Natural Resources, Territorial Right and Global Distributive Justice

By Margaret Moore

The issue of entitlement to control over and / or benefit from natural resources is a live political issue in many parts of the world, and directly relevant to our conceptions of the rights of political communities and individuals. In places like Brazil, for example, there is a direct conflict between the claims of the urban poor, who argue that their poverty should be addressed through, among other things, exploitation of the natural resources of the Amazon, and the claims of Amazonian indigenous people, who are living on huge swathes of the Amazonian jungle, who claim an interest in collective self-determination, and, for cultural reasons, tend to resist attempts to exploit these resources. In many cases, we are sympathetic to both kinds of claims and it is important to assess them in relation to one another and ascertain the limits of each of these arguments.

An important question in political theory is the question of who has entitlements to natural resources. The standard view of such entitlement is the statist view that the modern state can function properly only if it has control over territory, and this is what justifies, at least pro tanto, the three dimensions of ‘territorial right’. A. John Simmons neatly summarizes these in his claim that state sovereignty implies (1) rights to jurisdictional authority (to make laws across the geographical domain), (2) a right to control, extract and tax resources within the territory, and (3) a right to control entry and exit of goods and people. Many international relations theories simply assume this as definitional of what it is to be sovereign over a geographical domain, and that whatever justifies states (the production of common goods such as peace and order) will also justify these three different dimensions of state sovereignty. This cluster view of the various
rights that are assumed to be embedded in state sovereignty is questioned in this paper, and has also recently been challenged by cosmopolitans. With respect to natural resources, cosmopolitans argue that state control over natural resources is a form of undeserved advantage to the state and its citizens; and thereby question the bundled account of state sovereignty. This suggests that the two – state sovereignty and control over resources – can be completely disaggregated.

I argue in this paper that both the statist argument about the justification of resources and the cosmopolitan view of resources as a form of undeserved advantage are wrong in different ways. The statist position is wrong in assuming that the state's jurisdictional authority extends to all aspects of resources. At best, the idea of collective self-determination offers a limited and defeasible right to control the rules governing the acquisition, transfer and use of natural resources but does not justify a right to the full stream of benefit from the resource. The cosmopolitan position, which has been developed in partial reaction to the statist view, focuses on the moral undeservedness of natural resources but fails to take seriously the relationship between collective self-determination and control over natural resources. I argue instead that collective determination should be given priority regarding control of resources, but I also justify the global redistribution of wealth from rich countries, in order to support the right to subsistence of others.

State Sovereignty and Natural Resources: the Statist View (Partially) Defended

State authority is typically justified (if we are not anarchists) in terms of people establishing justice and making decisions to govern their collective life together. Control over natural resources is then justified as an extension of jurisdictional authority and (like jurisdictional
authority) in terms of the moral value of collective self-determination. In this section, I argue that control over natural resources, while not entailed in the exercise of jurisdictional authority, is justified in the same way as that authority, in terms of the value inherent in collective self-determination.

The term ‘natural resources’ is used here in a deliberately open way: to refer to anything, derived from the environment, that is instrumental to satisfying human wants and needs.7 Something can be a resource for one person, because instrumental to the satisfaction of his/her wants and needs, and not a resource for someone else, because that person does not view the object instrumentally.8 This is consistent with Avery Kolers’ definition of a ‘resource’ as a fungible means that is replaceable by other fungible means.9 As in his conception, resources are instrumental not only to the production, but also to the consumption of goods, since the absorption of waste is instrumental to the functioning of the economic system as a whole.10

There are at least two reasons why we might think that natural resources are part of ‘territorial right’; and these arguments help justify a presumption of control over resources, not the right to full benefit from natural resources.

The first argument appeals to an idea, first articulated by Locke in the context of justifying private property, which is referred to in the literature as ‘the tragedy of the commons’. The basic idea here is that, when land is held in common for general use, and without authoritative rules governing its use in the common interest, there is little incentive for any particular person to invest their time and effort in developing the land to improve its productivity. Since the land is common, there is no way for an individual to ensure that she will benefit from her investment because the prospective investor cannot exclude free-riders from reaping the rewards without contributing to the labor. Moreover, the problem isn’t simply an
incentive one: it may be rational to deplete the resources, to prevent other less scrupulous people from getting there first. For Locke, Nozick and others, the moral of the story is that, given the tragedy of the commons, exclusive ownership and control of the land (private property) is likely to make everyone, even the property-less, better off overall.

However, there is another, not incompatible, solution to this problem: to establish a legitimate political order, with jurisdictional authority over natural resources (land, water, minerals in the ground, etc.) to ensure that the uses to which they are put conform to the common good. This would mean that there would be rules on the number and size of fish harvested in the lakes and rivers or rules on the safe extraction and taxation of valuable minerals, for example, and coercive means to enforce these rules. The basic idea here is that rules are necessary to regulate the extraction, use and transfer of natural resources. This is not necessarily an argument for *state* sovereignty in contrast to global sovereignty, but it indicates that, until we have an authoritative (coercive) global political structure, it is necessary for the state to regulate these resources in terms of the common good.

This is a contingent argument for the regulation of natural resources at the level of the state and does not offer any particular reason why natural resources should be in the control of the state rather than a supra-national or trans-national body. Indeed, the logic of the argument suggests that the appropriate locus of regulation depends on the natural resource in question, and in many cases, local regulation is insufficient. For some natural resources, such as whales, a statist political structure will necessarily be insufficient, because the tragedy of the commons can re-emerge over the oceans, and lead to the over-harvesting of whales (unless there are clear and enforced rules to limit this). However, for many natural resources, rules established by and
enforced within the state are sufficient to ensure that natural resources are extracted and transferred in accordance with the common good.

The argument above establishes a general presumption for including control over natural resources within the ambit of the state or coercive jurisdictional authority. The second argument, which I will canvass below, establishes a more precise connection between control over natural resources and the moral value of collective self-determination. On this view, collective control, in the form of jurisdictional authority over resources, is an important dimension of collective self-determination, particularly the cultural dimension of different rules regarding land. The idea here is that, if we assume reasonable pluralism about the good life, we might expect that different societies would favor different property regimes or different approaches to the treatment of land and potential resources.\(^\text{11}\)

More concretely, we can imagine a group of self-determining people who, for various (cultural, ideological, religious) reasons eschew private property, as the Maoris did for example. We might expect that such a group would make a rule that property is not individually held but collectively controlled, and therefore forbid its alienation. The rules that they make as self-determining people establish the terms of ownership. It is hard to see how a people could exercise important control over the collective conditions of their existence unless they have the capacity to make such rules. If this view seems broadly right, then, the relationship between control over natural resources and the exercise of collective self-determination is that it is important that people have control over natural resources, especially rules regarding its use and transfer.

The connection between collective self-determination and control over resources is also brought out in an example, initially deployed by Jeff Spinner-Halev, for slightly different
purposes. He examines the case of the Lakota Sioux, who have resisted strip mining in the Black Hills because, for them, the hills are sacred. In this case, it is clear that control over natural resources -- and indeed, the capacity to make the decision to ‘count’ something as a resource -- is important to collective self-determination. If they were without this sort of control, they would be unable to make decisions about what happened to the land that they live on, the rivers that they drink from and swim in, the wetlands close to the river that they enjoy and/or hunt in, and so on. For the Lakota Sioux, any significant form of collective self-determination would have to involve what rules they would make regarding use of the Black Hills. It is not simply a question of distribution of existing resources on the assumption that the resources will be used and that some minimum level of resources is necessary to exercise effectively self-determination. Rather, the exercise of collective self-determination might involve eschewing development of a particular piece of land, perhaps because it is fragile wetlands, and development of the resource would be ecologically damaging, or because the land itself is sacred territory, according to the religious beliefs of the people living there.

Taken together, these two arguments suggest good reasons why we might think that control over natural resources is an important part of collective self-determination. If people lack this kind of control, then, to that extent, they lack robust forms of collective self-determination (although they might still be self-determining in other ways). Of course, this doesn’t tell us that control has to be embedded in the state; rather, it makes clear that control over resources is an important part of self-determination; and one could imagine different theories of political or institutional arrangements that locate these forms of control both above and below the state. Moreover, it is limited to showing that control over resources is crucial, but it does not follow from this that the state, or self-determining entity, is entitled to a full stream of benefit
from the exploitation of the resource. In contrast to the typical statist view, which has a cluster view of the various rights embedded in state sovereignty, these two arguments can justify why there is a link between collective self-determination and control over resources. They also justify some benefits that might flow from the exploitation of a resource, particularly to the extent that this is necessary to achieve meaningful self-determination, and to ensure that investments in the resources are properly rewarded, and so to avoid the ‘tragedy of the commons’. This is not the strong claim that control over natural resources is necessarily entailed in the idea of collective self-determination. However, it does suggest the weaker claim that meaningful self-determination will involve decisions about the rules surrounding the acquisition, transfer and use of natural resources. These are important dimensions of collective life, and if a people lack this capacity, they are, to that extent, limited in the powers of self-determination they have. However, it does not follow that the group is entitled to exclusive benefit from the resource.

**Global Luck Egalitarianism with respect to Natural Resources**

Once we allow that significant collective self-determination typically involves control over natural resources, we run up against the problem of how land or territory is to be fairly divided amongst the various groups that live there. Specifically, luck egalitarians point out that it seems unjust if one group’s land is large, fertile and resource-rich, while another group’s land is meager, barren and resource-poor. Even if we concede that the mere fact that natural resources are differentially distributed does not automatically mean that resource-endowed countries are wealthy, and resource-poor countries are poor – indeed, it may be the case that the opposite is true, as the literature on the ‘resource curse’ suggests¹³ – it would seem prima facie better to
have control over a territory rich in resources than one poor in resources. This is because we might expect secondary benefits from control over natural resources, such as the power to tax the resources, or employment or other related benefits yielded by proximity to important resources. If this is so, it is problematic from a justice perspective if group A controls a territory rich in many kinds of resources, while group B exercises their self-determination, such as it is, over a small, resource-less, land-locked desert.

A significant strand in the global justice literature appeals to this fairness intuition, and so extends luck egalitarianism from the domestic sphere, where it requires that people are compensated for undeserved bad luck, to the global sphere, where birth in relatively rich or poor states also seems to be a matter of good (or bad) fortune. Distributive justice involves redistribution with a view to mitigating (or sometimes equalizing) the effects of these undeserved advantages. One of the most plausible luck egalitarian arguments in the global justice literature refers to the arbitrary distribution of natural resources amongst countries. Charles Beitz suggests that arguments premised on the arbitrary distribution of natural resources amongst countries are more powerful than arguments premised on the arbitrary distribution of talents among people. Beitz writes that “the fact that someone happens to be located advantageously with respect to natural resources does not provide a reason why he or she should be entitled to exclude others from the benefits that might be derived from them.”\textsuperscript{14} Therefore, the parties to the international original position, from which principles of international justice are derived, would think that the resources (or the benefits derived from them) should be subject to a resource redistribution principle.\textsuperscript{15} He then argues, on luck egalitarian grounds, for redistribution of (benefits to) natural resources.
Thomas Pogge makes this claim about the arbitrary distribution of natural resources in support of his case for the global resource dividend. Mathias Risse does the same in the context of immigration and resources. One of the proposals put forward by Thomas Pogge in his book *World Poverty and Human Rights* is for a global resources dividend, a tax on natural resources, designed to transfer substantial but not staggering amounts of money from well-off states to poorer ones through a small charge on certain limited natural resources. This tax is meant to be used to address serious global inequalities (or deprivation). In line with his ecumenical strategy in arguing for various reforms, he puts forward a number of distinct but not necessarily compatible arguments for such a tax. The global resources dividend proposal is not particularly problematic, if it is conceived of as a mechanism to transfer money from well-off to poorer states, but his argument for it relies on a controversial argument against jurisdictional control over natural resources.

In his discussion of the global resources dividend, Pogge argues that the rich world ‘harms’ the poor by conferring on them a ‘resource privilege’. Here, Pogge is referring to the ‘territorial right’ implicit in self-government, whereby governments have jurisdictional authority over natural resources. Pogge describes rich countries as complicit in harm to the poor because they negotiate with poorer countries (or, more accurately, the governments of poorer countries) about their resources. Pogge cites an empirical relationship worked out by two Yale economists Ricky Lam and Leonard Wantchekon, between the possession of rich natural resources and poverty (and mediated through the tendency to military dictatorship). According to this thesis, affluent countries are thereby implicated in a cycle where the possession of resources generates various negative effects on poor (but resource-rich) countries, especially military coups and dictatorships and corruption. This cycle is caused by the fact that resource riches engender
strong motives to seize political power, namely, to gain control over the resource. Possession of
the resource then generates income to help rulers maintain power (it enables them to buy support,
and fund the police and military). Rich countries are implicated in this ‘harm’ because they
assume that all governments have the ‘territorial right’ to make decisions about the use and
transfer of resources in their territory – and thus help to fuel the cycle.

Implicit in Pogge’s argument is the assumption that there is a responsibility on the part of
all parties to an agreement about natural resources to ensure that no one is improperly excluded
from the benefit of natural resources. However, there are at least two different interpretations of
his argument, and these interpretations rest on an ambiguity about who is wrongfully excluded.
In the first case, the people who live on the land, and are governed by the state are wrongfully
excluded. Their interests are not taken into account; the government of the corrupt, dictatorial
but resource-rich state enters into an agreement with a multinational oil company, with the
expertise to drill for, refine and transport oil, and the citizens of the country are excluded both
from the decision-making process and from the agreement-generated benefits. It is not difficult
to understand and agree with this argument, since government is standardly thought to be aimed
at tracking the interests of the governed, and indeed to be fundamentally authorized by the
governed, so the citizens, on this account, are improperly excluded. In addition to the
government of the state in question, rich multinational companies and the countries that fail to
regulate them are complicit in this injustice. This is fairly uncontested, on at least the standard
theories of state legitimacy, which posit some kind of pre-existing entitlement on the part of
citizens to have a government authorized by them and operating in their interests. This
interpretation of Pogge’s argument does not undermine the idea of natural resources being
entailed by the collective self-determination argument: it simply suggests that territorial right,
which includes the right to control natural resources, should apply to legitimate governments, not illegitimate kleptocratic ones, and the current international order does not do enough to distinguish between legitimate and illegitimate regimes.¹⁹ About this, my paper agrees completely.

The second interpretation is that the global poor in general are improperly excluded from the benefit of global natural resources. This is a much more contentious claim, and rests on different foundational concerns than the first interpretation. The resources- leads- to- corruption dynamic details the ways in which the citizens of A are not benefiting from the resources of A, and thereby suggests that the citizens of the country in which the resources are located are wrongfully excluded. However, in justifying the global resources dividend proposal, Pogge suggests that the citizens of many different countries all over the world are improperly excluded from benefiting from the resources in A. He writes: “… this payment they must make [the Global Resource Dividend] is called a dividend because it is based on the idea that the global poor own an inalienable stake in all limited natural resources.”²⁰ He also says that it should be conceived of as compensation: “The better-off enjoy significant advantages in the use of a single, natural resource base from whose benefits the worse-off are largely, and without compensation, excluded”²¹ and in this section, it seems that the better-off and worse-off are conceived of as the global well-off and the global poor. For this argument to work, we must assume that the world’s poor have some basic (pre-institutional) entitlement to the world’s natural resources, although the exact nature of this entitlement is unclear.

There are two problems, however, with the global justice version of Pogge’s argument, and by extension the luck egalitarian position with respect to resources, which suggests that natural resources are properly ‘owned’ or controlled by everyone. Both problems are variations
of the basic point that this argument fails to take into account the ways in which specific people are attached to natural resources, including (perhaps especially including) land in different, morally important ways, and that these might justify differential rights. The first fairly well-known argument, which is extensively discussed by David Miller, points out that natural resources do not just fall like manna from heaven. They typically stem from material, pre-existing in the world, and are transformed into resources, from which value can be derived, by human beings. The transformation of things into resources which have use-value involves activities that require social contexts or human labor, in which not all human beings participate equally.22 In many cases, the resource’s value is mediated through social and technological contexts which make it difficult to describe the value as inhering independently in the resource. This raises a problem for luck egalitarians because it questions their central assumption that resources are a matter of pure luck, unconnected to social choices and an account of responsibility.23 Persuasively, Miller points out the difficulty of calculating the unimproved value of land, when much of the value of land stems from its proximity to other places of human creation – proximity to cafes, restaurants, theatres, shopping and so on. Even in less problematic cases, such as oil, diamonds, copper and other items of value, which could be conceived of as to some extent pre-existing, minerals have to be discovered, mined, often extracted from contaminated elements and so on – all of which relate the resource to specific people in particular ways.24 Moreover, in many cases, the value of the resource cannot be separated from the social choices made by people living in a political community; the value of the resource cannot be determined independently from rules surrounding the resource’s extraction, exchange and use.
Secondly, the global luck egalitarian account (of Pogge, Beitz, and Caney)\textsuperscript{25} assumes that land is a natural resource, and so instrumental to the satisfaction of human wants and needs. Indeed, at the beginning of the paper, I noted that it is definitional of the term ‘resources’ that it is instrumental in just this way. The connection between land and collective self-determination is also instrumental: in this world of territorially defined states, a group can be self-determining, have meaningful forms of self-determination, only if that group also has land. Rights to land are an important precondition for the exercise of self-determination, and this entitlement to land is valuable in part because it is instrumental to self-determination. However, it would be a mistake to think that the only relationship between land and the people is an instrumental one, where the land is viewed, potentially, as a geographical domain in which self-determination is exercised, as a source of wealth, as material to be worked or exploited, or otherwise transformed into economic use-value. This instrumental conception is not how all people view the land on which they live. Consider the Lakota Sioux’s refusal to sell or accept any financial compensation for mining in the Black Hills, when they view the Black Hills as sacred and want the mining stopped. The same is true of Maori land in New Zealand, which cannot be sold now, precisely because the Maori people stopped the practice when they realized what selling the land actually meant.\textsuperscript{26} This was also relevant to a large open copper mine in Bougainville, which was resisted by local peoples, who were ethnically and linguistically akin to Solomon Islanders, but who were governed within Papua New Guinea -- in large part because the transformation of the land that the mine involved was incompatible with their way of life. It is hard to see how any group that sees itself as a spiritual guardian of the land would alienate it voluntarily or adopt the instrumental view that land is simply a source of wealth, a stock of resources to be used to fulfill one’s own particular conception of the good. Nor is this non-instrumental view held only by
marginalized (indigenous and/or nomadic) peoples, who some might argue are a relatively small group of people in the world. Even in modern, industrialized societies, the use to which land is put, and the relationship of land to resource-extraction, is, and should be, a hotly contested issue. The instrumental conception is not necessarily the right one, or the dominant one, when we are considering whether to allow strip mining in a wetlands area or oil drilling in the fragile High Arctic, or whether an old cemetery should be plowed over to make room for a shopping complex. There are other values here which bear on the kind of society the collectively self-determining group wants to create.

The Lakota Sioux example reinforces the need for a sharp distinction between instrumental and non-instrumental views of lands and the difficulty of characterizing it merely as a resource. It also serves to highlight the non-neutral assumptions implicit in the global egalitarian literature, which assumes what is precisely in question, viz., that land is of purely instrumental value, that it is a stock of resources from which value can be derived and equalized to all people in the world. Indeed, this non-instrumental conception is not confined to small, nomadic or traditional societies: it is extremely widespread, because it is implicit in all particularized territorial claims. If someone has a claim to this particular river, rather than to a drinking/swimming/energy resource in general, they must value the river for more than just instrumental reasons, because otherwise they would be willing to accept some other river. Disagreement about whether land is just a resource is a different source of conflict than rival historical claims, because the first represents a disagreement about whether a resource should be developed, whereas in the second everyone may agree on developing resources, but they each may have an attachment to the same particular set of resources. Nevertheless, the attachment to the particular land can only be explained by appealing to non-instrumental (e.g., symbolic or
cultural attachment) values. Even in cases where the people have a partially instrumental conception of land, in the sense that, unlike the Lakota Sioux, they do intend to make use of the land or water, to fish or farm or mine, they do not view the land in purely instrumental terms, so that the world’s land can be dispensed in straightforwardly just or equal ‘packages’. Many national minorities and indigenous groups claim entitlement to particular pieces of land for reasons quite specific to their historical relationship to the land.

**Land, Resources and Global Justice**

There are four implications of the arguments above, which suggest the need for a different account of the relationship between collective self-determination, global justice and resources.

First, in specifying the arguments, both general and particular, for control over territory and resources, it is clear that they could not justify full benefit from the natural resources within the jurisdictional domain. The general justification for territorial right is that this is necessary for the exercise of collective self-determination. People living on the land, who are co-creating rules of justice and exercising control over the collective conditions of their lives should be able to make choices over how land is used. They should be able to make decisions about such things as whether it should be held individually or collectively, whether some parts of it should be protected wetlands or left unused in accordance with certain religious beliefs or a particular way of life. If people do not have this capacity, they cannot exercise any serious form of collective self-determination. However, it does not follow from this justification that the flow of money that is generated after the decision is made to use something as a resource can’t be subject to redistribution in line with people’s basic subsistence rights. Indeed, this way of understanding the argument – in terms of a distinction between control over and benefit from a resource --
makes sense of an otherwise puzzling argument in Pogge’s work. Pogge writes: “As in the case of preferred stock, this stake [dividend] confers no right to participate in decisions about whether or how natural resources are to be used and so does not interfere with national control over resources, or eminent domain. But it does entitle its holders to a share of the economic value of the resource in question, *if indeed the decision is to use it.*” (Italics mine).27 Although Pogge does not justify the self-determination component of that argument, the argument here provides an explanation of the two elements in Pogge’s work that are in balance - decisions to control and regulate resources by the right-holding group, and (some) benefits flowing from resources to people regardless of their membership in the right-holding group. It also agrees with him that there should be some mechanism in place to ensure that the actual exercise of collective self-government is consistent with meeting the basic rights of everyone and Pogge’s resource redistribution tax would meet that condition.

The second argument canvassed above involves the rejection of the luck egalitarian account of global justice as this applies to resources. There I argued against the luck egalitarian view, that it is implausible to suppose that everyone has equal entitlement to control over natural resources, or to benefit from the existence of resources, when people are so differently related to it. It might be plausible to have equal voice, or equal control over the resource – understood, say, in the model of a veto – if people were equally situated vis-à-vis the land or the resource, but in fact, people are unequally situated. They are unequally situated in relation to their labor, the impact that the land has on their culture and identity and the attachment that they feel for particular areas of land.28 All this suggests that entitlement (to land, to resources) cannot take the form of equal control, equal jurisdictional authority over all the land in the world, and further, that the assumption of a purely instrumental relationship between people and land in particular is
deeply problematic. While the global justice theorists’ focus on the instrumental and arbitrary character of land and other ‘resources’ is misguided, there is a very plausible insight contained within it, namely, that resources are important to subsistence, and subsistence is a basic right of everyone\textsuperscript{29}. On this view, the entitlement in question is a more general one, such as a basic right to subsistence or a basic right to the necessary conditions for a decent life, and access to resources is justified as part of this. This formulation is suggested by Locke in his account of the relationship of human beings to the resources of the world, where he writes:

\begin{quote}
Whether we consider natural reason, which tells us that men, being once born, have a right to their preservation, and consequently to meat and drink and such other things as nature affords for their subsistence; or revelation, which gives us an account of those grants God made of the world to Adam, it is very clear that God… has given the earth.. to mankind in common.\textsuperscript{30}
\end{quote}

On this conception of the relationship between human beings and natural resources, all people have a basic right to the fruits of the earth for their own subsistence. However, just as is the case with people who hold rights in land that is commonly held, and who can therefore use the common land for their own subsistence, they do not have rights to control what other people do with it in the pursuit of their subsistence.\textsuperscript{31} It is not, therefore, an equal voice or equal jurisdictional control conception. This links the argument here with the arguments developed in part one, which established a right to control resources as part of the right to collective self-determination, but did not establish an entitlement to the full stream of benefit from the resources in question.
It might be objected at this point that the argument against luck egalitarianism as it applies to resources does not defeat all forms of egalitarianism, nor even defeat luck egalitarianism as it applies to wealth. One might therefore think that the argument above has proceeded too quickly, in invoking a basic right to subsistence principle, rather than a relational principle such as equality. In some sense, this is right: the argument of this paper is confined to rejecting the luck egalitarian argument regarding resources, not all form of egalitarianism. However, there are reasons internal to the argument presented in this paper to resist individual equality principles at the global level. Specifically, there is the problem of how one ensures that opportunities are equal in a world of plural political communities. Miller has pointed out that it is very difficult to know what equality of opportunity looks like at the global level. An equality principle is unproblematic if the claim to equality is principally a claim to equal treatment by legitimate institutional structures, but if there are good reasons to have a plurality of political communities and institutional structures, each somewhat autonomous in its decision-making from others – and possibly with different conceptions of values and / or weighting different values differently -- it is not clear what we are supposed to equalize. With respect to opportunities in particular, if one political community has an opportunity set which involves a, b and c; and another political community has a different set of opportunities – d, e, and f -- then, unless we can compare these opportunities under a more general rubric, we do not have a metric to ensure that opportunities are equal. To adapt Miller’s examples, if two communities both value different forms of leisure, and one invests in a swimming pool and a soccer field, and another community has a hockey rink and a baseball diamond, it is possible to compare these two opportunities under a more general rubric of opportunities for leisure. It is quite different, however, if they have very different conceptions of value: if one community values spiritual
meditation and opportunities for eternal life, and another values numeracy and literacy. In this case, we have a serious problem comparing (and thereby equalizing) these two different opportunity sets. A related problem applies to other global equality arguments. Although it is coherent to argue that X is valuable, and we should equalize X, this might be at odds with the values actually endorsed in the political communities, where part of the point of having collectively self-determining political communities is for people to organize their collective lives together and create and maintain rules of justice for themselves.34 If we think, as I’ve argued in this paper, that collective self-determination is an important value, then it follows that different political communities will agree on different rules and institutional solutions, each with different implications. It is not clear how exactly to equalize the situation of people within political communities when one society adopts rules premised on their collective valuation of leisure over greater income (they want a shorter work week, longer holidays, and lower retirement age) and are prepared to forego gains in efficiency or productivity to realize this value; whereas another society opts for greater income and wealth, and people are prepared to works longer and/or more efficiently.35 It is also not clear why exactly these situations should be equalized, since allowing people to make decisions in collective entities in which they can pursue self-determination is also a way of treating people with equal concern and respect.

Thirdly, the argument of the paper suggests an important comparative principle connected to the value of self-determination. Here, the relevant unit of comparison is not the welfare of individuals within different political communities, but the self-determination of political communities themselves. This paper has presented an argument premised on the moral value of collective self-determination. If collective self-determination is so important, it suggests that we also have a duty to assist other collectives in becoming self-determining, including
assisting them in realizing the conditions necessary for political self-determination. This is a comparative argument, which applies at the collective level, and is in addition to ensuring individual rights to basic subsistence. This does not require full equalization of wealth to each community, but a sufficient level of wealth, and a sufficiently strong institutional capacity for the community to be self-governing. This is similar to Rawls’s argument in *Law of Peoples* where he specifies that there is an obligation on the part of politically and economically advanced societies to assist “societies burdened by unfavorable conditions” so that they can realize the “conditions that make a well-ordered society possible”. He further clarifies that one of the features of a well-ordered society is that each is “a full and self-standing member of the society of peoples, and capable of taking charge of their political life and maintaining decent political and social institutions” (italics mine). It is also consistent with Iris Marion Young’s invocation of the idea of non-domination to support a general principle of self-determination for political communities, and the means to realize political self-determination.

Fourthly, and finally, this account of the link between resources and the right to subsistence is attenuated in the sense that the right to a minimum can be met in a variety of ways. Indeed, it makes more sense to think directly about the redistribution of wealth, rather than in terms of any direct redistribution of the fruits of natural resources or imposition of a tax on natural resources. As I argued in the section above, the focus on resources is based on a misguided luck egalitarian view of resources as directly instrumental to the satisfaction of people’s needs; but it is wealth, or income, that is directly instrumental to the satisfaction of people’s needs, and can be directly applied to ensure that people’s basic rights to subsistence are met. The basic right to what is necessary to a decent life can be met through a variety of institutional mechanisms, and, while this could take the form of a tax on marketable resources, it could also be discharged more
directly in terms of a tax on a country’s wealth. Once we abandon the luck egalitarian focus on resources, we can think more directly about the best ways to meet this obligation globally. A direct mechanism to redistribute wealth has a certain degree of plausibility. After all, does Saudi Arabia have more of an obligation to redistribute its wealth than Taiwan or South Korea, because it has more natural resources? Should a tax be organized on the resources of the Democratic Republic of Congo, which doesn’t apply to countries like Singapore (except insofar as Singaporeans are potential consumers of the resources that originate in the Congo)?

The entitlement of everyone to a basic minimum or a basic right to subsistence is a limitation on the exercise of collective self-determination, and implies that collective self-determination is legitimate only if it is consistent with the basic subsistence rights of everyone. The term ‘consistent with’ can be used in a number of different ways, some more stringent than others. Here, the term ‘consistent with’ does not mean that the basic subsistence rights of everyone must already be met, but, rather, the weaker claims that (a) political communities in which people are collectively self-determining are themselves necessary for people to secure their basic rights; (b) the subsistence rights of others can be met without violating collective self-determination; and (c) collective self-determination is not the reason why these rights aren’t met. Fairer global rules regarding trade and development, as well as substantial redistribution from the wealthy to the poorer parts of the world are justified and, I believe, sufficient to meet subsistence rights. However, in line with the argument advanced in the first part of this paper, this redistribution cannot be aimed at equalizing wealth, since full equality would destroy incentives to properly care for resources in the first place; and presupposes agreement on the metric for assessing equality, which is problematic in cases of different, self-determining political and institutional structures. As this paper suggested above, the rules surrounding resources are not only important
for people to achieve control over the conditions of their existence, but are an important element in the solution to the ‘tragedy of the commons’. Moreover, the distinction proffered in the second part, between the right to control of resources and the right to the full stream of benefit from resources, which is not central to self-determination, suggests no necessary tension between self-determination and the subsistence rights of the global poor.

This happy scenario of course assumes that many peoples will decide to use the natural goods over which they have jurisdictional authority and thereby create wealth, which can be subject to redistribution. But this happy scenario ignores the vexed question of whether political communities have obligations of justice to cultivate resources when doing so could help meet the basic needs of the global poor. This problem emerges in relation to groups that, in order to be collectively self-determining in an effective way, claim rights over a territory, and this involves the right to set the terms under which natural resources are used in the first place, and they decide not to use X as a resource. If the basic needs of people outside the state can be met only if states give up some control over their ‘resources’, are they required to do so? Is it so important for the Lakota Sioux or the Bougainvillians to maintain their traditional way of life that they should be permitted to do so even if this meant that the basic needs of everyone could not be met? If we have a strong sense of people’s entitlement to having their basic needs met, then the failure to cultivate resources to the fullest seems like an expensive taste that no theory of justice should countenance.

This is a serious challenge because throughout this paper, I have rejected the view that the Bougainvillians or the Lakota Sioux are merely pursuing an expensive cultural ‘taste’. I have argued the opposite: that control over resources is necessary to meaningful self-determination, which is itself of significant moral value. There is however the theoretical possibility that failure
to exploit potential resources (resources in the eyes of some) jeopardizes subsistence rights. I do not think it is obvious that subsistence rights should automatically trump the right to collective self-determination. Although people’s lives are more important than their capacity to be fully collective self-determining, Jeremy Waldron has helpfully pointed out that, when rights conflict, we do not necessarily look at which right is morally most important, but also at how direct the relationship is between the fundamental interest in question (the interest that the right is supposed to protect) and the policy. Here, I can only express skepticism that mining the various minerals in the Black Hills or the copper from Bougainville is directly necessary to meet subsistence rights, and that there are no other alternatives. This suggests that there is a presumption against violating people’s right to self-determination as a first method of recourse to ensure the subsistence rights of all.

One can imagine cases, however, where the priority is reversed, and where access to a particular natural resource is absolutely necessary to meet people’s basic subsistence rights. Consider, for example, a serious illness, leading in many cases to death, which is caused by the bite of a particular kind of mosquito, but which can be cured by a drug which requires access to a mineral, which is found in land X, far away from the mosquito-infested area. The people living on X decide not to mine this mineral. They make the decision not to exploit it. On my account, people living on X (Xers) do have an interest in collective self-determination and this does give them a presumptive right to make this sort of decision. However, this interest in self-determination over the resource in this case is outweighed by the interests of people living in the mosquito-infested area, who are falling ill from an easily preventable disease. The interests in self-determination are not absolute, but require a careful assessment, especially weighing exactly how necessary the mineral or resource is to the prevention or treatment of the disease (is it the
only cure?) and whether the interests in collective self-determination absolutely requires the non-exploitation (of the resource) decision. In the case of the Lakota Sioux, it is clear that mining is at odds with their beliefs about the spiritual value of the Black Hills. In other cases, however, it is possible to exploit a resource without serious violence to the way of life of the political community. At best, the argument here indicates a presumption in favor of control over resources, grounded in the interests in collective self-determination, but this would be defeasible when strong and essential interests of others were at stake.

Conclusion

This paper has advanced a number of distinct but related arguments. First, it surveyed two arguments for embedding control of natural resources in political communities. It defended the idea of rights to control natural resources as implicit in meaningful forms of collective self-determination and as a useful strategy to solve ‘tragedy of the commons’ problems. To return to the Amazonian indigenous communities, their claim to leave the Amazonian jungle untouched, its resources unexploited, relies on a prior idea of these communities as entitled to collective self-determination over the conditions of their existence. Second, it argued that global luck egalitarianism as applied to natural resources fails to consider the various particularist attachments that people have. The luck egalitarian account of natural resources was criticized as being insensitive to the various morally important ways in which people are related to land, and to the expressive value of land for peoples and communities, which is not captured in the instrumental view of territory as a source of natural resources, and as a domain in which self-determination can occur. The urban poor in Sao Paolo, who appeal to the basic unfairness of the distribution of resources, are relying on their urgent need, but are not sensitive to the relationship
that the indigenous communities have to the lands in which they live and which they claim are important for their self-determination. Nevertheless, I also argued that self-determination, and implicitly jurisdictional authority over resources, must take a form consistent with the right to subsistence of everyone. The paper distinguished between jurisdictional authority over resources and the right to the full stream of benefit from the exploitation of resources; only the first is central to collective self-determination. Even the right to control resources is a defeasible right when significant interests of others living outside the self-determining community are at stake. I did not offer a theory of commensurability of value, but suggested a way of approaching moral judgments in these kinds of cases, relying not merely on the importance of the interest in question, but how closely tied the right (to the resources) is to the fundamental interests of the self-determining community.

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1 This view is consistent with the international law view of the state, which defines the state as a territorial entity. Under the 1933 Montevideo Convention on the Rights and Duties of States (Art. 1) states are defined as “entities with fixed territories (and permanent populations) under government control and with the capacity to enter into relations with other states.” A. John Simmons, “On the Territorial Rights of States”, *Philosophical Issues: Social, Political and Legal Philosophy*, vol. 11 (2001),321, note 5

2 “Territorial right” is typically viewed as implying a ‘cluster view’ of right, which involves a cluster of claim-rights, liberties, moral powers and immunities. This follows the typology


4 Cosmopolitans have also challenged the right to control immigration. See Arash Abizadeh, “Democratic Theory and Border Coercion. No Right to Unilaterally Control Your Own Border”, *Political Theory*, 36 (2008).

5 Of course, at some level, since they are *cosmopolitans*, they are critical of states and of state sovereignty. However, very few endorse a global state, and many confine their arguments to questioning what they perceive as the least defensible elements in state sovereignty. The luck egalitarian argument about resources is part of this argumentative strategy, and assumes that the various aspects of territorial right can be disaggregated.

6 This paper bears some similarities to Chris Armstrong, “National Self-Determination, Global Equality and Moral Arbitrariness”, *Journal of Political Philosophy*, 8 (2010), 313-334. Like Armstrong I argue that both self-determination arguments and global egalitarianism should not be viewed in oppositional terms. However, the argument of my paper differs markedly from his, because Armstrong does not examine the link between self-determination and resources.
This includes biotic resources, which are obtained from the biosphere, typically, plants and animals, but also includes those mineral fuels which are obtained from decayed organic matter, and abiotic resources, such as land, water, air and mineral ore. The crucial feature of a resource is its instrumental nature.

This is not a purely subjectivist account of a resource. I also believe, though I do not argue for it here, that it is improper to treat some things as resources. I accept the view that human babies and organs should not be commodified like a resource. This account of a resource then only applies to things where we are not under a general duty not to treat something as a resource.

Avery Kolers, “Justice, Territory, and Natural Resources”, *Political Studies* (forthcoming).

The concept of resource developed here draws on Kolers’ argument that resources are not natural kinds. Kolers illustrates this point by analogy with the theory of action, pointing out that just as raising one’s hand might signal any number of actions (voting, volunteering, catching a ball), so resources require not only the intention to treat X as a fungible means, but has similar individuation conditions: it cannot be understood apart from the people or person who adopt instrumental intentions towards it. I share his view that resources are fundamentally instrumental to other ends, but my definition of resources differs from Kolers because he regards the intentions of the group that has control over resources (the group that properly exercises territorial right) as definitive. This moralized definition, I argue in this paper, is problematic.

Kolers, “Justice, Territory and Natural Resources”, mss. 9.
The second argument – about collective self-determination – not only has implications for control over natural resources, but for regime type. It seems to require some institutional mechanisms to ensure that the political order is democratically organized and accountable. If we endorse the second argument about collective self-determination, it seems we are also committed to promoting the conditions for the realization of self-determination, and these might well include internal self-determination. This is because the argument will fail if there are no mechanisms of vertical accountability between the political elite, which has control over resources, and the people in whose name the elite governs. Without these mechanisms in place, the resources could be used simply for the benefit of the political elite, and this would violate people’s collective self-determination, the very argument on which the control of resources rests.

12 Jeff Spinner-Halev, “From Historical to Enduring Injustice”, Political Theory, 35,(2007), 574-592.


17  One argument that is suggested by Pogge but not fully developed is that such a tax would be relatively easy to collect and administer because on a defined set of items, rather than levied by states directly on individual wealthy citizens of their countries. Pogge also expresses concern that the global resources dividend should be based on resources whose extraction is easy to monitor, so that the costs of overall collection are low. He also suggests that it should be levied on resources that are harmful for environmental reasons, such as crude oil; and make sure that it is on resources that would not greatly impact the price of goods that are needed to satisfy basic needs. Pogge, *World Poverty and Human Rights*, 206.


Miller’s argument is targeted at Hillel Steiner’s left luck egalitarianism. Hillel Steiner is able to acknowledge the role of unequal labour on land in his luck egalitarian theory, which argues that people are vested with two fundamental rights: the first is the familiar, libertarian self-ownership right; the second is a right to an equal share of the value of global natural resources. He clarifies that redistribution applies only to unimproved land, which of course leads Miller to complain that it is very difficult to disentangle the original natural value from the value which is connected to human creation. See Hillel Steiner, “Hillel Steiner, “Territorial Justice” in S. Caney, D. George and P. Jones, eds., National Rights, International Obligations (Boulder, Co: Westview Press, 1996), 139-48; and “Sharing Mother Nature’s Gifts: A Reply to Quong and Miller”, Paper given to the Justice and Territory conference, Dublin, 2010. A longer version is forthcoming in Journal of Political Philosophy. Steiner is able to take into account, at least at the theoretical level, unequal labor on land, but does not address the issue of unequal attachment. He also adopts a purely instrumental view with respect to land and other things.


I agree with Miller’s criticism of global luck egalitarianism as applied to resources, which focuses on the various ways in which people interact with land, and with resources, and how these choices and activities give rise to responsibility and to desert. However, my argument is
distinct from this in two ways: first, the emphasis that I’ve placed on self-determination is more foundational than his responsibility argument, since it’s a presupposition of his argument that we must think that the communities in question ought to be self-determining, that is, the kind of entity that is capable of making choices and bearing responsibilities. Second, Miller’s emphasis simply on responsibility seems to be an attempt to run a version of the luck egalitarian view at the global level. Luck egalitarianism relies on a distinction between choices and circumstances, and argues that people should be held responsible for their choices, but should not be held responsible for unchosen disadvantage. Miller simply applies the same logic at the collective level. Just as individuals shouldn’t externalize the costs of their (self-determined) individual choices, so too nations shouldn’t externalize the costs of their (self-determined) collective choices. The problem with this is that it doesn’t defeat luck egalitarianism at the individual level, but leaves us with two levels of responsibility: if we hold nations responsible for the costs of their collective choices, the inevitable result is that some individuals within the nation will suffer unchosen disadvantages (e.g., individuals who were outvoted in the collective decision, future generations etc).


Hillel Steiner’s version of luck egalitarianism is an exception: it is able to address unequal contribution or unequal labor, but not other forms of unequal relationship to land. See endnote 21 above.


This point is made in Mathias Risse, “How Does the Global Order Harm the Poor?” *Philosophy & Public Affairs*, 33 (2005), 360.

I am also persuaded by some of the objections to luck egalitarianism put forward forcefully by Elisabeth Anderson, Jonathan Wolff and Samuel Scheffler. In particular, I agree with Scheffler and Wolff that it is extremely difficult to distinguish between choices and circumstances and so luck egalitarianism presupposes an impracticable theory of the person. They also argue that it can have negative indirect effects of either being too intrusive and thereby showing disrespect, or too harsh to those who have unlucky option luck. See Elisabeth S. Anderson, ”What is the Point of Equality?”, *Ethics*, (1999) 109/2, 287-337; Jonathan Wolff, “Fairness, Respect and the Egalitarian Ethos”, *Philosophy & Public Affairs*, (1998), vol. 27, no. 2, 97-122; Samuel Scheffler, “What is Egalitarianism?”, *Philosophy & Public Affairs*, (2003) 31/1, 5-39.

34 There is the added difficulty that luck egalitarianism is primarily an individualist theory, which, when it is applied globally, seems to suggest that almost every inequality is arbitrary, since no individual could be viewed as responsible for the wealth or poverty of his/her country, and many people’s well-being is significantly shaped by the opportunity sets in his or her political community.

35 Luck egalitarians could respond to this particular example by pointing to the importance of distinguishing between choices and circumstances, and noting that the example is couched in the language of choices (for which people are responsible). Inequalities that are the result of people’s *choices* are fine, they might argue, but inequalities that are the result of *circumstances* that the person finds him/herself in should be remedied. However, the distinction is problematic, not only for the familiar reason that people make choices in light of their circumstances (the talents that they have, the context in which they find themselves in) but also because the distinction seems inappropriate as a way to think about the status of culture in people’s lives. Obviously, it does not seem quite right to conceptualize culture as a pure circumstance, as a background condition in which people make choices and live their lives. This is for the familiar reason that people might grow up in one cultural milieu, and are taught to be a good Muslim or Sikh or a Serbian nationalist, but they may reflect on their heritage and come to eschew some or all of it. On the other hand, it also seems wrong to conceptualize culture as something we *choose*, which is how it is typically viewed in the luck egalitarian literature. This would
conceptualize attachment to a particular minority culture, or the commitment to a small language, as an expensive taste, similar to the preference for fine champagne, and as something for which people should bear the cost. This is obviously unfair between large and small cultural groups, both of whom, we can suppose, have similar identity-related interests in maintaining their group’s cultural practices. Moreover, cultural and religious attachments do not seem to be mere preferences, analogous to my (individual) preference to wear a skirt rather than trousers. This trivializes people’s identities and cultural attachments, and reveals the conceptual difficulty that luck egalitarianism has in accounting appropriately for cultural ties.


37 Rawls, “Law of Peoples”, 447. Implicit in Rawls’s account of ‘decent’ political and social institutions is a particular account of international justice, which he discusses in terms of three elements, including a list of basic rights, according a high priority to these fundamental freedoms, and have measures for assuring that citizens have means to make effective use of these freedoms, 428.
