

Resource Rights and Global Distributive Justice¹

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Territorial Rights and Global Justice²

The philosophical literature regarding resource rights is divided between two different camps that have yet to develop a meaningful way of interacting. These camps belong to theories of territorial rights on the one hand and to theories of global distributive justice on the other.

Territorial rights are rather commonly thought to be a cluster of rights entailing, (1) the right to establish a (legitimate) rule of law within a region through the making, adjudicating, and enforcement of law, (2) the right over land and resources within a region, and (3) the authority to determine habitation, immigration, and citizenship rights within the region.^{3,4}

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² A note on methodology. I start by considering territorial and resource rights as rights typically characterized by statehood. It is possible to start with an alternative conception of territory, such as indigenous land right claims or cultural claims to land (see Kolers 2009). For two reasons, I start instead with a more conservative conception of territorial rights as typified by states. First, statehood is a clear example of a territorial right. Yet we don't really understand what that right is. By theorizing an example of the right, I hope to clarify what territorial rights are. Second, this starting point is most relevant for understanding and influencing current international legal institutions—which should be a goal of theories aiming to evaluate actual international institutions.

³ Similar articulations of territorial rights are found in Simmons 2001, p. 306; for discussion on the rights associated with self-determination, see: Copp 1997, p. 279 .

⁴ Theories of territory are underdeveloped, although interest in the topic has recently increased. Theories regarding legitimate claims to jurisdictional authority are represented by (Steiner 1996; Kolers 2002, 2009; Meisels 2005, Buchanan 1991, 2003, 2004, Wellman 2005, Hendrix 2008, Moore 1997, Nine 2008).

The concept of resource rights, although important to territorial rights theory, is largely unexplored. When discussing resource rights, theorists usually frame the rights as simply following from or subsumed under the other, more fundamental arguments regarding legitimate political authority over a region. The territory literature for the most part does not address the impact that resource rights may have on global distributive justice, and when distributive justice is considered, it is usually thought to be a separate issue from issues of political authority.⁵

By contrast, in theories of global distributive justice, resource rights are regarded more or less as property rights. They are taken to be ownership claims over goods that must be legitimated by reference to principles of distributive or historical justice, just as property rights must be legitimated. This position is best represented by the influential work of Charles Beitz (1979) and Thomas Pogge (2002). Mirroring theories of territory, theories of global distributive justice largely ignore the connection between global distributive justice and domestic political authority. When these theorists talk about legitimate political authority, they usually refer to the presence or absence of a legitimate *international* political authority, one that may or may not have the legitimate authority to distributive goods like resources between states. In these theories, resource rights are still assumed to be property rights, and the prior conceptual and normative connection between a state's political authority and its claim to resources is not addressed.

The motivation for this essay is to build a bridge between these two literatures on the topic of resource rights. On the one hand I appeal to the literature on territory and argue that resource rights are rights of jurisdictional authority; they are not property rights. On the other hand, I appeal to the literature on global distributive justice and argue that resource rights are distributive goods, i.e., I argue that jurisdictional authority over resources is a distributive good. This position provides promising inroads for the global justice debate, because it usefully connects the two most important issues in global political theory: political authority and distributive justice. I also argue that it better addresses fundamental

Theories regarding immigration rights include, for example: (Carens 1987, Dummett 2001, Heath 1997, Lomasky 2001, Perry 1995, Scheffler 2007, Wellman 2008).

⁵ Some theories do consider issues of distributive justice as applicable to territorial rights when considering secession rights. In these cases, the distributive justice is considered to be a matter between a limited number of affected states and not a matter of global distributive justice. See for example, Buchanan 1991, p. 43-44; Meisels 2005, Chapter 7.

concerns of global justice—addressing global poverty and oppression—better than alternative positions.

The essay proceeds in three parts. First I articulate and support my own conception of resource rights. In the second part I defend the position that resource rights are a distributive good, and I sketch my theory of distributive justice regarding resource rights. In the final section I sketch the implications of this view for contemporary theories of global distributive justice.

PART 1: WHAT ARE RESOURCE RIGHTS?

In this section I articulate one dimension of resource rights: what resource rights are. For simplicity, in this essay I assume that a 'resource' is a naturally occurring non-human thing that is/may be of use or value to persons, and 'value' may be understood in many different ways. Gyms, metals, oil, gas, water, and agricultural land all count as resources, as well as many others. I should also note that I am working within a liberal framework. My normative starting point is to place a primacy on individual autonomy and well-being. My articulation of the concept of resource rights fits within this broad normative position.

The conclusion of this section is that a resource right is the right of a group with the capacity for legitimate political authority to control (make, adjudicate, and establish laws regarding the use of) the resources within its territory with respect to the persons within (who must obey the laws of the state) and outside of the borders (who are excluded from these resources).

Group Property Rights vs. Jurisdictional Rights

Broadly speaking, there are two theoretical avenues for understanding the nature of resource rights. First, we can think of it as a property right. As property rights, resource rights articulate a set of exclusive rights over goods that allow the owner to use, manage, and alienate the good as the owner desires. Resource rights function importantly in this way. In many cases, valuable resources within the state territory are nationally owned, and in these cases especially, resource rights function as property rights, 'privately' owned by

the group. Moreover, having resource rights has effects like the effects of having property rights—resource rights are exclusive claims to goods that directly affect the relative wealth and well-being of persons within a state (depending on who reaps the benefits of the resources) and outside of the state. On this view, resource rights should be analyzed using the same theoretical justifications as other property rights.

Alternatively, we can think of rights over resources as jurisdictional rights. As jurisdictional rights, resource rights are understood as necessary for the establishment of the rule of law within the domain of the state; a resource right is jurisdictional authority over people's use of goods—to make, adjudicate, and enforce laws regarding people's use of goods within the region. On this view, resource rights should be analyzed under theories of political authority.

As we will see, it is imperative to evaluate resource rights as both a kind of property right and as a jurisdictional right. Both functions have profound impacts for individuals worldwide and are essential to understanding the entirety of the concept. However, resource rights should be understood in the first instance as jurisdictional rights.

Understood as jurisdictional rights, the primary function of a resource right is to help establish the rule of law through the legislation, adjudication, and enforcement of laws regarding land and resources within a particular geographical region.

One may object that, really, there is no clear distinction between a property right and a jurisdictional right.⁶ Both are rights to control the use of goods, rights to control the actions of persons located on or using the goods, and powers that establish an agent's authority to make decisions regarding that good with respect to other persons. I argue that there are good reasons for emphasizing the differences between these kinds of rights. At the very least using the different concepts highlights three important primary aspects of the kind of right that we want to talk about. First, the rights have different *functions*. Jurisdictional rights are about creating and maintaining rule of law within the region. By contrast,

⁶ Thinking of resource rights merely as property rights may encourage the perception that resource rights are the aggregate of residents' individual property rights, a view supported by Hillel Steiner's individualistic Lockean theory (Steiner 1996). I will not address this view directly here. I have argued in length elsewhere that the individualistic Lockean approach is deeply flawed. (The political authority that a group has over land and resources can't be explained by a transfer of powers over property.) To avoid this debate altogether, one could assert, as I do, that resource rights are group rights not reducible to individual property rights. I briefly defend this assertion in the next section.

property rights are about using goods in the pursuit of one's conception of the good. Another way to put this difference is to say that jurisdictional rights facilitate the implementation of a particular conception of justice, while property rights facilitate the pursuit of a particular conception of the good.

Second, the rights are each on a different *level*. Property rules govern the exclusive use and transfer of goods; jurisdictional rights concern the laws regarding many things, including what rules of property use and transfer are in force in a region. In rights-talk, jurisdictional rights are "higher-order" than property rights—they are powers to alter property entitlements as well as how property rights may be exercised. (Wenar 2005, p. 233, Meisels 2005, p. 6). In fact, it is difficult to understand property rights independent of a prior judicial and legislative authority. Several authors have argued that property rights are dependent on the state for their articulation, adjudication, and enforcement. Because property rights are determined by the state's implementation of its conception of justice through legal statutes, jurisdictional authority is theoretically and chronologically prior to property rights. Jurisdictional authority must first be established before property rights can exist at anything like the degree of articulation necessary for modern social and economic life (Buchanan, 2003, p. 233; Brilmayer, 1989; Kolers, 2000). If this is the case, then a group cannot 'own' its resources in the sense of having a property right unless it first has the jurisdictional authority to legislate over these resources. Thus, it is essential to theorize this authority over resources first.

Third, the rights pick out different *holders*. Jurisdictional rights are held by groups, and importantly not by individuals. Groups, not individuals, have the capacity to create a legitimate system of rule of law (at least in liberal theory). By contrast, property rights may be held by individuals, groups, states, and other sorts of agents. Groups, not individuals, have the capacity to establish *legitimate* rule of law. As such, only groups with the capacity to establish legitimate rule of law should hold jurisdictional rights.

Thinking of resource rights as jurisdictional rights gives us a theoretical umbrella under which the property right dimension of resource rights can be evaluated. Part of the jurisdictional authority over resources includes the right to declare the nationalization of particular natural resources, such as oil or diamonds. Under the jurisdictional understanding of the

right, the Sierra Leoneans may legislate that all newly mined diamonds originating within Sierra Leone are the property of the nation. Additionally, a resource right includes the right to direct the use of, access to, and development of land and resources through the legislation of property rights, and to draw taxes from property owners. The (private) property and market systems established over resources will be part of the explanation regarding how the group's resources are valued, utilized, controlled, and affect persons inside and outside of the state. Only jurisdictional authority over resources can explain this aspect of the group's right to control resources within its borders, especially the group's right to control those resources that are privately owned. With the initial understanding of resource rights as jurisdictional rights, we can explain both the property dimensions of the right (a group has exclusive control over resources to develop, sell, or preserve as it desires) and the jurisdictional dimensions of the right.

Impact: Understanding Territorial Rights.

As I mentioned earlier, territorial rights are rather commonly thought to be a cluster of rights entailing, (1) the right to establish the rule of law within a region through the making, adjudicating, and enforcement of laws, (2) the right over land and resources within a region, and (3) the authority to determine habitation, immigration, and citizenship rights regarding the region.

Given my arguments above that a resource right is in fact a jurisdictional right, it is apparent that there is an ambiguity in the distinction between (1) and (2). What's the difference between a right to establish rule of law and the right to establish rule of law regarding resources? I suggest the following articulation of territorial rights should be adopted:

(A) Jurisdictional rights over persons within the territory;

(B) Jurisdictional rights over resources within the territory;

(C) Rights to the value generated from (B), such as profit from the use and sale of resources; and

(D) The authority to determine habitation, immigration, and citizenship rights regarding the region.

In some ways, all of the parts of this cluster are related to rights over land; that's why it's called a territorial right. I assert here that there's a difference between, for example, a right to establish justice regarding the civil liberties of persons within a region (part of the jurisdictional right over persons) and a right to control the export of domestic oil (part of the jurisdictional right over resources). The direct object of the former right is persons within a certain region, and the direct object of the latter is (non-human) resources within the same region.

The distinction between (B) the jurisdictional right over resources, and (C) the rights to the value generated from (B), is important. How I have articulated the distinction is not as important as the fact that a distinction may be drawn between different parts of what is normally considered to be the 'bundle' of resource rights. In this essay I have articulated resource rights as jurisdictional rights only. The articulation and arguments for (C), rights to the value accruing from the use and sale of the resources, must be something above and beyond the articulation of the resource rights themselves. This is important because, although both (A) and (B), the jurisdictional rights, look as if they are a necessary component of territorial rights, neither (C) nor (D) has this function. One can argue on behalf of territorial rights without asserting that the state has a claim to the profits it derives from the sale of its resources. Likewise, one can argue on behalf of territorial rights without asserting that the state has a right to restrict immigration. On this understanding of territorial rights, the core of resource rights—(B)—is essentially part of the territorial right of a state. The legitimacy of the state's political authority, and indeed of its existence, is bound up in an evaluation of its capacity for legitimate rule over resources.

PART 2: RESOURCE RIGHTS AS OBJECTS OF GLOBAL DISTRIBUTIVE JUSTICE

At the heart of global distributive justice theories is a concern to address two issues: (1) severe poverty and oppression around the world, and (2) justice in holdings, i.e., ensuring that goods are held by those who have a legitimate claim to them. Resources—who controls

them, how they're used, who benefits from their development—is an important part of this picture. To address the fundamental concerns of global distributive justice, we need to have an account of the role that resource rights play in a just world.

In the second part of this essay, I argue that resource rights (domains of jurisdictional authority over goods) should be normatively governed by specifically designed principles of global distributive justice. As I mentioned above, there is a difference between the value accrued from the use or sale of a resource, and the jurisdictional authority over the resource. Others, notably Thomas Pogge (2002, p. 196-215), have argued for a redistribution of the value accrued from the use or sale of a resource. I am arguing here for the position that the jurisdictional authority (the core of the resource right) is itself an object of distributive justice. This position better addresses the fundamental concerns of global distributive justice than alternative positions.

For John Rawls, the primary subject of justice is the basic structure of society. The basic structure of society is “the way in which the major social institutions distributed fundamental rights and duties and determine the division of advantages from social cooperation” (Rawls TJ 1999: 6). The basic structure of society is the target of justice because it defines persons’ “rights and duties” and influences “their life prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start” (Rawls TJ 1999: 6-7). There is some debate over whether the idea of the basic structure of society can be applied in the global context. However, one need not adopt the whole Rawlsian theoretical structure in order to adopt the kernel of this idea: institutions of rights, especially rights to exclude that profoundly affect holders and excluded, must be subject to the norms of justice. To believe otherwise in the global context of territorial rights and resource holdings is to endorse a ‘might makes right’ normative paradigm for global entitlements; without principles of justice to regulate legitimate claims to jurisdictional domains, any state may claim exclusive authority over the resources within its domain merely because it is able to physically control them. This view is unacceptable. Holdings must be justified. We must have a theory of legitimate entitlement regarding resource rights.

Principles of distributive justice should regulate institutions that have enduring and profound effects on the distribution of goods among peoples and individuals around the world. The institution of resource rights is of this type, and principles of justice should regulate it.

The world is divided into separate territorial states. Territorial states are part of a global institution that affects the distribution of benefits and burdens, rights and duties among persons and groups, and its effects are present, profound, and enduring. The system of territorial rights, including the ascription and assignment of resource rights, should then be an object of justice. Contemporary debates regarding global distributive justice focus on a particular way of understanding the scope of distributive justice, i.e., whether the scope of egalitarian distributive justice extends beyond state borders (Blake 2001, Nagel 2005, Cohen and Sabel 2006, Abizadeh 2007, Sangiovanni 2007). My arguments in this section skew this debate in that I argue that state borders themselves are a distributive good. (The distributive nature of jurisdictional rights themselves is unfortunately ignored in the current literature; I explore further implications of my arguments for theories of global distributive justice in Part Three.)

The institution of resource rights as assigned by territorial rights is so profound and enduring that we often forget that it is an institutional construction. Upon very little investigation, it becomes clear that resource rights are institutional. Even setting aside the international institutions which help to construct the institution of resource rights, there remains the institution of territorial rights, enforced and respected by the independent territorial powers. The institution of territorial states itself creates and enforces a particular system of resource rights. In addition, resource rights are articulated, adjudicated, and enforced by international bodies.

Regarding the *enforcement* of resource rights, the UN Security Council is the foremost international actor. Part of the duties of the UN Security Council is to defend jurisdictional rights over resources with military force, if necessary. The Council is akin to the international chief of police; it is charged with keeping the peace and maintaining international law and order. As a police force is charged with defending private property rights, the Council is charged with defending territorial rights. When there are disputes over

resource rights, the Council attempts to maintain the peace and bring about resolution through non-military means. When non-military actions do not achieve peace, then the SC may authorize military action. Both non-military and military actions were part of the SC response to the Iraqi invasion of Kuwait. During this crisis, the SC authorized of the invasion of Kuwait and Iraq to restore Kuwait's self-determination and called for sanctions against the export of Kuwaiti oil after the Iraqi invasion of that country.

Regarding the *articulation* of resource rights, as Leif Wenar has recently emphasized, the view that a people holds resource rights has substantial support in the statutes of national and international law. For example, article 1 of the International Covenant on Civil and Political Rights states:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources...⁷

Other treaties establishing international law, such as UNCLOS (United Nations Convention on the Law of the Sea), set out legal statutes for determining jurisdictional and other claim rights over resources held by various parties, and the process of diplomatic recognition in international law gives particular agents international legal authority over particular territories and resources within those territories. Also, domestic institutions are recognized internationally (*de facto* and *de jure*) as having determinate jurisdictional authority over the resources within the domestic territory. For example, private international law is generally directed at determining under which national jurisdiction property rights claims should be interpreted.⁸ International law reinforces the legal and political institution of resource rights by reinforcing the authority of domestic institutions as a determinate jurisdictional authority over goods within particular borders.

⁷ Wenar notes that similar statements are made in other national and international legal documents, such as Article 21 of the African Charter on Human and Peoples' Rights, Article 1 of the International Covenant on Economic, Social, and Cultural Rights, and *The Constitution of Iraq*, Article 108 (Wenar 2008, p. 8).

⁸ See, for example, The Hague Conventions on Private International Law (HCCH 2009).

Regarding the *adjudication* of resource rights, the International Court of Justice is a clear example of a body that adjudicates disputes regarding claims to resources and violations of resource rights. The International Court of Justice has adjudicated disputed resource rights in many cases spanning several dimensions of the right. For example, cases that have come before the ICJ include disputes over which group has authority over nearby islands (ICJ 2003 Malaysia/Singapore), claims that foreign born herbicides have ruined domestic environment and agriculture (ICJ 2008 Ecuador v. Columbia), and disputes over maritime borders (ICJ 2008 Peru v. Chile).⁹

These are only some examples. On the domestic and international level, jurisdictional borders delimiting resource rights are designed and reinforced by a complicated network of formal and informal legal, social, and economic organizations. The system of resource rights, the international institutional arrangement through which groups claim particular and exclusive powers over certain lands, is an enduring and pervasive international institutional arrangement.

It may be less clear how resource rights define individual rights and duties and influence individual life prospects in a way that is profound and present from the start. Resource rights have this effect because of two features of resource rights: that they have property-like effects and that they are jurisdictional rights.

As I explained above, the property-like effect of resource rights is the direct effect that these resource rights have on the global distribution of goods including wealth and well-being. These effects are both domestic, regarding the relative distribution of goods between persons inside of the jurisdiction, and global, regarding the relative distribution of goods between all persons. The global effects follow almost by definition. When a group exercises its resource rights, the members of foreign groups do not have a primary right to develop and use of those goods. This would be true even if something like Pogge's Global Resource Dividend were in place, and there were a global redistribution of the value accruing from the use and sale of resources (Pogge 2002, 196-197). Additionally, even if one believes that the relative wealth and well-being of a domestic population is not dependent upon their

⁹ However, it should be noted not all countries (US, Israel) accept *compulsory* ICJ jurisdiction, although these countries may voluntarily refer decisions to this authority.

claims to native resources,¹⁰ the above is true. The distribution of goods domestically is constrained by the resource rights, because it cannot claim primary rights over the resources of other groups. A group only has a primary right to its own resources; it can only build and work from its own resources. This exclusive aspect of resource rights effects the way that the economy, culture, and other domestic institutions will develop.

Moreover, as Pogge and Wenar have pointed out, the institution of resource rights and how resource rights are articulated and designed at the international level have important effects for individuals.¹¹ Pogge explains,

...we share responsibility not only for the damage authoritarian rulers can do to the interests of 'their' people in international negotiations, but also for the authoritarianism and corruption being so widespread in the developing world... [via] the resource and borrowing privileges that our global order confers upon those who manage to bring a country under their control. Such rulers are internationally recognized as entitled to sell natural resource and to borrow money in the name of the country and its people. These international privileges facilitate oppressive rule and greatly encourage coup attempts and civil wars in the developing countries. (2002, p. 22)

The system of resource rights effects the relative distribution of goods for persons worldwide. Currently there are ample examples of injustice accruing from the articulation and enforcement of resource rights. However, my claim is true even if the system of rights works well (ideally) and the relative distribution of goods doesn't make anybody unfairly worse off.

The institution of resource rights also affects the relative wealth and well-being of persons who share a common citizenship. These domestic effects are achieved through the way that the right holder chooses to exercise its authority in the articulation of property rights over

¹⁰ "A society with few natural resources and little wealth can be well-ordered if its political traditions, law, and property and class structure with their underlying religious and moral beliefs and culture are such as to sustain a liberal or decent society." (Rawls, Law of Peoples, 1999, p.106)

¹¹ Wenar argues that the common international practice whereby the government of a state is acknowledged as having the authority to control and to sell the extractable resources within the state is illegal and contributes the resource curse. The resource curse describes the phenomenon when a resource rich state has relatively poor economic growth and few political and social freedoms for its members. (Wenar 2008)

goods domestically. Because the resource rights are held by certain groups and not by others, only the right-holder groups have the authority to determine the rules of (and to some extent the entitlements to) property within their jurisdiction. Thus, the domestic distribution of goods is a direct (though not determinate) result of the way that resource rights are recognized internationally to be held by certain groups.

Jurisdictional rights are fundamental to our life prospects in yet another way. They are the basis upon which rights, duties, benefits, and burdens are distributed amongst individuals. A group with jurisdictional rights has the right to establish a rule of law according to its own set of principles and values. A group without jurisdictional rights does not have the right to establish law. This is particularly important when the jurisdictional rights in question are resource rights. A crucial aspect of establishing a comprehensive rule of law is the authority to establish property rights and rules regarding the use of goods. Individual and collective use of goods is an important part of social life. Without the authority to regulate rules regarding the use of goods, a group has limited jurisdictional authority over its members. A group's ability to be fully self-determining is dependent on their ability to hold resource rights.

Currently international institutions recognize the importance of resource rights for the self-determination of groups, but only as a respect for those groups that *already* exercise their right of self-determination (with a very few exceptions). The institution of resource rights, as it is currently articulated and enforced, is quite static in its attribution of rights. Resource rights are held by only a small set, and each member of this set has rights only over one particular region of resources. The set of right-holders and the particular objects held by each right-holder remain the same. I'm not here criticizing the static nature of the institution of resource rights. Instead, I'm pointing out its particular distributive nature.

Suppose that the world is divided into only three regions. In each region a different group, A, B, or C, has exclusive resource rights over resources (including the authority to determine property rights). Living within these regions is a number of groups. Three of the groups, call them d, e, and f, are groups that may qualify for the right of self-determination (they have many of the qualities that we would normally assign to that sort of a group). Groups d, e, and f do not have resource rights. We can imagine that these are minority groups, the

members of which currently live under the jurisdiction of A, B, or C. In this case, all of the people in this world live under the principles of justice regarding rights over goods as determined by A, B, or C.

Even under conditions of perfect freedom of movement between states, the system of territorial rights deeply affects the life prospects, rights, duties, relative wealth, and other goods that persons enjoy. Because jurisdictional rights are held only by groups A, B, and C, persons are allocated primary goods in accordance with the principles of justice chosen by A, B, and C only. If the distribution of resource rights in this world were changed so that d, e, and f also had resource rights, then the life prospects, rights, duties of persons would be fundamentally different. As this system of resource rights affects the distribution of goods amongst persons in such an enduring and profound way, it should be subject to principles of justice. A principle of justice concerning the distribution of resource rights could justify the state of affairs where only A, B, and C have resource rights, or according to the circumstances and the principle, it could justify the redistribution of resource rights to include rights for d, e, and f. What is clear is that resource rights are distributive, and we should have principles of justice that determine when a group has a legitimate claim to resources, and when they do not.

One might be hesitant about my proposal if they think that I am calling for the redistribution of jurisdictional authority, i.e., the redistribution of states or state borders.¹² However, one need not endorse this radical position in order to accept the conclusion that resource rights are an object of distributive justice. What is clearly called for is a set of principles of justice for the regulation of a global system of resource rights. Our duties regarding these principles may be articulated in ways other than the redistribution of jurisdictions. (I briefly sketch my own theory below.) For example, we may fulfil our duties via more open immigration policies, a global redistribution of wealth, or a re-ordering of the international

¹² Kolers argues against the understanding of territorial rights as objects of distributive justice (Kolers 2009, Chapter 2). It is important to draw a distinction between the following compatible statements: (1) certain principles of distributive justice (such as luck egalitarianism) are inappropriate for regulating a system of territorial or resource rights, and (2) resource rights are an object of distributive justice. Kolers, I believe, endorses both (1) and (2). Kolers presents a theory of territory that articulates universal principles regarding the articulation and allocation of jurisdictional rights over lands and goods. In effect, this includes a theory of distributive justice regarding resource rights.

institutions such that they don't obviously disadvantage less developed nations (e.g., by addressing the causes of the resource curse (Wenar 2008; Pogge 2002)).

It may be objected that although it is clear that resource rights are institutional, it is not clear that the international institutional structure is 'justice apt', i.e., that principles of justice apply to it. In response, I maintain that principles of distributive justice may and should apply when the institutional structure exists, may be modified, and has enduring and profound effects on individuals. The institution of resource rights fits this description.¹³ The powerful international institutional structure of resource rights exists, and there is nothing that we can do but face the question: how should it be organized? Thomas Pogge writes in a similar vein regarding cosmopolitan principles governing global economic institutions:

...we face a choice of economic ground rules that is partly open... This choice has a tremendous impact on human lives, an impact from which persons cannot be insulated and cannot insulate themselves. Our present global economic order produces a stable pattern of widespread malnutrition and starvation among the poor, with some 18 million persons dying each year from poverty-related causes, and there are likely to be feasible alternative regimes that would not produce similarly severe deprivations. If this is so, the victims of such avoidable deprivations are not merely poor and starving, but impoverished and starved through an institutional order coercively impose upon them. There is an injustice in this economic order, which it would be wrong for its more affluent participants to perpetuate. And that is so quite independently of whether we and the starving are united by a communal bond or committed to sharing resources with one another. (2002, p. 176)

Alternative Conception of Resource Rights

Others who aim to illuminate the role that natural resources play in a theory of global distributive justice, often argue that resource rights should be distributed between states. These distributive paradigms aim to redistribute goods from resource rich states to resource

¹³ There is, I grant, an *additional* question regarding whether any international organization has the legitimate authority to change the existing institutional structure. Although I think this is an important and interesting question, it remains beyond the scope of this essay

poor states. Beitz and Pogge's theories are examples. More complicated theories have been proposed by Matthias Risse and Tim Hayward. On their brand of theory, there is normative presumption in favour of an equal per capita entitlement to the resources (or valuable ecological space) of the world. States are entitled to only their fair share of resources (or space) according to this per capita calculation. Each of these theorists hopes his theory will address the fundamental concerns of global justice: poverty, oppression, and just holdings of goods.

From the perspective of global justice, the problem with these resource distribution proposals is that they ignore issues of domestic justice internal to the state. Poor *states* will reap the benefits of these redistributive programmes. However, many of these poor states house gross inequalities; control of money, resources, and government is often concentrated in a small percentage of elites (who exclusively reap the benefits from the development of the state's resources). Often these elites oppress their population in order to maintain their control over the territory's productive resources. The benefits of these redistributive programmes would flow to these elites (because they control the political and economic structures of the state), effectively rewarding them for keeping their populace in poverty. The result could be a perverse incentive for domestic elites to oppress and impoverish their population in order to milk the global distributive system.

These authors may reply that my objection is not a problem with their theories, but rather it is merely a matter of correct implementation, and if the benefits of the redistributive paradigm were effectively managed, the benefits would go directly into the hands of the poor members of poor countries. But certainly a better theory will be one that creates fewer rather than more implementation problems in reaching its desired goal (and I maintain that my theory creates fewer problems). Moreover, my objection is a theoretical one. As long as resource rights are conceptualized as state rights, then the right is primarily a one of jurisdictional authority. The state will direct the use of resources through its creation, adjudication, and enforcement of law. An analysis of this right that looks at only the production and consumption of goods resulting from the exercise of the right is missing a great part of the normative picture. Methods of production and consumption can be encouraged through extremely unjust policies. Resources aren't merely developed or

consumed; but rather they are developed and consumed in just or unjust ways. A legitimate title to resources should take this into account. The holder of resource rights must have the capacity to rule the state legitimately. Policies regarding the just holding of resource rights should take the manner of the exercise of these rights into account.

This approach to resource rights, that legitimate resource rights are a matter of legitimate implementation of law, forces theories of global distributive justice to cast an eye inside of the state. Only legitimate states, or states that promise to be legitimate, have a claim to resources. This proposal better addresses the fundamental concern of global justice. Under this proposal, the domestic state is motivated to have its own house in order, or risk losing its resource rights.

Principles of Justice Regarding Legitimate Entitlement to Resource Rights

In other works I have defended a collectivistic Lockean theory of territorial rights. In this work I explain how a group of people can acquire territorial rights through their relationship with their territory, if their use of the territory meets certain Lockean-inspired criteria. A state using the territory to establish a state gains territorial rights (jurisdictional authority) over their territory if the territory is used in ways that support and promote individual liberty, well-being, and efficient use of the land and resources.

This theory can be adapted to explain a system of just holdings in resource rights. Resource rights, as jurisdictional rights, should be subject to the standards of legitimate political authority. That is, holders of resource rights must, at the minimum, display a capacity to govern legitimately. I hold the category of 'legitimate political authority' open to debate; however it is clear that legitimate political authority requires that the institutions of the state systematically provide the object of basic human rights to its members and are responsive to the will of its members.

As a Lockean-inspired theory, and indeed as a theory of rights over goods, this theory should encourage a system of rights that makes good use of the resources. For Locke, a system of private property rights is justified in part because it creates value for humankind. In our

context, a system of resource rights is justified if it encourages the creation of value for humankind across generations and as measured along the dimensions of individual autonomy and well-being. A system of rights is distinct from a token instance of that right. At the system level, we're talking about the global institution of resource rights. This institution of resource rights is not any particular resource right, such as Norway's right over its oil. It is instead the global institution from which particular tokens of the resource right are understood and justified. Norway's right to its oil is a token of the system of resource rights just as Botswana's right to its diamonds is a token.

With the system/token distinction, we can adopt the creation of value criterion to our normative evaluation of resource rights. At the system level, we should prefer the *system* of resource rights that creates the most value for the most people across generations. From the system, we can articulate the criteria for legitimate title to resource rights. The token rights need not be subject to the same justificatory criteria as the system. That is, the system may be subject to maximizing criteria, but the tokens need not be. We want the system of rights that promotes the most possible value. This does require, and often indeed prohibits, that each token right is subject to maximizing criteria. For example, it is likely that a value-maximizing system of resource rights should endorse long-term token rights over resources, as long as the holders prove their capacity to establish legitimate rule of law. This will encourage states like Sierra Leone to stabilize and become legitimate. It will also encourage stewardship of the resources for future generations. This system of resource rights rejects token-maximizing claims, such as the claims of would-be colonizers who promise to issue more value from the indigenous resources.

In summary, (briefly), on my collectivist Lockean theory, a system of resource rights is justified if it (a) allocates legitimate title of resource rights only to states with the capacity for the establishment of legitimate rule, and (b) if this system of rights encourages the most value for the most people across generations (as compared to competing systems of resource rights).

I have been purposefully silent about the meaning of 'value'. This is a discussion for another time. I believe that my theory is consistent with many different liberal interpretations, even those interpretations that are culturally relative.

PART THREE: Implications for theories of global distributive justice.

Even if you don't buy my principles of distributive justice regarding resource rights, the thesis that jurisdictional rights over goods are objects of global distributive justice in itself has important implications for contemporary theories of global distributive justice.

First, theories of global distributive justice in part ask: under what conditions would the world be just? Some authors answer that the distribution of goods in the world is not unjust if the domestic distributive institutions of each state are just. There are no global principles of distributive justice, per se, but only the justice of individual domestic states considered separately.¹⁴

From my arguments, it is clear that an analysis of international justice cannot be limited to merely the aggregate of the justice of domestic institutions without reference to global principles of distributive justice. This is because any domestic group must first have a legitimate claim to the resources upon which they establish their domestic system of justice and a distribution of goods, and this claim must reference global principles of justice regarding the just distribution of resource rights. The work of Rawls, Miller, Nagel, and others in the same vein, all presuppose that a society has a claim to its resources regarding which the society then has a duty to distribute domestically goods justly. This prior claim to resources is what I am highlighting here. We may agree that societies have only domestic duties regarding the distribution of goods *only if* they have a legitimate claim, globally understood, to those resources in the first place.

Second, an impact of my account of resource rights is that, at minimum, a two-level set of principles of distributive justice is necessary for the assessment of justice in the distribution of goods. On the first level, there should be a set of principles of distributive justice regarding the just distribution of resource rights among states. This follows from my

¹⁴ For more on this debate, see Miller 2007, Rawls LoP 1999, Blake 2001, Caney 2006, Nagel 2005, Cohen and Sabel 2006, Sangiovanni 2007, and Abizadeh 2007.

arguments in Part Two of this essay. On the second level there should be a different set of principles regarding the distribution of goods within the groups or among individuals more generally considered. This approach allows for a variety of domestic versions of distributive justice provided that they are established within whatever principles of justice regulate group authority over their members and their resources as well as intersocietal interaction between groups.¹⁵

I have given an account of the nature of resource rights and a brief account of the quite significant direction that this account should provide for theories of territorial rights and theories of global distributive justice. I do not offer here a comprehensive account of what those principles of justice should look like —beyond the sketch that I gave for principles regarding resource rights above. A defence of a comprehensive set of principles of global justice regarding resource rights is the task of another work.

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¹⁵ In this approach, I am following a limited cosmopolitan approach consistent with the approach of Pogge (2002) and is articulated well by Hinsch (2001, p. 56).

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