

Land Grab, Human Rights and Ethical Concerns about Biofuels – A Review of Key Arguments¹

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ABSTRACT

Due to the food crisis of 2007-08 the demand for arable land has increased leading to large scale land acquisitions, 'land grab', in developing countries. Even though land grab entails positive outcomes in terms of investments in poor countries, concerns about detrimental effects have been voiced by significant actors such as the World Bank (2010) and the UN Special Rapporteur on the Right to Food, Olivier De Schutter (2009). They express concerns about the environment and violation of basic human rights.

A significant driver motivating land grab is the promotion of biofuels (Clancy 2008). Even though biofuels are generally considered a sustainable solution, it is widely contested if they escape potential negative bad effects (Cotula et al. 2008, Borrás & Franco 2010). In April 2011, *The Nuffield Council on Bioethics* released the report 'Biofuels: Ethical Issues', emphasizing that the current production scheme in biofuels should comply with a proposed ethical framework partially based on human rights.

In this paper I will review and discuss some of most common ethical arguments surrounding land grab in regard to biofuels and human rights, and finally end up in a modest defense of a human rights approach to solving the severe problems that land grabbing entails. This defense will rely on a notion of cosmopolitanism that is sensitive to institutions as means to realizing human rights aspirations. The paper proceeds thus: (1) I start out defining the paradigmatic case of morally bad land grabbing driven by biofuels. I call this the 'Food vs. Fuel-Land-Grabbing' (FFLG) case. (2) I enquire the claim that environmental human rights are a mistaken expansion of the purview of human rights (Woods 2006). (3), I sort out the categories of human rights particularly relevant to land grabbing driven by biofuels. (5) The result of the human rights analysis is then compared with the advocacy for a normative global code of conduct on land grabbing (Meinzen-Dick & Markelova 2009; Borrás & Franco 2010). (6), I will address the more general claim that global inequality is both the cause of and answer to land grabbing and that human rights based responsible investment-approaches will only preserve the status quo of global inequality leading to further bad land grabbing (Borrás & Franco 2010). This will open up for a discussion running in global justice theory between proponents of cosmopolitanism and thinkers who prefer that nations are determining the scope of global responsibility (Rawls 1999, Pogge 2004, Nagel 2005, Cohen & Sabel 2006, Miller 2007, de Bres 2011). The debate on land grabbing provides clear cues for a cosmopolitan approach, but it is less clear what sort of cosmopolitanism adequately answers to the concerns raised in regard to the issue. I will argue that a pluralist and institutionally sensitive sort of cosmopolitanism is needed in the moral argument against bad land grabbing driven by biofuels as in the FFLG case.

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Introduction

Recently, the UN Special Rapporteur on the right to food, Olivier De Schutter made a strong statement about how not to think about Land Grabbing (Schutter 2011). He claims that the current debate has started out on the wrong foot by focusing too much on ensuring responsible investment in developing countries and too little on the structural forces that keep poor people stuck in poverty. Hence, the phenomenon widely known as land grabbing², is another example of the effects of global poverty and inequality. By making the claim, De Schutter seems to be at odds with his own aspirations of promoting a human rights framework unto the manifold processes of land grabbing - not to mention the aspirations of the World Bank and IFPRI (International Food Policy Research Institute), which have both recommended regulations of soft law to ensure that Large Scale Land Acquisitions (LaSLA) are turned more responsible towards the environment and the local people. De Schutter's remark could however be seen as an alignment with the more critical agendas of NGOs like the *Via Campesina*, who restates the traditional Marxist skepticism about human rights as a good remedy to solve the bad effects of land grabbing. I do not think that De Schutter's remark needs to be interpreted thus, since he is surely a defender of human rights, and global inequality and poverty is indeed intrinsic to what human rights are supposed to remedy. In order to answer to the concern about human rights and land grabbing raised by De Schutter, I suggest looking at how current cosmopolitans invoke human rights in conjunction with an equally significant concern for institutions as the necessary conditions to fulfill rights. I shall return to this in the end of this paper where I will defend a liberal cosmopolitan view on human rights and Land Grab along the lines of Thomas Pogge's institutional approach to human rights.

Before that, I proceed through the main stations of a general defense of human rights in the case of land grab and biofuels. The main stations are: 1. Ethical relevant features of the case, 2. A defense of environmental rights and a clarification about a distinction between human rights proper and environmental rights, 3. Relevant human rights suitable to address land grab driven by biofuels, 4. Assessment of a global code of conduct regulating LaSLA, 5. Discussion of a cosmopolitan view on the case in regard to global inequality and human rights.

1. Ethical concerns about land grab and biofuels

First, a brief introductory remark about the ethically relevant features of the case at hand. Clearly, land grabbing defined as stealing of land from poor people whose livelihoods depend on the land (for generations) is morally wrong. The wrongness seems to be comparable to other obvious injustices such as slavery and child labor. Hence, the debate on land grabbing in developing countries is intuitively compelling and has the normative force that can provide impetus to moving the global well-off³. However, besides this apparent quality, the case of land grab also provides a paradigmatic example belonging to a longer list of

² The term land grabbing is here used as synonymous with Large Scale Land Acquisitions (LaSLA). However, the negative connotation to land grabbing stresses the morally bad aspect of illegally or unethically taking over land from people who otherwise have an entitlement to it, e.g. by living on the land for generations without any formal legal entitlement to it. Using the term LaSLA does not necessarily entail 'stealing' land from the poor.

³ Richard Rorty's defense of human rights rests on a slightly cynical 'sentimentalist' claim that it "has become much easier for us to be moved to action by sad and sentimental stories", compared to what a rationalist or philosophical foundation of human rights would do. I merely flag this because the contested foundations of human rights beyond the fact of a global consensus on human rights, often leads to a general rejection of human rights as universally valid. So Rorty's approach or Rawls's 'method of avoidance' about justifications are default positions worth defending. See Rorty, R. (1998). 'Human Rights, Rationality and Sentimentality' in *Truth and Progress – Philosophical Papers*.

global problems that need to be solved at a global level, since there is no prospect in solving global issues *per se* at the national or regional level alone. Issues like climate change, the food crisis of 2007-08 and the prospect of future shortages of food to feed the growing future populations, the financial crisis that threatens not only living standards of the global rich but eventually also threatens the global poor, are all symptoms of issues that when they become mutually enhancing they tend to create scenarios of a perfect storm.⁴ Each of such global critical issues are of course extremely complex and it is difficult to reach a considered ethical judgment because the facts relevant are many, often scientifically inaccessible for lay people (as ethicists often are), and adding to the challenge: the facts involved are often also contested beyond normal scientific disagreement. Climate change is a good example of how science becomes an area of contestation and how disagreement among scientists becomes a source of public confusion. Now, looking to land grabbing and biofuels, this case is deeply intertwined with the other issues of climate, food and finances. So, besides the obvious wrongness in stealing land from the poor, the ethical concerns are also about mitigating climate change by becoming less dependent on fossil fuels, about seeing to that biofuels do not direct land use away from the needed future food supplies (known as the Food vs. Fuel debate), and about financial speculation in land as a commodity on a par with other objects of investment for profit and about development aid and policy should be conducted. It is literally impossible to address all these issues in one ethical analysis.⁵ And, adding to the challenge it is difficult to know in advance what the final outcome of a chosen policy will be. Expressed in the vocabulary of ethics – one thing is the morally sensible to do in terms of deontology, e.g. to ensure that land grabbing complies with human rights. Another thing is to know what the consequences for the victims of land grabbing are if human rights are complied with as opposed to the situation when human rights are not complied with (consequentialism).

So instead of aiming at an analysis of biofuels and land grabbing ‘in total’ seeking to answer if land grabbing driven by biofuels are overall good or bad, I will look at the case where:

1. Biofuels are 1. generation (based on crops that are also used for human food such as wheat and maize).
2. The biofuels are produced in a developing country as large-scale farming (industry) with the aim of being exported to a more well-off country (not necessarily a rich Western country) for the use in fuels for transporting.
3. The biofuels considered are grown on land that has been ‘sold’ or taken over by a private company or government in a more well-off country with the intermediary assistance of (corrupt) domestic government administration and power elites.
4. The land belongs to indigenous people who have no formal legal property rights to the land, only customary use-rights and the land is considered partly marginal waste land, but it is used by pastoralists, women and fishers to provide for their livelihoods.

I will call this the ‘Food vs. Fuel-Land-Grabbing’ (FFLG) case.⁶

⁴ The term ‘perfect storm’ has been used by several authors to describe situations when a global crisis exacerbate beyond human control, e.g. John Beddington (2010) and Stephen Gardiner (2006).

⁵ Admittedly, this is a common found problem in applied ethics and political theory in cases where the object of analysis is complex, comprehensive and not transparent. In science and technology studies (STS) the entanglement of norms with facts are termed ‘technoscience’ (Latour 1989), or the ‘multi-stable technological trajectory’ (Thompson 2007)

⁶ The case is more or less equivalent to the one described by Borras & Franco (2010: 15) as type B1. And, The Nuffield Council on Bioethics (2011) also mentions the ‘fuel vs. food’ debate as paradigmatic to the ethics of biofuels in general, though they are also stating that the evidence for biofuels driving food prices up is limited. So, I do not intend to claim that FFLG is *the* problem that needs prior attention, only that it works to carve out the core of ethical intuitions connected with biofuels and land grabbing.

I admit that focusing on this ‘paradigmatic’ example is providing an early bias towards an ethically negative conclusion; however, I think that it is needed to first focus on clear cut cases where the ethical analysis is on relatively safe ground before proceeding to more complex and dilemmatic cases which is where the analysis should eventually lead us.

Interestingly, the Nuffield Council on Bioethics’ report on ethics and biofuels does not conclude in a general for or against biofuels. They instead conclude with an ethical framework that any policy on biofuels should comply with. A major reason for this is that biofuels is too comprehensive and many-sided a subject to be judged *in toto*. However, my approach is to state a case that is intuitive and that has given rise to popular debate.

When looking at the FFLG case the ethical concerns are (as related to the numbers in the specification of the case above):

1. If fuel for the rich substitutes food for poor people, it is morally wrong
2. If the large scale farming of biomass entails losses in jobs and/or poor working conditions, it is not morally permissible
3. If the land deal is not done on the basis of fair procedure (law) and fair background conditions (power), it is not morally permissible
4. If the land is termed waste land but it also provides the livelihood and subsistence for the people living there for generations, and if the customary right to land is not acknowledged by domestic legal institutions it is morally wrong to impose a deal on the people.

Of course, the moral claims here stated need further qualification to make sense, however, they should function as starting points for the subsequent analysis. I do also not pretend that the claims are true, since it is indeed contested if biofuels as such entail the food vs. fuel dilemma, and moreover, it is also contested whether the outcome of LaSLA as such is good or bad for local populations in developing countries. However, these are the details that follow from further qualifying the above moral claims.

In section 3, I will address how human rights are relevant to land grabbing and biofuels. Before that, I will enquire a general criticism of environmental human rights and clarify how, if at all, environmental rights are relevant to the discussion on land grab and biofuels.

2. Environmental human rights

Liberalists of the conservative kind are usually skeptical about expanding the list of human rights, political and socio-economic, to also include environmental human rights. In the debate on climate change critics have claimed that there is not human right to be protected and compensated from the losses incurred by climate change. Hence, so the critical argument goes, so-called climate refugees escaping from having their homes and livelihoods destroyed by the climate changes have no human right to be protected or compensated. This is in stark opposition to the fact that even the UN fully acknowledges a human right not to suffer from climate changes.⁷ The question raised by this controversy on the scope of human rights is whether human rights protection, promotion and remedy should also address threats from nature and not only be limited to threats from states and other human agencies. It is not so clear how the case of land grabbing and biofuels relates to this. On the one hand, the threats from nature in the case are all ‘man made’, e.g. pollution of the local environment. On the other hand, the human rights at stake also tend to stress the human-nature bond that is vital for people living in rural areas in developing countries. The confusion is probably a profound one since among environmental human rights proponents it is debated

⁷ The UN adopted the first resolution (7/23) entitled: “Human Rights and Climate Change” in 2008. The philosopher Simon Caney has developed the view that human rights provide protection and remedy from sufferings incurred by climate change. See Caney 2006.

whether such rights are logically entailed by the already existing human rights (Hancock 2003), or such rights are genuine human rights on their own premises (Hayward 2005).

Kerri Woods is critical about environmental human rights as such and argues in the article 'What does the language of human rights bring to campaigns for environmental justice?' (2006) that the term environmental justice is more appropriate in most cases than environmental human rights. Woods takes a practical-strategic view on such rights and argues that the language of human rights might not be the most effective way to promote the interests vested in environmental justice. This is so because human rights are contested on several accounts. For instance, human rights are basically anthropocentric, and in a case of opposing interests between humans and non-humans, it is evident that human rights will decide in favor of humans (Woods 2006: 581). Furthermore, human rights emphasize the individual over and above the context, be it social or environmental. This runs counter to promoting sustainability in the sense that a sustainable environment for humans should strive at equilibriums between humans and nature (ibid.: 577). Woods is also worried that since human rights rely on states protecting citizens' rights, those who live in weak states will suffer from an overly optimistic trust in environmental human rights.

Now, Woods concerns about human rights protection in regard to environmental deprivations are relevant to the case of land grab because several of the experts on this subject do promote human rights thinking as best means to defuse problems in land grabbing and also because the issue of a right to land might be seen as an environmental right. A major reason for trust in human rights is probably that human rights are now the globally most widely accepted way of talking about moral issues. Hence, the vocabulary of human rights is employed based on the reasonable expectation that it will work in moving the agenda from words to action. However, it is exactly this expectation that Woods questions, and advises that we instead use other terms such as environmental and social justice – whether that will work better is an open question that Woods has not answered to.

3. Human rights relevant to the case of land grab and biofuels

Most of the experts found in the debate on global land grab and biofuels adhere to human rights. I have not found anyone who is directly opposed to human rights, but some hold more critical views (Borras & Saturno 2010). The most comprehensive analysis' of human rights in regard to land grabbing is found in the reports and articles from the UN special rapporteur on the rights to food, Olivier De Schutter. However, he is not taking any distinctive view on whether LaSLA is caused by the demand for biofuels or other drivers, though he refers that about 35% of current LaSLA is driven by biofuels (De Schutter 2010: 308). To get the particular view on biofuels the Nuffield Council on Bioethics report on the ethics of biofuels is more relevant, unfortunately, land grabbing and LaSLA is here in the background. So, no comprehensive and explicit analysis of the linkage between land grab, biofuels and human rights has been found (though it may exist). Hence, my approach is here to list the rights mentioned in the above sources mentioned and see what is overlapping. First, I will start with the UN and De Schutter's list of human rights.

As De Schutter points out, there is already an abundance of references in existing human rights declarations and covenants that are relevant to the case of land grabbing. However, one key assignment for the special rapporteur on the access to food is to highlight critical issues, and as a matter of fact, De Schutter warns that that even though entitlements to land are widely recognized in current human rights, there is no self-standing right to land:

International human rights treaties do not recognize a right to land as such. But such a right may be grounded in either the right to property or in the right to food. (De Schutter 2010: 305).

Since the pressure on land is increasing, not least since the food crisis of 2007-08, the importance of promoting a human right to land is pivotal. Apart from advancing a human right to land, De Schutter

recommends that LaSLA complies with 11 human rights principles of various kinds, mostly principles that apply to procedure rather than content. Hence, De Schutter's principles are in full alignment with The World Bank and IFPRI's notion of promoting 'responsible investments' in foreign land (De Schutter 2009: 5; Braun & Meinzen-Dick 2009).

The Human rights principles are (De Schutter 2009: Appendix):

1. Deals on LaSLA should be transparent for all stakeholders
2. Deals on LaSLA should provide the peoples who sell their land 'free, prior and informed consent' and remedies when they justifiably need to be evicted from their land
3. Host states should protect their people's human rights by incorporating these into their laws
4. Investments in LaSLA should promote well-being and development
5. Investments in LaSLA should contribute to increasing employment
6. Investments in LaSLA should contribute to promoting sustainability: protecting the environment, mitigating climate change and not depleting non-renewable resources like water
7. The human rights principles should be enforceable by stating sanctions in the land deal
8. Local food security should be of priority over exporting needs
9. An impact assessment of the land deal showing impact on social and environmental indicators should be done in advance of any negotiation
10. Indigenous peoples right to land, whether by formal or customary use-law, should be respected
11. Workers' rights according to the ILO convention should be respected

In this list of human rights principles, all of which are derived from existing human rights law, there is a mixture of sorts of rights with an overweight on what could be called negative rights, i.e. rights that say what 'not' to do, or what should be respected, not interfered with etc. The procedural rights are somewhat in between positive and negative rights, but possibly would be grouped with 1. generation political and civil rights (democratic rights of fair procedure). The three principles that say that investments should promote development, employment and sustainability could be read as positive rights, since they demand that an effort beyond mere respect should be done. Whether the three principles in reality would create a demand on investors on a par with investment in social and economic rights is not easy to decide.⁸

There could be internal potentials for tensions or conflicts between the different principles, however, I do not see any obvious ones, since the typical tension between negative freedoms and positive duties (equality) is not immediately apparent from the list. However, on the general topic LaSLA the aim of promoting prosperity in developing countries could be in conflict with the aim of ensuring equality also. I do not see how De Schutter's human rights could provide guidance in the weighing of these concerns.

De Schutter stresses that the human rights principles are *minimal* and provisional until a more operational and detailed guideline is available. This means that they are necessary but not sufficient to ensure that a land deal is responsible. To ensure a deal is responsible, a wider range of concerns needs to be addressed also, in particular, the *opportunity cost* involved in selling land to foreigners should be taken into account – are there other ways to protect and promote the interests of the people whose land is on the table being traded (De Schutter 2009: 6).

De Schutter also points to an important weakness in the current human rights system. There is some protection of the customary rights of landusers and indigenous peoples right to land. However, in many developing countries a majority of the rural poor have not sorts of rights to land⁹. This is often so, because the state owns the land or the land is concentrated on few owners and the rural poor 'merely' live on it. In

⁸ The distinction between the negative respecting and the positive promoting is spelled out in the UN special representative on business and human rights, John Ruggie's guiding framework: "Protect, Respect and Remedy". <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework>

⁹ These are estimated to be about half of the 1 billion people living today on the brink of food insecurity (De Schutter 2011: 256)

such cases, De Schutter advises that the government embarks on land reforms with the aim of distributing the ownership of land more equally (De Schutter 2010: 334).

The basic question of land reform hinges on the background conditions for human rights to function. If the background institutions are basically unfair, corrupt and repressive the implementation of human rights stands only few chances of succeeding. De Schutter is fully aware of this and also makes it clear in the article 'How not to think of land-grabbing: three critiques of large-scale investments in farmland' (2011), that:

[...] we need to do more than impose a discipline on land-grabbing: we need a real alternative to this kind of investment in land (De Schutter 2011: 249).

He then suggest contract farming as an alternative business model that could promote the human rights of people in developing countries, since such a model would ensure that the wealth created would be safely kept in the country, for the possible future benefit of the people.

Now, to supplement De Schutter's human rights analysis on LaSLA with a view on biofuels, the Nuffield Council on Bioethics' (NCB) recommendations are relevant. NCB do not say much about land grabbing besides a summary of two cases in the Palm Oil industry (NCB 2011: 40-41). However, the NCB stresses that human rights are the first principles to consider before embarking on producing biofuels. Human rights, hence, are permissibility criteria for biofuels production, saying that biofuels should not be produced at the expense of essential rights such as:

- The access to food
- The access to water
- The access to fulfillment of health (rights)
- Working rights
- Land entitlements

These human or essential rights are spelled out as principle 1, in an ethical framework of 5 other principles mentioning: (2) environmental sustainability, (3) contribution to reducing GHG emissions, (4) being in accordance with principles of fair trade, and (5) ensuring an equitable distribution of benefits and burdens from biofuels production. As an addition to these principles, the NCB also mentions that in so far as biofuels could be mitigating climate change, there is also a positive duty to promote such biofuel production. The NCB acknowledges that in the current international political system there are regulations of biofuels that also include considerations of human rights and sustainability. Even though the European Renewable Energy Directive (RED) is one of the key drivers in promoting biofuels (aiming at the target that 10% of transport energy in 2020 should come from renewable sources), it has recently incorporated social requirements. However, the NCB is more impressed with the *Roundtable on Sustainable Biofuels* (RSB), which is a multi-stakeholder initiative that has elicited a certifiable biofuels standard. The standard is voluntary, and it is an example of private industry driven corporate social responsibility regulations that often precedes state regulation where no regulation is present. One of the sustainability criteria mentioned in the RSB are land rights (NCB 2011: 87).¹⁰

¹⁰ The UN organization FAO has also published a guiding framework to be used in the assessment of biofuels, and it includes social indicators. FAO (2010). *Bioenergy and Food Security – The BEFS analytical framework*. Rome. <http://www.fao.org/docrep/013/i1968e/i1968e.pdf>

Looking at De Schutter's and NCB's recommendations on human rights the overlap on a concern for land entitlement and land rights is apparent. Moreover, the concern for access to food, workers' rights, well-being and health are present in both approaches. And, a general concern for equity and a fair distribution of benefits and burdens is present. From a practical perspective, i.e. being an investor for instance, the two lists of recommendations could supplement each other and there are overlaps so the 'check list' is not necessarily a long one. However, it is also clear that both lists are not very operational and indeed must be difficult to use for a company or a government that wants to start up a biofuel production facility based on buying up larger areas of land in a foreign country. By this I am not saying that it is not sufficiently clear what to look out for, and hence there is no excuse in that respect – but, it is likely that both lists will not enjoy much appreciation in the real world of commerce and politics.

I think there is also another conclusion to draw from the human rights perspective on land grab and biofuels. Human rights cannot stand alone. They are by themselves merely 'minimal' rights that constrain land deals (De Schutter) and hence cannot legitimize land deals as such (opportunity costs needs to be taken into account also). Moreover, since NCB has supplemented human rights with further ethical principles and considerations, so even from an ethical perspective, human rights cannot stand alone. So, human rights might be effective in addressing key ethical concerns raised by land grabbing and biofuels, but they are not ethically sufficient in addressing the most relevant concerns.

4. A global code of conduct (CoC) on LaSLA and the idea of responsible investment

In this section I will present and discuss the notion of a global code of conduct (CoC) proposed by several key actors in the debate and academic research on LaSLA (IFPRI 2009, Braun & Meinzen-Dick and The World Bank 2010/11).

This is the CoC proposed by the World Bank (2011: overview [*abbreviated*]):

1. **Respecting land and resource rights.**
2. **Ensuring food security.** Investments do not jeopardize food security but strengthen it.
3. **Ensuring transparency, good governance, and a proper enabling environment.**
4. **Consultation and participation.** All those materially affected are consulted, and the agreements from consultations are recorded and enforced.
5. **Responsible agro-investing.** Investors ensure that projects respect the rule of law, reflect industry best practice, are economically viable, and result in durable shared value.
6. **Social sustainability.** Investments generate desirable social and distributional impacts and do not increase vulnerability.
7. **Environmental sustainability.** Environmental impacts of a project are quantified and measures are taken to encourage sustainable resource use while minimizing and mitigating the risk and magnitude of negative impacts.

In comparison the IFPRI CoC is (Braun & Meinzen-Dick 2009: 3-4):

- **Transparency in negotiations.** Existing local landholders must be informed and involved in negotiations over land deals. Free, prior, and informed consent is the standard to be upheld. Particular efforts are required to protect the rights of indigenous and other marginalized ethnic groups. The media and civil society can play a key role in making information available to the public.
- **Respect for existing land rights, including customary and common property rights.** Those who lose land should be compensated and rehabilitated to an equivalent livelihood.
- **Sharing of benefits.** The local community should benefit, not lose, from foreign investments in agriculture. Leases are preferable to lump-sum compensation because they provide an ongoing revenue stream when land is taken away for other uses. Contract farming or out-grower schemes are even better because they leave smallholders in control of their land but still deliver output to the outside investor. Explicit measures are needed for enforcement if agreed-upon investment or compensation is not forthcoming.

- **Environmental sustainability.** Careful environmental impact assessment and monitoring are required to ensure sound and sustainable agricultural production practices that guard against depletion of soils, loss of critical biodiversity, increased greenhouse gas emissions, or significant diversion of water from other human or environmental uses.
- **Adherence to national trade policies.** When national food security is at risk (for instance, in case of an acute drought), domestic supplies should have priority. Foreign investors should not have a right to export during an acute national food crisis.

A CoC is a wider list of criteria that does overlap with the human rights discussed, but it usually also incorporates concerns beyond human rights, such as adherence to trade policies. Hence, the basic idea of implementing a CoC on LaSLA proceeds along the same liberal approach to politics as do human rights – i.e. to allow freedom of action within the constraints laid out by liberal norms and ideals. So free trade is a good in itself as long as it is ‘respecting’ the norms of ‘good behavior’ of international trade. Human rights as classical liberal and political values, also tend to subscribe to the liberal conception of politics as protection of freedom. This might be the reason why Saturnino Borrás and Jennifer Franco in their ‘Towards a Broader View of the Politics of Global Land Grab: Rethinking Land Issues, Reframing Resistance’ (2010) take a very critical view on the CoC approach:

In short, part and parcel of CoC proposals is an uncritical belief in the basic beneficence of formal and legal measures such as clearer contracts, clearer and more secure property rights (usually interpreted as private and individual rights), transparent contracting, FPIC, and state-civil society partnership. Each of these, in itself, is not necessarily bad; each could have merit depending on a particular context. But none is inherently good in that none can guarantee truly pro-poor outcomes. In the absence of a clear framework and process that insists on prioritizing truly pro-poor outcomes, the weaknesses of these various elements are more likely to be reinforced when framed within a win-win, voluntary CoC as the response to the global land grab. (Borrás & Franco 2010: 12)

Borrás and Franco basically sees a CoC on land grabbing as in the guise of ‘responsible investment’ as an extension of the existing ‘global industrial agro-food and energy complex’ (ibid.: 9). Hence, the critique runs deep in the opposition to current liberal oriented development policy regimes found among the major global development institutions. Borrás and Franco also point to the general philosophy that pervades the arguments of the neo-liberal development policies, telling that land grabbing is inevitable and that ‘real land reform is impossible’ (ibid.: 12). It seems that the harsh criticism launched against the mainstream of development institutions could be targeted at a straw man rather than the actual opinions of experts in the World Bank and IFPRI. At least, the impression from reading the IFPRI expert Ruth Meinzen-Dick in ‘Necessary Nuance: Toward a Code of Conduct in Foreign Land Deals’ (2009), does provide some reassurance that the naïve neo-liberal version projected by Borrás and Franco does not fit well. Meinzen-Dick explicitly rejects the simplifying two narratives approach to current LaSLA – the ‘beneficial investment’ narrative versus the ‘neocolonial land grab’ narrative (ibid.: 75). That Meinzen-Dick still believes that a CoC will provide means to overcome this divide in narratives is true, but she is not a unilateral believer in CoC as the panaceas that will solve all problems in land grabbing.

De Schutter expresses similar reservations about a too optimistic trust in norms such as human rights, but he is on the other hand less explicitly critical about the current ‘capitalist’ global order. So, the positions on whether norms like a CoC and human rights provide solutions in land grabbing, are possible found in a continuum running from ‘detrimental to development goals’ over ‘useless’ to outspoken ‘efficient’ and ‘morally required’ instruments constraining land grabbing.

The alternative to a CoC neoliberal approach is exploring ‘land sovereignty’, according to Borrás and Franco. Land sovereignty reinstates the people and the class as historical real social relations. Land sovereignty opposes the concept land governance that relies on an abstract logic of property, state-centrism and

control, measurement of land and neglect of the inner tension of interests found among people within local communities. Land sovereignty is defined as:

[..] *the right of the working class people to have effective access to, control over and use of land live on it as a resource and territory* (Ibid.: 35).

The approach on land sovereignty is directly opposed to the neoliberal belief that the market will provide the most efficient allocation of land as a scarce resource (ibid.). And, land sovereignty is approaching land grabbing from below and bringing the state back in as 'nation-state' (ibid.). In this framework the notion of land reform is bringing back in also social justice.

I am slightly skeptical about the rhetoric in the 'sovereignty of the people' thinking since it lends its visionary content from the problematic nationalist thinking surrounding the grounding and the return of the 'true' and authentic nation. And, it is obviously discriminatory in the definition which explicitly only entitles the working class people with 'sovereignty'. That said, I also think that Borrás and Franco deliver a profound and thought provoking attack on the sometimes too naïve belief in liberalism as guiding principle in development politics. The strength is clear as the notion of land sovereignty goes beyond the human right to have property protection and the right to access to food in claiming that the poor and destitute are entitled to land. Part of the problem in liberal political theory of contractualism and constructivism is the unilateral reliance on symmetrical models of equal starting points for negotiation.¹¹

5. A cosmopolitan view on land grabbing and biofuels

In this final section I will draw on the current discussion within global justice theory. I think that the theory of Thomas Pogge claiming that the global rich should not participate in a global basic structure of trade and regulation that is to the disadvantage to the global poor is relevant to the case of Land Grabbing. Pogge is also a defender of human rights, but he at the same time uses the Rawlsian basic structure argument as a normative driver in support of global justice. Recently, Charles Sabel and Joshua Cohen (2006) followed up by Helena de Bres (2011) have shown that global justice theory needs to take into account the pluralistic structure of a global basic structure *pace* Rawls. This kind of pluralism is, I think, highly relevant to understanding the normative complexity surrounding global Land Grab, i.e. the prospect of installing one global code of conduct irrespective of the multitude of institutions relevant to make LaSLA responsible, is rather weak. To see the importance of reforming and creating institutions with a global reach that will ensure that human rights are realized is well captured, I think, by the recent concern for pluralism in global justice theory. Since, the theory of global justice is already comprehensive and complex in itself, I will not give any further introduction to it. Instead, I will return to my 'Food-vs.-Fuel-Land-Grabbing' case (FFLG) and ask how this case could highlight concerns for global justice.

As the FFLG case is compelling in its appeal to our moral emotions and intuitions, it resembles Peter Singer's 'drowning child in the pond' case that Singer used to make it obvious that we have global responsibilities towards the distant poor if we can help them without any particular cost to ourselves (Singer 1971). The difference between the FFLG case and Singers drowning child is that the FFLG is not at thought experiment, but brute reality in the sense that biofuels are driving poor people away from their land. The question is whether the wrongness inherent in the FFLG case stems from the fact that we simply feel that this is wrong or if there could also be non-psychological sources for the wrongness. Looking to global justice theory, the controversial notion of a global basic structure that is distributing the benefits and

¹¹ The idea that we are all equal as starting point for the normative theory is clearly present and determinate in John Rawls's *The Law of Peoples* (1999). The symmetrical model has since been criticized by among others Martha Nussbaum (2007) in her *Frontiers of Justice*.

burdens accruing from global trade and cooperation (Beitz 1989), shows how the FFLG case exemplifies global interdependency (of a global basic structure). To see the importance of invoking a basic structure argument in the case of FFLG we need to go back to the Rawlsian argument for the primacy of the basic structure of society, which rests on three claims. First, Rawls explains, the effects of the basic structure of society “[...] are so profound and present from the start” (Rawls 1971: 7). Second, the basic structure of society regulates and distributes the goods resulting from social cooperation. The third assumption is that the basic structure coerces citizens to comply with rules (of the law). Hence, three Rawlsian criteria of institutions relevant for justice emerge: “pervasive impact,” “reciprocity,” and “coercion.”¹² Looking to the Rawlsian criteria of a basic structure of society and applying those to the global level as cosmopolitans would do (cf. Pogge 2002), the FFLG case shows that the pervasive impact resulting from the demand for biofuels and energy in the rich countries on the poor who are evicted from their land is present. There is indeed a clear causal relation between the rich and the poor in terms of impact. It can be disputed whether there is a sufficient degree of cooperation between the rich and the poor in the FFLG case – one could object and say that it was rather an exploitative relation. However, since FFLG is occurring on in a state-based international order, it could testify to a cooperative venture between rich and poor host states allowing the land grabbing to take place. I am not so sure that this would qualify for the Rawlsian ‘fair terms of cooperation’ clause also, but for the sake of argument this could be neglected, since it is indeed disputable whether cooperation among states in the FFLG cases are ‘fair’ or not. Looking to the criterion of ‘coercion’ it is less clear if any sort of coercion as compliance with rules of law is relevant to FFLG. In fact it must be the adverse absence of law that characterizes FFLG and the wider issue of land grabbing. The quest for a code of conduct and the promotion of land right in the human right regime both testify to the fact that there is an absence of law and legal coercion to regulate LaSLA. At this point the basic structure argument could fall, because it fails to fulfill the enforcement criterion. However, this is where current pluralist thinking in global justice theory sets in, suggesting that enforcement is not necessarily required for global interdependencies to have moral significance. In fact, could be argued that it would be sufficient to have pervasive impact on each other globally. Global institutions need not be perfect, nor existing for there to be pervasive impact. However, institutions are needed to ensure fair conditions for cooperation and to ensure enforcement of law. As far as this digression into global justice theory has any moral implication for the case of land grabbing and biofuels, I think that it lends support to the position that human rights and a code of conduct (sufficiently qualified) would need to acknowledge the importance of providing for the appropriate institutions needed to realize the norms aspired to. Accepting this line of argument could make it clearer why there is a need to define positions on the issues of global land grabbing and biofuels that are balanced between the liberal concerns for the freedom of trade and the assurance of vital interests of people suffering from losing their land and livelihoods. This line of argument of course need to be unpacked and developed much further than what I have done here.

Conclusion

In this paper I have sought to provide a review of the ethical arguments and viewpoints surrounding the case of land grabbing and biofuels. The case is a complex one that makes it impossible to address it in general and give an answer to whether it is either good or bad. However, stipulating the ‘Food-vs.-Fuel-Land-Grabbing’ case the discussion gets a starting point that is more tractable. I start out my inquiry to clarify whether the promotion of environmental human rights is a coherent idea, and find out that there are reasons to be cautious about expanding the list of human rights to also include environmental rights. According to Kerri Woods the notion of environmental justice better captures the intentions of the environmental movements and it is less contested than environmental human rights. Then I proceed to the work of Olivier De Schutter, the UN Special Rapporteur on the access to food, who has devoted several

¹² Cf. Høyer Toft (2010)

publications to the subject human rights and Large scale Land Acquisitions (LaSLA). De Schutter recommends a list of 11 minimal human rights principles that any land deal should comply with, however, he also advises to take into consideration *opportunity costs* of a particular land deal for the local people living on the land. The Nuffield Council on Bioethics in their recent report on *Biofuels: Ethical Issues*, also recommends that any biofuels production should comply with an ethical framework consisting partially of human rights. In order to address the concern about whether human rights are a good remedy for solving problems of global land grabbing I turn to the heated debate started by Franco and Borras, claiming that a global code of conduct on land grabbing is detrimental to promoting the interests of the poor in developing countries suffering the bad effects of land grabbing. Even though Franco and Borras are contributing to dividing the debate they also show case some of the misgivings inherent in the current predominantly neoliberal regime of development research and policy. In an attempt to seek nuances in the ideological divide between critical and liberal approaches to land grabbing I introduce strains of current global justice theory. Here I show that following the Rawlsian preference for institutions as constraints and drivers of moral arguments, as seen in the basic structure argument, there is a need for recognizing the importance of institutions in the liberal concern for human rights. This translates into saying that the current concern for human rights and a global code of conduct in the case of land grabbing need also to take back ground institutions into consideration.

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