Kim Angell, PhD Fellow, Dept of Political Science and the Ethics Programme, University of Oslo
E-mail: kim.angell@stv.uio.no

Needs and Desert in David Miller's Theory of Territorial Rights[1]

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ABSTRACT: David Miller has recently put forward an expanded theory of territorial rights. In addition to his earlier view, namely, that particular rights to territory are grounded in a group's (need for) attachment to particular pieces of land, he now adds a wholly separate basis for territorial rights – of desert for value-creation in land. This is referred to as a "quasi-Lockean" basis, and it holds (roughly) that: When a group G has created (material) value in a particular portion of land L G has come to deserve territorial rights over L, because the laborer deserves to keep the product of its labor and the created value cannot be retained by G without its having territorial rights over L. In the central cases discussed by Miller, this eventually obtains even when G, prior to its value-creation, has forcefully seized the land on which it labors and expelled the earlier residents. In this paper I argue that the quasi-Lockean consideration for territorial rights does not strengthen Miller's theory. First, in the said (central) cases, it is hard to identify a proper desert claim due to the problem of laboring on land to which others have title. Second, even in cases where a desert claim could be established, it is nonetheless implausible for the quasi-Lockean consideration to ground territorial rights, as opposed to other (lesser) kinds of reward. This latter conclusion (usually) holds, or so I argue, both where the land in question is initially unowned, and where (some sort of) legitimate title is conferred on the laborer by Miller's needs-based consideration –which may supersede the injustice of forceful expulsion – thus (potentially) allowing for subsequent value-creation to function as a desert base.

Introduction

In his recent work on national responsibility and global justice, David Miller (2007) submits the following consideration as a basis for territorial rights. Roughly: When a group G has created (material) value in a particular portion of land L G has come to deserve territorial

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rights over L, because G deserves to keep the product of its labor and the created value cannot be retained by G without its having territorial rights over L. This consideration of desert (which he calls a "quasi-Lockean" consideration), along with his old argument from needs (see Section 1), constitutes Miller's new and expanded theory of territorial rights.[2]

In this paper I will argue that the quasi-Lockean basis for territorial rights does not strengthen his theory. Firstly, in the central cases discussed by Miller it is hard to identify a proper desert claim; secondly, even in cases where such a claim could be established, it is (for the most part) nonetheless implausible for it to ground territorial rights as opposed to other (lesser) kinds of reward.

It is important to emphasize that the right to territory that Miller discusses is not meant to be absolute. Instead, he is concerned with how a *pro tanto* right to territory can be established (2007: 221).[3] A pro tanto right can be overridden by other considerations in an all-things-considered rights-statement.

But what exactly is a *territorial* right, as opposed to other forms of rights over land? In Miller's view, an agent's territorial right is the "claim to a monopoly of political authority throughout the territory it controls"; it is "the right to apply law and other instruments of public policy to everyone and everything within a particular geographical area" (2007: 214).

In an unpublished paper on territorial rights, Miller separates territorial rights into three component rights: jurisdictional rights, the right to the land's resources, and the right to control border movements. I will refer to the first component, "the right to make and enforce law throughout the territory in question" (unpublished: 2), as *(comprehensive) jurisdictional rights.*I will assume that on any plausible understanding of territorial rights, comprehensive jurisdictional rights will be a *necessary* component; unless an argument succeeds in justifying such rights of jurisdiction it will fail as an argument for territorial rights.[4]

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[2] Note that Miller's *general* justification for territorial rights is "utilitarian in character" and focuses on "the overwhelming benefits of a territorially defined system of law and public policy" (2007: 214-16). Such general justifications are not the concern of this paper, which only discusses the question of how *particular* territorial claims can be established: as Miller puts it, "[w]hy should *this* state have the right to exercise political authority within *these* boundaries?" (ibid.: 214).

[3] The quasi-Lockean argument concerns the grounding of a *special* right *in rem*. A *special* right is a right that "a person is conceived to have by virtue of the occurrence of some contingent event or transaction" (Waldron 1988: 112). This contingent event can occur consensually, that is, it refers to some sort of transaction occurring between specific persons, such as in the case of contracts or promises (i.e. *in personam*); or, the event can happen *in rem,* that is, in those situations where an agent generates the right nonconsensually – but where the right nonetheless applies generally/to all other agents (ibid.: 107-8).

[4] I will be arguing that the quasi-Lockean argument does not ground the required right of jurisdiction, and thus adds nothing to Miller's theory qua theory of *territorial* rights. Whether the quasi-Lockean argument might

Finally, there is a distinction between *natural* and *institutional* claims. The considerations I make in this paper are about natural rights. The notion of *natural rights* is complex and can take on various meanings.[5] In my usage, the term refers to those rights that, as Simmons puts it, "could be possessed independent of (logically prior to) civil society, whose binding force is nonconventional" (1992: 90).

1. Miller's (Expanded) Theory of Territorial Rights

Writes Miller:

> Consider a nation that over a long time occupies and transforms a piece of territory and continues to hold that territory in the present. This unavoidably has a number of consequences. First, there is a two-way interaction between the territory and the culture of the people who live on it. The culture must adapt to the territory if the people are to prosper […]. But equally the territory will in nearly every case be shaped over time according to the cultural priorities of the people, as fields are marked out and cultivated; irrigation systems are created; villages, towns, and cities are built; and so forth, so that eventually the face of the landscape may be changed beyond recognition. It has become the people's home, in the sense that they have adapted their way of life to the physical constraints of the territory and then transformed it to a greater or lesser extent in pursuit of their common goals. […] From this further consequences follow. The first is that the nation as a whole has a legitimate claim to the enhanced value that the territory now has, so long that is as we accept the idea of inherited national responsibility […]. […] And because the added value cannot be separated from the territory itself – it is embodied in cultivated fields, buildings, roads, waterways, and all the rest – there is no way in which the nation could retain the value it has created but not the territory (2007: 217-18).

This is Miller's outline of what he calls a "quasi-Lockean basis for territorial rights" (ibid.: 218). This is his consideration of *desert.*[6] It is important to note that, on this quasi-Lockean consideration, the created value is of a *material* (or "economic") kind.

ground any of the other components in Miller's understanding of territorial rights will not be explored.

[5] See Simmons (1992: 89-92) for a list of such meanings (and their use in Locke).

[6] For criticisms of a desert-interpretation of Locke's theory of appropriation, see e.g. Simmons (1992: 246-52) and Waldron (1988: 191-4, 201-6).

In addition to the quasi-Lockean element, Miller mentions another basis – explicitly presented as "separate" – for grounding territorial rights, what he calls "the symbolic significance of national territory":

> Living on and shaping a piece of land means not only increasing its value in an economic sense, but also (typically) endowing it with meaning by virtue of significant events that have occurred there, monuments that have been built, poems, novels and paintings that capture particular places or types of landscape. […] The case for having rights over the relevant territory is then straightforward: it gives members of the nation continuing access to places that are especially significant to them, and it allows choices to be made over how these sites are to be protected and managed (2007: 218-9).

The argument from symbolic significance is based on a present- and future-looking consideration of *need.*[7] To paraphrase, the idea is that the land in question contains *symbolic* (as opposed to material) value for a group when events of special significance (to the group) have occurred on it.

Miller regards these considerations of desert and need, when taken together,[8] as "the strongest case for territorial rights", what he calls *"the occupancy/transformation"* basis for territorial rights (ibid.: 217). And while the two considerations will often correlate, they need not do so:

> Some peoples may live on land while doing very little to reshape it; yet the land may hold enormous symbolic significance for them. The period over which land has been occupied can be much shorter, in which case there may have been a dramatic increase in its value, but far less by way of historical

[7] As alluded to above, the argument from needs is what I called Miller's 'old' theory of territorial rights (see e.g. Miller 2003: 265; 1998: 68-9, 77 n. 14). Note, however, that there are a few slight indications of a desert-element in his 'old' theory as well. Consider the following phrasings from a passage in "Secession and the Principle of Nationality", where Miller applies his symbolic significance-basis to a case of secession of "the Xs" from "the Ys", where "the Xs, although perhaps always having certain features that distinguished them from the Ys, have been free and equal partners in *the building of* the community. […] Here I think the legitimate demand of the Xs does have to be set against the equally legitimate demand of the Ys not to be deprived of part of the territory which they and their ancestors *have helped to shape,* and which they quite naturally think of as theirs. In a non-economic sense, the Ys will be poorer if the Xs secede" (1998: 69, my emphases). On my reading, the italicized words allude to the desert-element that is clearly introduced in the "quasi-Lockean" consideration.

[8] To say that the two considerations are 'taken together' does not mean that they mutually support each other, or anything of that sort. Rather, Miller intends them to be separate and independent grounds for territorial rights. Obviously, if a group can refer to both grounds when making the case for having territorial rights over a particular piece of land, then that case may be stronger than if only one consideration had obtained.

> associations. So the strength of the claim to territorial rights may vary. And, of course, there may be competing claims from other groups (ibid.: 219).

As I will now argue, there is a range of problems with the desert-based (quasi-Lockean) consideration which render it incapable of strengthening Miller's occupancy/transformation theory of territorial rights.

2. Does Miller's Quasi-Lockean Argument Contain a Proper Desert Claim?

According to Lawrence Becker (1977: 50-2), if the performing of an action is to render the performer deserving of a benefit – that is, for it to function as a desert base – the performed action must be *morally permissible.*[9] This, he claims, is a necessary condition.[10] And I will assume that the said condition is an uncontroversial requirement.[11]

Does the desert claim in Miller's quasi-Lockean argument satisfy the condition of the moral permissibility of actions? As long as Miller allows for occupation of land, and even the expulsion of those currently residing on it, it seems difficult to regard the subsequent transformation of land (by the occupier) – value-creating or not – as morally "untainted" in the required sense. I shall take it that laboring on land under such circumstances is prima facie

[9] Of course, the reverse (i.e. moral *im*permissibility) will apply to cases where the action is supposed to render the agent deserving of a *punishment.*

[10] In addition to this condition, the action must, on Becker's view, be both beneficial to others (not merely to the performer of the action) and supererogatory (i.e. beyond the call of duty) (1977: 50-2). Because these further (and perhaps more controversial) conditions are not necessary for invalidating the desert claim being made in Miller's quasi-Lockean argument, I will not discuss here how they might (further) challenge it.

[11] Is this assumption too sweeping? Perhaps there are instances where a proper desert claim could be established even though it is connected to a prior impermissible action. Consider the following example: I have stolen a pair of running shoes. I then use those shoes to win a marathon. Even though I have done something impermissible (i.e. stolen the shoes), it seems that I can nonetheless become deserving of a benefit, namely the prize for winning the marathon.

To this we can say two things. First, the claim that the winner deserves the prize is a claim about institutional, as opposed to non-institutional, desert. If the institutional rules of the marathon are silent on whether competitors can use stolen shoes, then I may deserve the prize in an institutional sense. But it is an open question whether I deserve the prize in the non-institutional sense. Perhaps the other competitors have used plenty of their spare time to earn money to buy themselves running shoes, whereas I have been able to use most of my spare time practicing for the marathon. My having stolen the shoes has thus given me an unfair advantage over the others. Perhaps this fact makes any of them more deserving of the prize than I am, in the non-institutional sense. The quasi-Lockean desert claim is of the non-institutional variety.

Second, even though I may have enhanced the value of the stolen shoes, at least in the sense that they have now been used for winning a marathon, it nonetheless seems wrong to say that *the shoes* are now *mine to keep.* I may deserve *the prize* (depending on the rules of the marathon), but whether I have enhanced the value of the shoes should not influence my duty to return the shoes to the person from whom I stole them. I should perhaps even pay some sort of compensation for having displaced them, and for wear and tear.

morally impermissible; thus, in order to claim that such laboring can nonetheless qualify as a proper desert base, a separate argument will be required. Needless to say, Miller anticipates this line of criticism. So, what rationale does he give us in order to motivate his stand on this matter?[12]

Miller seems to invoke a "consequentialist" rationale:

> The alternative position [that occupancy and transformation only count for anything if the occupiers had a right to the territory in the first place] […] seems impossibly demanding. What would count as having an unblemished original title to land? Presumably it would mean occupying land that has had no previous inhabitants (or that has been voluntarily relinquished by its previous occupants), while respecting some quasi-Lockean 'enough and as good' condition to ensure that the occupation was not depriving others of an equal chance to acquire territorial rights. Given the tides of human history, whose present title would meet this condition? Perhaps the Icelanders' […]. […] Such rare cases apart, those who hold territory now do so as a result of a very long history of human movement, infiltration and conquest, some of whose episodes will involve injustice. So […] insisting that nations' territorial claims only deserve respect if a valid original title can be established […] would […] have the effect of putting virtually all borders into question, opening the way to arbitrary annexations, secessions, dismemberments, and so forth (2007: 220).

Such a "consequentialist" rationale for why current boundaries should be given moral weight might have much to recommend for it. Still, it is difficult to see why invoking such a rationale could strengthen Miller's quasi-Lockean argument.

Consider the following: The consequentialist rationale, in a plausible version, could be based on something like the idea of a *moral statute of limitations.* In one version, this idea holds that, when we seek to redraw current boundaries on the basis of unjust takings in the past, we have good reason to end our inquiry at some point in order to retain a certain degree of stability in the international state system, so that states can continue to provide important benefits for their citizens (see e.g. Buchanan 1991: 88-9).

What the consequentialist rationale should not do, however, is to render legitimate the acts of past injustice *themselves.* But this seems to be the unavoidable implication of Miller's

[12] One option, of course, is to deny that national responsibility can be inherited: by holding that the generation after the occupying generation has clean hands, as it were, their laboring might be defined as undertaken on "unowned" land. Whether plausible or not, this option is in any case unavailable to Miller, who takes the exact contrary position on national responsibility (see 2007: esp. Chapters 4-6).

(version of the) rationale: On the hypothesis that Miller wants to draw normative force from the *value-creating labor* on the part of occupiers and colonists – which he seemingly does, given that he, after all, includes the quasi-Lockean element in his theory of territory – then he must render their actions *morally permissible in the first place.* Given that desert-claims based on value-creating actions must satisfy the condition of the moral permissibility of those actions, the necessity of restituting past injustices follows; Miller must simply regard the original act of occupation as morally permissible because the quasi-Lockean argument would lose its moral force unless he so does.

This unwelcome implication is not had on the argument from a moral statute of limitations, on which past injustices can still be regarded as morally impermissible acts. On this latter approach, the moral work is done solely by present- and future-looking considerations (of need). Miller's version of the consequentialist rationale, however, in addition to such considerations, must somehow include (or have as one of its effects, so to speak) a moral reassessment of the relevant occupations in the past.[13]

To further illustrate this pivotal difference, consider Waldron's argument for supersession of historic injustice (1992: 20-26): Whenever circumstances change, the ongoing (distributive) effects of an unjust act in the past may be transformed; for example, if a portion of land was unjustly settled by agent A in the past, but the continued possession of the land now constitutes an especially vital interest on the part of A (i.e. A has nowhere else to go), and the agent B, who was expelled by A in the past, has found "subsistence" elsewhere, then A may be granted legitimate title to the land – even though the settlement was initially unjust.[14]

As with the argument from a moral statute of limitations, Waldron's thesis of supersession is based on a purely present- and future-looking consideration of need. It is not that the *act* of injustice in the past *itself* is nullified from the moral point of view – that our assessment of *it* has changed, so to speak;[15] instead, it is the *implication that follows from* that act that has changed, due to changes in circumstances (here and now).

[13] Even though Feldman (1995) might have shown that desert bases can sometimes reside in the future, I suspect that the examples he mentions in favor of this claim are so disanalogous to Miller's case of occupation and expulsion as to preclude an appeal to forward-looking desert.

[14] Note that Miller's rationale for the moral permissibility of occupation deviates (implausibly) from Waldron's supersession argument in one important respect: whereas Waldron requires that land has been made part of an agent's life plans, and that former inhabitants have found subsistence elsewhere, Miller does *not* regard the latter clause as necessary (see 2007: 219).

[15] Miller seems to have overlooked this detail; he takes Waldron's article to offer "cogent general considerations in support of" his own view that an "unblemished original title to land" is *not* necessary for the quasi-Lockean consideration to ground territorial rights (Miller 2007: 220, n. 26).

The upshot seems to be the following: Territorial rights might, at some point in time, be conferred on a group based on its post-settlement *needs,* regardless of whether the group has unjustly settled the land in question; however, the group cannot submit an additional *desert* claim for having created value during settlement, because their labor during settlement counts as labor done upon someone else's land.

If this is the whole story, the quasi-Lockean basis could hardly be said to strengthen Miller's moral theory of territorial rights. In what follows, however, I will discuss two cases in which the quasi-Lockean consideration might still do some moral work. First, it is conceivable that land can revert to the common (stock of natural resources) – due to the Lockean idea of a *waste* restriction – and the quasi-Lockean basis for territorial rights might be applicable to such a case. On the Lockean theory of appropriation, land lying unused – in waste – is free to be appropriated (Simmons 1992: 286-88). That is to say, when land turns into waste then the agent that previously held rights over it loses those rights. Other agents are thus at liberty to establish rights over the waste land through labor. This is *case A.*[16]

Second, in cases of *type B,* we consider a scenario where some kind of legitimate title to land has already been settled due to considerations of need. The idea is that, once a legitimate title to land is conferred, the prospects for establishing a proper desert-claim (based on subsequent value-creation) seem bright(er): *needs first, then desert.*

So, even if my criticism in Section 2 is on target, Miller's quasi-Lockean argument might still be relevant in some cases; at least, on the face of it, it will take more to rebut the argument in cases A and B.

As I will now argue, however, there is (at least) one further significant weakness in the quasi-Lockean argument which makes it difficult to sustain as a basis for *territorial* rights, even in the cases in question. This is due to its reliance on what I will call the premise of insecurity. (After discussing the problems with that premise, I will return to cases A and B.)

3. The Premise of Insecurity

Consider again Miller's quasi-Lockean argument for territorial rights:

[16] Note, however, that the scenario in case A does not obtain in the central cases discussed by Miller, unless the very *expulsion* of persons turns the land on which the expelled have resided into waste. I comment briefly on that (harsh) waste condition in Section 9 below. Case B, however, may be of relevance for the central cases discussed by Miller – where occupation and expulsion have occurred.

(i) A group which creates value in land deserves to keep the product of its labor;

(ii) the product is the created value, not the (modified) land itself. However,

(iii) the value created is inseparable from the (modified) land. Therefore:

(iv) In order to ensure that the group gets to keep the value it has created, the group should be granted pro tanto territorial rights over the (modified) land.

Even if we assume that the desert claim in (i) passes the test of the moral permissibility of (desert-establishing) actions, there are other, potentially unwarranted, steps being made in (this statement of) Miller's argument. First, in (i) the group is assumed to deserve (some kind of) title to the *product* of its labor. But Miller offers no argument for why retaining the value created in the modified land is the most fitting way to reward the laborer's desert.[17] But, for the sake of argument, let us assume that this difficulty can be overcome.[18]

Second, and more important, even if we grant that some sort of title to the product of one's labor is the fitting reward, whether this supports the conferring of territorial rights is still an open question, because: Miller must explicate why the created value cannot be retained through other means than that of conferring *territorial* rights.[19] Why not confer a right to private property, for example? Short of such an explication, premise (iv) does not follow.

[17] Note that for those desert claims whose fitting reward is determined by *conventions,* this problem does not apply. But, as alluded to earlier, the quasi-Lockean argument is concerned with identifying *natural* claims of desert and their specific fitting rewards, if any.

[18] What could explain that the laborer deserves the *product* of her labor? Simmons suggests that the most plausible explanation is rule-consequentialist: "Locke famously argues that labor increases the stock of goods for all […]. […] [O]ne good way of encouraging (inducing) labor is to reward the laborer with the title to the product, thereby (indirectly) encouraging the laborer to do what is best for all […]" (1992: 248). Waldron has pointed to a weakness with such a rule-consequentialist rationale. He refers first to Locke's claim that appropriation through labor can actually be seen as increasing mankind's common stock of external resources, because the appropriating laborer is then able to subsist by utilizing a smaller portion of land than before her appropriation (see e.g. Locke 2002: Section 37). In Waldron's view, this claim is problematic because "the benefit here arises not directly from the action of labouring, but from the action of living exclusively off one piece of land. […] Thus instead of being a reward *for* his beneficial action, the man is being 'rewarded' *in order to make* the action beneficial" (1988: 205).

[19] Recall from Section 1 above, that the value in question refers to *material* value, such as cultivated fields, irrigation systems, villages, towns, and cities. The quasi-Lockean consideration concerns deserts for creating such value, not value of the symbolic kind. The latter is of relevance for the needs-based consideration. Unless otherwise specified, when speaking of the value in land I will be referring to (created) material value.

So, what explanation does Miller offer us? In an unpublished paper (where he elaborates on his theory), Miller gives the following explication of why retaining of the created (material) value requires those jurisdictional rights "normally exercised by a state" – what I above referred to as comprehensive jurisdictional rights:

> It is not difficult to justify rights of jurisdiction for groups who are related to territory [either through having created material value in land or because the land holds symbolic value to them, or both]. For if the group does not have representatives to exercise such rights on its behalf, then its continued enjoyment of the value it has created *will always be insecure.* Rights of private property alone will not do the job because a) such rights are *always susceptible to being redrawn* by whoever holds rights of jurisdiction and b) much of the embodied value that the group has created is likely to be *located in public spaces* – in public architecture, landscapes of historic significance, and so forth. The group needs to maintain overall control of the territory in order to secure that value over time, and for that it needs rights of jurisdiction such as those normally exercised by a state (unpublished paper: Section VI, p. 19, my emphases).[20]

This quote underlines an important premise in Miller's quasi-Lockean argument: the laborer's actions have conferred the (broad) pro tanto right *to retain the created value;* in turn, this broad right includes *whatever set of rights necessary to that effect* (i.e. what is morally important is that the laborer retains the created value, not that a specific set of rights is conferred); however, Miller suggests – by reference to assertions (a) and (b) – that the conferring of comprehensive jurisdictional rights is necessary in order *to secure* the laborer's "continued enjoyment of the value it has created".[21]

So, can assertions (a) and (b) do the job for Miller?

4. Can There Be "Public Spaces" Within Private Land Property?

Assertion (b) suggests that: if the created value is located in public spaces, then it can only be retained by agents that are in a position to determine how *public* places should be managed and used; and how could *private* property rights be sufficient for that purpose? Indeed, the

[20] Passage cited with author's permission.

[21] Note that Miller invokes this line of reasoning in the exact same way in the needs-based consideration: the appeal to assertions (a) and (b) is (similarly) crucial in his explication of why land that holds symbolic value for an agent can be used as a (separate, free-standing) ground for comprehensive jurisdictional rights.

retaining of value located in public spaces seems to require comprehensive jurisdictional rights.

Initial plausibility notwithstanding, this rationale jumps to conclusions. Consider the following: whenever the creation of material value confers a right of private property over a piece of land (in which the created value is located) – grounded in the quasi-Lockean consideration alone – then that land could not have initially been public; when a piece of land is publicly owned in the first place it is impossible for an agent to come to have private property in it *through desert-establishing value-creation,* because creating value in land over which others have legitimate title does not establish proper desert – or so I suggested in Section 2.

But if so, Miller's distinction between private and public spaces is irrelevant in the following sense: our worrying about how the laboring agent's created value is to be secured when it is located in public spaces is misguided because the conflict cannot arise; at any given moment, the land is either publicly owned, or it is privately owned (or unowned).[22]

Further, consideration (b) can also be disputed without having to rely on the claims I made in Section 2. When a piece of land is privately (and collectively) owned by a large group, and where the exercise of the group's private ownership can take on highly complex forms of interaction between group members, there is typically need for a quasi-public institution to create rules of conduct on the property and adjudicate in cases of conflict between group members regarding the use of their common property. This quasi-public institution is 'jurisdictional' in that simple sense; and when the institution creates the rules of conduct on the land property it may define some parts of its (private) land as "public spaces" *for the group* (whereas for the state at large these spaces are still to be seen as *private* property); at no point, however, does this 'legislative' activity necessarily rival the jurisdictional rights of the state; such units, which we can call *sub-jurisdictional,* can coexist with jurisdictional institutions proper on the same piece of land. (The case of Norway and the Finnmark Estate can serve as an illustration.)[23]

[22] Note, however, that, as alluded to in Section 2, in the case of *symbolic* value, land which initially was public may *cease to be public* after it has been embedded with symbolic value; in such a case the needs-based consideration brings about a supersession of the public's ownership.
[23] For more information on this case, see: http://finnmarksloven.web4.acos.no/artikkel.aspx?AId=146&MId1=123

So, (b) fails to explicate why comprehensive jurisdictional rights are necessary for retaining the created value: a right of private property is enough; public spaces can be carved out on private property as long as those spaces are public for the private property holders, but not for other citizens of the state.

I will soon discuss whether assertion (a) fares any better. But first, let me introduce the concept of a *natural default set of rights.*

5. A Natural Default Set of Rights

Even though we may grant that the content of the set of moral rights necessary for retaining the created value may vary according to circumstances, there must be a specific set of rights that is necessary in order to retain the value *regardless of circumstances.* This set of rights is what I will call *the natural default set of rights.* The way to determine this natural default is to ask which set of rights is necessary in order to retain the created value *in circumstances of strict compliance* with what justice requires. (Without such a natural default we have no standard from which to determine whether a change in circumstances may require this or that redistribution of rights (in order to secure the retaining of the created value).)[24]

Which rights would the natural default include in the case where a laborer has created (the various kinds of) material value (mentioned by Miller)? First, it is impossible to retain that value if one is not permitted to physically enter the land (in which the created value is embedded); clearly, a right to *access* the land is necessary. Further, a right on the part of the laboring group to *use* (the value in) the land also seems required, as well as the right to *control* the access and use rights of third parties (to the extent necessary for preventing that their accessing and using the value precludes it from being retained by the laborer). Note, however, that this set of rights amounts to nothing further than a *right to private property.*

To see why the natural default, apart from being necessary, is also *sufficient* for retaining the created value under circumstances of strict compliance, consider the following scenario: the laboring group G has acquired a pro tanto moral right to retain the (material) value it has created in land L. As seen, having a legal right of private property in L is necessary in order for G to retain the value. However, there also exists another moral agent, S,

[24] As Waldron (1988: 163) points out, it may not be possible, in the State of Nature, to specify the content of the right in as detailed a way as that allowed by the laws of civil society. Yet I take it that this will not pose insurmountable problems.

which has a (morally justified) legal right to jurisdiction on L. The right to jurisdiction may logically include the right to change the rules that determine private property relations on L, but S will (or so we assume) exercise its right to jurisdiction in accordance with the demands of morality. Part of what morality demands is that G's right to private property is not violated; so, as long as we assume circumstances of strict compliance, G will – even with a (mere) right to private property in L – securely retain the value.

So, under idealized circumstances of strict compliance there is no insecurity;[25] consequently, in that scenario Miller's quasi-Lockean argument would ground nothing further than a right of private property – such a right would then be necessary but also sufficient for retaining the created value. However, Miller's theory is meant to apply to circumstances of partial compliance; and here the insecurity mentioned in assertion (a) may become an issue.

Let us now have a closer look at assertion (a). Strictly speaking, the truth of (a) seems to me self-evident; as alluded to, it is a conceptual truth that the holder of legal jurisdictional rights is logically entitled to change the laws regulating private property within its jurisdiction. However, the question is whether we have reason to regard this fact – (a) – as *sufficient for grounding* the transition from insecure private property rights to rights of jurisdiction. That is, we must think that *living in insecurity* is morally unacceptable to such an extent as to justify the conferring of a further (legal) right of jurisdiction as a means to escape that insecurity.[26]

Here I want to draw a distinction between two forms of insecurity. Call the following scenario one of *theoretical* insecurity: Although S is legally (but not morally) allowed to expropriate G's private property, S is friendly and can thus be expected, at least for the foreseeable future, not to cancel G's legal right (unless there is very good reason for so doing). In contrast, insecurity is *practical* when S is hostile and can be expected to imminently attempt to violate G's right of private property (without good reason).

[25] Note, however, that even when persons want to comply with moral rules, lack of coercive institutions might create a situation where lack of confidence in others may lead fully complying citizens to distrust each other (Rawls 1999: 211-12). If so, even under strict compliance, the rights of G and S would have to be backed up by a system of international law.

[26] Note that if (a) is meant to generally ground the transition from an insecure right of private property to jurisdictional rights, then *all* sorts of (morally justified) legal rights that are supposed to be *enforced by a state* would seem, due to the insecurity mentioned in (a), to entitle their holders to a pro tanto right of jurisdiction. Interestingly, if this is what follows, it is a result that sits uncomfortably with Miller's collectivist theory of territory, as it would make *individuals* eligible for territorial rights: on Miller's view, "territorial rights […] belong fundamentally to the people collectively and are exercised on their behalf by the state they have authorized to do so" (2007: 217).

I do not intend to take a stand on whether practical insecurity is sufficient to ground the transition from property to territory. In this paper I will remain agnostic on that front. What I will suggest, however, is that *theoretical* insecurity is *not* sufficiently detrimental to G's legitimate interests as to justify redistributing the right of jurisdiction from S to G.[27]

6. Theoretical Insecurity: How Bad Is It Really?

We are normally able to enjoy our land property even though our state has a legal right of expropriation. In my view, as long as the state is friendly and does not expropriate in arbitrary fashion, our proper enjoyment is not significantly precluded; that is, living under this level of (theoretical) insecurity seems morally acceptable. Consider a familiar scenario: the state wants to build a public road (for good reason, let us assume). This road will have to run through several stretches of privately owned land. In this situation, the state will expropriate wherever necessary and pay some sort of compensation to the property owners. This possibility of expropriation befalls land-owners in all liberal democracies. Still, this fact doesn't seem to preclude their proper enjoyment of land property.

Further, in cases where the right of land property is also *constitutionally protected* Miller's appeal to theoretical insecurity seems even less plausible. Constitutional protection ensures that rights of private property are not straightforwardly 'susceptible to be redrawn by whoever holds rights of jurisdiction'. Constitutional arrangements can be amended, so the retaining of the created value is not *absolutely* insulated from democratic change, but such changes are difficult to make and cannot be made in the normal process of legislation.[28] At least, such protection helps mitigate the allegedly detrimental perils of living in theoretical insecurity.

An alternative strategy to the same effect is to constitutionally secure either a right to veto certain policies that might endanger the created value, or (even) a right of partial jurisdiction on policy areas that are essential for the value to be retained, if any. The former

[27] I argue the points in Section 6 below more fully elsewhere (cf. Angell, work in progress).

[28] Normally, constitutional amendment requires that a qualified majority votes in favor of the proposal in two consecutive parliaments. This restricts the number of cases where the relevant insecurity (on G's part) obtains, for the following reason: in the case of modern democracies, the agent that holds comprehensive jurisdictional rights, S, is partly constituted by (large parts of) the laboring group G, in the sense that G's members can be assumed to be part of the electorate. For constitutional amendment to be a threat, G must be a sufficiently small numerical minority within the electorate, so that its (or its representatives') voting power cannot block such amendment. For the purposes of this paper, however, I grant this assumption. S is thus the *de facto* wielder of jurisdictional rights.

would ensure that the retaining of the value is sufficiently secured within a centralized form of democratic governance, whereas the latter would create a more federal arrangement. Such forms of constitutional protection are not mere theoretical constructs; institutional arrangements like these are, on the contrary, quite common in the real world.[29]

In other words, the prospects are quite bright for minimizing the level of theoretical insecurity. Note also that G's interest in escaping theoretical insecurity must be weighed against S's interest in retaining its morally justified pro tanto right of jurisdiction. When we take S's legitimate interest into account, the case for justifying a redistribution of jurisdictional rights (from S to G) seems quite bleak: Living in theoretical insecurity is just not sufficiently detrimental.

There is a further way of reducing theoretical insecurity: enforcing G's private property right through *international law.*[30] One might object that a system of internationally enforced rights of private land property may be too hard to implement in the real world – both as it is and as it might be in the short or medium term. In response I want to draw attention to the case of Nicaragua and the indigenous people of Awas Tingni, which was decided on August 31, 2001, by the Inter-American Court of Human Rights.[31] About the Court's decision, Anaya and Grossman write as follows:

> The Court held that the State of Nicaragua violated the property rights of the Awas Tingni Community by granting to a foreign company a concession to log within the Community's traditional lands and by failing to otherwise provide adequate recognition and protection of the Community's customary tenure. […] Like Awas Tingni, most of the indigenous communities of the Atlantic Coast are without specific government recognition of their traditional lands in the form of a land title or other official document. […] The Court ordered Nicaragua to demarcate and title Awas Tingni's traditional lands in accordance with its customary land and resource tenure patterns, to refrain from any action that might undermine the Community's interests in those lands, and to establish an adequate mechanism to secure the land rights of all indigenous communities of the country (Anaya and Grossman 2002: 1-2).

[29] See Lijphart (1999) for a thorough survey of cases.

[30] Now, one might object that, in Miller's central cases, where group G has forcefully occupied land L and perhaps also expelled members of S, it seems implausible to assume that S, if allowed to (re-)establish jurisdictional rights over L, will be motivated to respect G's right of private property. If S is granted such rights, then G has good reason to fear that its right of property will be violated at some point in the future. I admit that this is a pertinent worry. But I do not see why this problem cannot be handled by securing G's private property right in international law. Moreover, if I was on target in Section 2 above, then this scenario will not arise simply because the quasi-Lockean argument does not establish desert in cases of occupancy and expulsion.

[31] Thanks to Tom Christiano for suggesting this example.

What's more, in Anaya and Grossman's view, this decision has forged "an international legal precedent with implications for indigenous peoples throughout the world" (ibid.: 1). Miller's quasi-Lockean argument is of course not meant to apply solely to indigenous peoples – it is supposed to typically apply to nations (cf. 2007: 217); but, in light of the Awas Tingni case, a similar legal precedent for national groups does not seem unfeasible at all. So, the objection that surveillance of intra-state property rights is too hard to implement fails.

These points should suffice to sever the transitional link between property and jurisdiction on which Miller's quasi-Lockean argument – indeed his whole occupancy/transformation theory of territory – crucially relies. That is to say, when the premise of insecurity fails, Miller is left unable to ground anything further than rights of private property. I will return to this problem in Section 9 below where I suggest a way in which his quasi-Lockean argument might be modified in order to circumvent that conclusion.

But first, let us return to the challenges that the faulty desert-base imposed on Miller's quasi-Lockean argument. Recall that the relevance of his quasi-Lockean argument must (if I was on target in Section 2) be restricted to what I called cases A and B.

7. Case A: Waste Land

In case A, where the laboring group G starts to labor on land that has turned into waste, the previous holder of rights over the land, S, can ponder as follows: Even if G has now created material value in the (former) waste land, there is nothing in the quasi-Lockean argument stopping S from justly reestablishing comprehensive jurisdictional rights over the land in question, on the condition that some sort of institutional arrangement (like the ones mentioned above) is established, in which the set of rights naturally required for retaining the created value is conferred upon G.

I'm open to the possibility that if S does *not* respect G's property, this might justify shifting the right of jurisdiction from S to G. But note that this would be a *remedial* argument for territory – which is compatible with Miller's theory, but not entailed by it.[32]

[32] Note that appealing to *practical* insecurity would probably come very close to being a remedial argument as well – depending upon how one specifies the criterion for the onset of practical insecurity.

8. Case B: Needs First, Then Desert?

What about case B? Recall that, in this scenario, desert for value-creation is supposed to make the case for territorial rights after the needs-based consideration has conferred on the laborer *some sort of title* to the relevant land (on which the value-creation will take place); the idea is that, once legitimate title has been established in that way, the *subsequent* value-creation may function as a proper desert base. As I will now argue, however, this line of reasoning is not as straightforward as it might first appear.

First, as we saw in Section 6, being entitled to retain material value does not (typically) imply being justified in having comprehensive jurisdictional rights (because the appeal to insecurity fails to ground the transition from property to jurisdiction); and it is not obvious why matters should be any different for the argument from symbolic significance. To the contrary: the natural default set of (private property) rights seems sufficient for retaining symbolic as well as material value. Consider the following examples. It seems plausible to distinguish between different types of (historically) significant events. For some events, no more than a right to access the relevant piece of land seems necessary for retaining the symbolic value (e.g. in order to visit a seashore from which one can gaze towards the place where a sea battle was fought). Other events might require the rights of use and control as well (e.g. in order to determine whether and how a significant burial ground should be modified, or to control the access and use rights of others in order to prevent the burial ground from deteriorating), thus equaling a right of private property. And as long as the relevant rights are constitutionally secured, and/or subject to international surveillance, enjoyment of the embedded symbolic value (in the type of events mentioned by Miller) seems to be properly secured for the relevant agent.

But: if that first point is on target, and the needs-based consideration will (typically) confer no more than a right of private property in land, then the quasi-Lockean consideration may run into the problem of laboring on someone else's land even in case B. Let me briefly elaborate.

Why is it not enough to establish some sort of legitimate title to the land, such as private property, then labor on that property, and thus, in time, somehow *expand* one's title over the land? The most obvious answer is that the creation of material value will typically

not justify jurisdictional rights (as seen in Section 6); it follows that desert for value-creation (typically) cannot expand a right of private property (into rights of jurisdiction), only *consolidate* this (private property) right.

But let us disregard that suggestion for a while (i.e. for the rest of the present section), and instead consider another way in which value-creation for the sake of expanding a needs-based right of private property is problematic: It is far from clear why such laboring is not an instance of laboring on that which is owned by someone else.

Even though the laborer, in case B, might have *some sort* of (needs-based) title to the land, it is an open question whether other right-holders continue to hold *other* kinds of title over the same piece of land. (The possibility of such a plural picture, where one piece of land stands in different relations to various right-holders at the same time, seems evident, and has been assumed from the start.) The question is whether G's laboring on L – which is G's private property – may in time confer upon G jurisdictional rights, thus cancelling S's rights-relationship over L. That is, can G's value-creation in L be a relevant desert base if G has merely a private property right over L, but G's value-creation (on that property) is of a kind that requires (let us assume) the conferring of something more extensive than a private property right over L for G to (fully) retain the created value?[33]

If we think that *such laboring* does *not* satisfy Becker's requirement that actions in the desert base must be morally permissible (cf. Section 2 above), then the quasi-Lockean argument cannot be used to somehow *expand* a (needs-based) right to private property into comprehensive jurisdictional rights – such value-creation would simply amount to laboring on that which belongs to someone else. If so, the only way for the quasi-Lockean argument to do any relevant moral work in case B is by *consolidating* a needs-based right of jurisdiction; to enable such consolidation, however, there must be, from the first, some sort of symbolic value the enjoyment of which requires comprehensive jurisdictional rights.

So, under what conditions, if any, can we say that the embedded symbolic value cannot be retained without conferring comprehensive jurisdictional rights? Perhaps the claim that rights of jurisdiction are necessary for retaining the symbolic value could be uncontroversial in cases where the prospective right-holder has, for a long time, lived under and operated a set of consolidated, well-functioning political institutions (such as in Miller's

[33] Note that these complications are absent in the case of waste land or unowned land, in which *there are no other right-holders*. But in Miller's central case – which involves expulsion and occupation – the land is seized with force, and other rights-holders thus (initially) exist.

central case). In such cases, it does not seem too far-fetched to suggest that the people has experienced various significant events – namely, those events associated with *living under and operating a complex set of institutions that already wield something that resembles comprehensive jurisdictional rights* – the symbolic value of which cannot be retained without actually having such rights of jurisdiction. If the retaining of symbolic value can ever be said to require comprehensive jurisdictional rights, this type of case seems to be the most plausible candidate.

For the sake of argument, let us grant that, in such a scenario, comprehensive jurisdictional rights are necessary for retaining the symbolic value embedded in the land; if so, the laborer could be at liberty to labor in a desert-establishing way after the moment when comprehensive jurisdictional rights were conferred by the needs-based consideration. To elaborate: Value-creating labor has obviously been done on land L by group G between T0 and T1 (i.e. a set of complex political institutions has been created); however, this labor has been done under circumstances where L does not 'fully' belong to G (i.e. G has merely a right of private property, or less). However, at T1, we find that the attachment forged between G and (the now modified) L has conferred on G a 'full' title (i.e. including rights of jurisdiction) to L *based on G's need* (to retain the symbolic value embedded in L). T1 is thus a turning point, so to speak. If so, labor done on L by G *from T1* and onwards would satisfy the condition of the moral permissibility of (desert-establishing) actions, and might thus render G deserving (of some sort of right over L).

Now, the problem for proponents of the quasi-Lockean argument is that wherever they want to argue that the turning point is, the quasi-Lockean argument seems to be weakened. This is so, because two of the pivotal components in that argument – which is now combined with the argument from symbolic significance (and thus slightly modified) – pull in different directions: Arguing for an early turning point makes it difficult to substantiate the claim that retaining of the symbolic value requires comprehensive jurisdictional rights, whereas opting for a late turning point implies that the desert base becomes correspondingly shakier.

To see this more clearly, consider the following: If we assume a late turning point, then a consolidated liberal democracy, say, has already been established, and the *further* amount of (properly desert-establishing) value-creation that could be done by laboring does not seem

very large; that is, the further laboring in such cases will probably amount to little more than *maintaining* the value (i.e. the institutions) that has already been created.[34]

In one sense, the group would then do nothing at all to change the land, as the land would *remain* in the configuration that was presented to them *at the point (T1) where* they could start to labor on it in a desert-establishing way. But why should one be deserving based on value-creation if one does *not* alter the status quo (i.e. does not *enhance* the value)?

I guess the answer to this latter question turns on how much laboring it will take to sustain the status quo value – to counteract its deterioration, so to speak. (And I admit that some sort of reply might begin here.) But still, the plausibility of the desert argument seems to depend heavily on labor being *overwhelmingly responsible* for the value of the land, relative to the land's own contribution.[35]

This consideration of 'overwhelming responsibility' has been importantly invoked by Tamar Meisels, (relevant parts of) whose work Miller explicitly describes as being similar to his own approach (see Miller 2007: 218, n. 25). Meisels rightly points out that there are several distinct and independent elements in the Lockean theory of appropriation (of external resources). She focuses on the idea that:

> in laboring on an object the individual improves it in a way that ultimately renders it completely different, and immeasurably more valuable than it was before. […] Thus, in effect, the labourer is laying claim to something that did not exist prior to his effort (2005: 81).

[34] Why assume that Western-style political institutions are required for the symbolic significance argument to confer comprehensive jurisdictional rights? Such an assumption seems to go against a central feature of Miller's two-piece occupation/transformation theory, namely, that territorial claims may be grounded equally well by its two considerations even though they may come in different blending proportions, as it were, in different cases (see 2007: 219). (The relevant passage is quoted in Section 1 above.) But even if we grant that a favoring of Western-style conceptions of value is implausible, it also seems implausible to allow for a *switch* between conceptions of value. Consider the following: Western groups might first appeal to Non-Western conceptions of value – in order to somehow confer territorial rights before having created Western-style institutions – and then, by appealing to a more Western-style conception of value, seek to establish an additional desert-claim for having created such institutions. Should such a switch between conceptions of value be allowed in the establishing of desert? What about Non-Western groups – if they, over time, *genuinely* adopt Western-style conceptions of value, and then create Western-style institutions – would they become deserving? And vice versa: would it work for Western groups, if they were to dismantle their state institutions, and then genuinely embrace a way of life informed by a Non-Western conception of value? I will not address these issues any further here. In any case, this twist on the quasi-Lockean argument significantly reduces its relevance; such switches between conceptions of value seem to be, and will probably remain, empirically quite rare.

[35] See Locke (2002: paras. 40-43) for the argument that labor is responsible for nearly all of the value in land.

Illustrated by the building of cities, she writes:

> A nation seeking recognition of title to a settlement set up by its members is in a strong sense claiming ownership rights to an object which its members in effect brought into being. At the very least, its nature and current value are of their making. […] [T]hey now possess a morally significant interest in the products of their labour. Properly speaking, then, far from claiming the right to appropriate territory, they are actually seeking recognition of their interest in something that, for the most part, they themselves established (ibid.: 85).

However, even if we grant this view of the matter, the quasi-Lockean argument may still fail to confer territorial rights *in case B:* Because the 'land' in this situation is the 'already developed political institutions', it seems to require a further argument to establish that the reward for the mere *maintenance of* these institutions should be equivalent to the reward for *creating* them.

Until such an argument is forthcoming, the needs-based consideration does all the relevant moral work on its own, and proponents of the quasi-Lockean argument are left with case A.

In addition, even if they manage to somehow deny the maintenance/creation distinction, the proponents of the quasi-Lockean argument will nonetheless have to deal with the challenges posed in Section 6 above. That is, even if we assume that maintenance is sufficient for establishing desert, it is still unclear how the retaining of (maintained) *material* value in land can entitle the laborer to anything further than rights of private property. This applies to case B (where the value is supposed to be maintained) as well as case A (where the value is supposed to be created): Proponents of the quasi-Lockean argument must find a way of arguing that comprehensive jurisdictional rights are *necessary* for retaining the relevant value.

I will now end by briefly suggesting a way in which they might do so.

9. Waste Land Reconsidered: Introducing the Idea of Immaterial Value

If the above has been on target, the quasi-Lockean consideration (as a consideration grounding *jurisdictional* rights) may be applicable only in cases where the value-creation can be done on *waste* land. This potentially narrows the applicability of the argument considerably, depending upon how we specify the conditions under which a group holding territorial rights over land can lose this rights-relationship, so that the land reverts to the common (i.e. turns into waste).

Proponents of the quasi-Lockean argument could perhaps still get the result they favor if they allow for a very harsh story about how land turns into waste: For example, if you are expelled from your land, and for that reason can be said to have 'terminated' your value-creation on that land, then the land turns into waste and reverts to common. I take it that such a condition comes across as unpalatable.

Regardless of one's preferred waste condition, however, there is a further point to be made in the case of laboring on waste land. (And this is where I return to the problem alluded to at the end of Sections 6 and 8 above.) In Section 6, I argued that comprehensive jurisdictional rights are not necessary for securing the laboring group's proper enjoyment of the value it has created. If it is warranted to suggest (as I did) that a right to private property – at least when constitutionally protected and/or internationally enforced – is sufficient for securing proper enjoyment of the created material value, then the quasi-Lockean argument on its own seems incapable of *ever* conferring comprehensive jurisdictional rights. (That is, the expansion of the set of rights would have to be based on something else than the consideration of desert for value-creation.)

But perhaps there is a way around that conclusion. Recall that comprehensive jurisdictional rights might be necessary for retaining embedded symbolic value when that value is due to *the symbolic significance of events associated with living under and operating a complex set of political institutions* (or so we granted in the previous section for the sake of argument). If that suggestion succeeds in the case of the needs-based argument from symbolic significance, then something quite similar to it may perhaps succeed for the quasi-Lockean argument as well. The idea is that, the laboring group has *created* such (political) institutions; and, to the extent that they are valuable, the retaining of the (created) value may require comprehensive jurisdictional rights, or so I shall now suggest.

There is need for a slight modification of the quasi-Lockean consideration, however, before this line of argument goes through. The reason is that, if we only count the *material*

value of the relevant institutions (such as infra-structure, buildings, documents, etc.), then rights of private property seems sufficient for retaining the value. But if the laborer could also be said to have created what I will call *immaterial* value, the prospects for the quasi-Lockean consideration grounding comprehensive jurisdictional rights seem brighter.

Consider the creation of an institution for the regulation of, for example, certain leisure activities – the Football Club (FC). The institution FC may be valuable in material ways (it may e.g. include a building where documents can be kept, meetings can be held, etc., which is thus valuable in ways that buildings usually are), but a significant part of its value will probably be immaterial, as it *regulates a specific set of relations between persons to their mutual benefit.* (Note that FC being immaterially valuable in this way is different from its having symbolic value – although FC may have that kind of value as well.)

I take it that modern state institutions can be said to have immaterial value in this sense, as they pertain to regulate various important relations between citizens to their mutual benefit. Let us also assume that immaterial value can be created by agents in much the same way as material value can be; creation of immaterial value can thus, on the relevant conditions, function as a proper desert base (when the labor is done on waste land).

Further, and this is the important point: if the laboring group has created an immaterially valuable institution, and the (immaterial) value of that institution consists in its functioning according to its purpose, which (inter alia) includes wielding comprehensive jurisdictional rights, then in order for the created value to be retained by the group, it must have whatever rights necessary for ensuring that the created institution can continue to function according to its valuable purpose.

If we, for the sake of argument, grant all this, let us now return to the case of G and S. If S (and others) abstains from (re-)establishing comprehensive jurisdictional rights over the waste land, then G (who started out with a right to private property) may perhaps, in time – if and when political institutions get created – expand its set of rights over the land so that it includes comprehensive jurisdictional rights. If we grant all these (admittedly) underexplicated steps, the said expansion could be thought of as grounded by the (now modified) quasi-Lockean argument *alone.*

Concluding Remarks

To sum up, this leaves us with the following modified version of the quasi-Lockean consideration: For a right of jurisdiction to be the fitting reward for value-creation,

(1) the laboring group must have created (materially and immaterially valuable) political institutions

(2) on waste (or otherwise unowned) land; and

(3) the waste condition must be (much) less harsh than the one mentioned above.

Arguably, cases that satisfy (1)-(3) are very rare, if existent at all. So, in this modified version, the quasi-Lockean consideration would not add to Miller's explicit aim, namely to avoid "putting virtually all borders into question".

Alternatively, in the case where the quasi-Lockean argument is paired up with the consideration from needs: if the maintenance/creation distinction can be denied, *and* if the retaining of symbolic value can be shown to require comprehensive jurisdictional rights, then desert for maintaining *im*material value could be claimed to (merely) *consolidate* the right of jurisdiction that was initially grounded in needs.

However, even though these points might suggest a way forward for proponents of the quasi-Lockean argument, there are several other challenges that the argument must overcome. In order to pose further problems for it, one could invoke the additional conditions on desert claims (mentioned in n. 10 above), as well as the complications (which I have not at all explored here) introduced by some sort of Lockean proviso on appropriation – demanding that "enough and as good is left for others" – a restriction that should be taken into account by all Lockean theories deserving the name.

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