectives about how they experience the world and how we relate to each other. Other theorists of this era made a more explicit connection between experience and theorizing. For example, renaissance humanist Mario Equicola argued in De mulieribus (On Women) in 1501 that male theorists’ failure to consult women while theorizing about women’s natures caused them to commit naturalistic fallacies and moralistic fallacies. In this way, institutional metaphysics and epistemology were compromised as a result of women’s exclusion. One of Descartes’ arguments is that simple facts are self-evident; we start with them, then move to complex knowledge. For example, a woman possesses experiential knowledge of simple facts relevant to her life as a woman that men cannot experience. This does not mean that men cannot access any knowledge about women’s experiences. It simply means that they are methodologically limited in accessing one kind of knowledge; namely, experiential knowledge. Importantly, incorporating experiential knowledge and social situation into our lines of thought helped us depart from earlier superstitions about different groups’ innate capacities. Descartes warned against theorizing about knowledge in a vacuum. Instead, we must acknowledge that our judgments are both motivated by earlier circumstances and contribute to future ones. He points out, for instance, that we should look at the stakes certain people hold in making truth claims. These stakes are relevant. Slave owners used to believe slaves were naturally constituted for slavery as a matter of metaphysical fact. Obviously, this was not through careful scientific examination. Instead, this ‘truth claim’ was made on the basis of social interests (and social standpoint). This observation brought us to Hegel’s classic Master/Slave dialectic, which shifted how we understand power relationships by bringing in the viewpoint of the slave as well as the master. Although standpoint theory has brought about both social and philosophical usefulness, it has been overzealously adapted in politics. Some of its adaptation has been disingenuous; some has been genuine. Motives aside, the way standpoint theory typically gets wielded in politics today is ridiculous, and manifests on all regions of the political spectrum. The use of standpoint in politics typically individualizes the experience of oppression, which should instead be understood to refer to systemic barriers people with shared characteristics face in virtue of how they are consistently perceived. What a standpoint analysis should do is give us epistemic access to otherwise private and personal experiences. Someone’s lived experience can contain valuable information about particular ways systemic inequalities manifest. However, while standpoint can give one unique epistemic access in certain domains, it doesn’t necessarily dictate the terms of structural oppression or make anyone of any oppressed group morally infallible. The left will sometimes use standpoint theory for social capital within leftist circles to avoid accountability. They will take criticism of a marginalized person as an attack on the group(s) they belong to rather than a criticism of their personal views or behaviour. Kai Cheng Thom articulated this problem by recalling discourse she observed: “Online, I sometimes see arguments in which people try to shut each other down using identities as weapons, ie “You can’t talk to me that way! I’m trans and you’re being transphobic!” “Oh yeah? Well I’m a femme and you’re a masc! Shut your misogynist, femme-phobic mouth!” The left’s abuse of standpoint is bad for marginalized people because it puts them on a moral pedestal and expects them to be saintly while acting like only people with privileged identities can hurt other people. This is off the mark. Standpoint should draw on marginalized voices to explain why marginalized people are systematically subject to violence and economic subordination, but it doesn’t give us information on the character of every individual marginalized person and how morally good their actions are. Creating a virtuous/vicious category to parallel oppressed/oppressor is profoundly condescending and dehumanizing. Recognizing the humanity in another—and recognizing them as an equal—includes an acknowledgement of their capacities to act cruelly, deceptively, and immorally. For example, treating women as saintly beings that cannot do as much wrong as a man is the act of an outdated chauvinist, and not of anyone genuinely interested in advancing equality. The liberal misuse of standpoint epistemology is exemplified in Criado Perez’s disagreement with Sanders’ comment. The notion that the election of Hillary Clinton over a more progressive male would be a feminist victory simply because she is a woman is absurd. It postulates a universal “woman” and declares “women’s interests” to be the interests of white, upper-middle-class American women in order to avoid Clinton’s less progressive history with women that fall outside of these lines. Further, like the left, liberal standpoint abusers take criticism of a politician and their record as an attack on their entire racial or gender identity. Unfortunately for the state of our girl power, Iraqis, Libyans, and Syrians are not moved by the gender of those that advocate bombing them. Typically, identity victories like the election of Barack Obama or the would-be election of Hillary Clinton are offered as appeasements to those concerned with racial and gender politics. Meanwhile, politicians of this sort are just as capable of advancing reactionary policy as their white male counterparts. The celebration of “identity victories” is especially common during election season where progressive liberals celebrate the “first women,” “first woman of color,” and “first Muslim” in the imperial core. Standpoint might dictate that it’s good to have diverse voices legislate on issues that pertain more strongly to the groups they belong to. For instance, more women might mean better legislation on reproductive health. This, however, is a limited approach. It assumes, first, that anyone that occupies a particular identity will serve the interests of all that belong to that identity. Reproductive health is an apt example: In America, for instance, women are less likely to be pro-choice than men are despite the fact that pro-life politics has broadly been antagonistic to women. It is important, in general, not to disqualify someone for office based on their gender, religion, class, or race, but identity is not a sufficient qualifier for office, either. Perhaps the most amusing abuse of standpoint comes from those that explicitly claim to disdain identity politics. This often comes in the form of using one’s status as a minority to claim something that ostensibly impacts one’s group is not a problem. The kind of standpoint epistemology embraced by numerous ideological groups has paved the way for people of various identities to believe that their identity makes them individually authoritative on a given subject. Unlike the liberals that openly embrace identity politics, others in the center tend to be part of circles that typically reject it but make use of it when they need to silence their way out of being challenged. In other words, they will still try to claim rightness based on their identity but will not hesitate to condemn others doing the same. Ironically, the right’s tactics here mimic the problem with leftists who use identity as social capital and act like marginalized people can’t be morally blameworthy or complicit in oppression. But there is no reason this should be the case. Other right-leaning commentators take liberal abuse of identity politics to make their own case. Liberals typically limit themselves to lauding any woman who is also a liberal (though not always). They will, at the very least, not support a far-right woman that supports Trump, but the conservatives’ interpretation of their politics sees that this ought to be the case. This results in calling for women to support their candidate of choice because here, identity politics would actually suit their cause. In sum, we can’t speak authoritatively about some things we don’t have access to e.g. epistemic access via lived experience, phenomenology. But having that access and phenomenology also does a limited amount of work. In Dostoevsky’s The Brothers Karamazov, a character claims: “There would be no civilization if God hadn’t been invented. And there would be no cognac either. But even so, we will have to take your cognac away from you.” There would be a lot missing from philosophy and politics if standpoint epistemology hadn’t been invented. But there are parts of it that will just have to be let go.