

**Global Justice and the Convention of  
National Control over Resources**

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[Please note that this really is an early draft, so please do not cite without permission. The next draft will incorporate a fuller discussion of the components of property rights (in Section III), and a more direct argument for a more globally-dispersed regime of control over property (in Section IV). The present draft concentrates on motivating the issues, and rebutting what I take to be some of the more promising arguments for national control over property.]

**Abstract:** This paper is about the idea that nations are entitled to control the natural resources within their borders. Although this idea is enshrined in a number of pieces of international law, its normative basis is less obvious than we might think. Though it does not try to be exhaustive, this paper examines some of the more likely justifications. A first kind of justification suggests that communities – such as national communities – interact with resources (as they purportedly do with territory) in such a way that they may derive an entitlement to those resources over time. A second kind of justification suggests that an important good (either the good of national self-determination, or the good of effective care over resources) is best served by a regime of national control over resources. I examine the first kind of argument in Section II, and the second kind in Section III. In each case, the justification is found wanting, with the implication that, in my view, the convention of national control over resources does not currently have an adequate defence. I will end, in Section IV, by briefly noting some of the implications for debates about global justice.

## I Global egalitarianism, self-determination and national control over resources

International law, Leif Wenar tells us, stipulates that resources are to be considered the property of the nation-states ‘in’ or ‘under’ which they exist. Wenar has suggested that, given that the party owning the resources of a given nation are ‘the people’, it would be remiss for the resources of that nation to be bought and sold on the open market without the citizenry in general being aware of that sale, able safely to voice disapproval of that sale, and ultimately to *prevent* that sale if they wished without fear of persecution or intimidation.<sup>1</sup> In many brutal and corrupt states these conditions are not in place, with the implication that resource sales are illegitimate – and indeed the conclusion that many or all of us in Western states are colluding with theft, and receiving stolen goods. Wenar cites, for instance, the (1966) Covenant on Civil and Political Rights, which, alongside an injunction about self-determination, states that ‘All peoples may, for their own ends, freely dispose of their natural wealth and resources.’<sup>2</sup> For the purposes of this paper I will call this the Principle of National Control.<sup>3</sup>

If the principle is widely accepted, it is also widely violated. Indeed the point of Wenar’s important paper on the resource curse is to tell us that the principle is enshrined in a number of legal instruments but widely ignored, over-run as it is by our habit of buying national resources from just whoever can sell them to us. Still, it’s easy to see why members of the UN might have made appeal to such an idea in the 1960s, given the spectre of colonial expropriation. And in the current age of TRIPS, there is concern about private individuals claiming ownership over resources to be found in another country, including biological resources such as plant species common to that country. Resistance to this idea has been extensive, and *one* ground for criticism might be that the resources in question belong to (the people of) the nation or state in which they are found.<sup>4</sup> In such cases it’s easy to understand the attraction of invoking national or communal control. But if such a principle - the principle that nation-states, or the inhabitants of them, own their own resources - is so widely accepted, what is its basis? Wenar tells us little or nothing about the normative basis of that right.<sup>5</sup> In fact he simply tells us that it is ‘so intuitive that most will need no more proof than its statement.’<sup>6</sup> In his important article we have at best a brief series of clues as to its nature or origin (such as the fact that Wenar appears to

consider it a property right, and also the aforementioned fact that the UN presents it alongside a general defence of national self-determination). But no more.<sup>7</sup>

I want to look for possible justifications for a principle of national control. I will not attempt, now, to be exhaustive in that search (I won't, for instance, consider possible Kantian arguments for national control over resources). Instead I will concentrate on defences of national control over resources which might be either found, or worked up, from the accounts of recent defenders of national self-determination.

Within current academic debates on global justice, one of the most interesting disputes is between global egalitarians and defenders of national self-determination.<sup>8</sup> Indeed there is a sense – as argued by Wenar, again - that a self-determination-based argument provides the best chance of thwarting the claims of global egalitarianism.<sup>9</sup> Take David Miller's 'dynamic objection' to global egalitarianism, for instance - which resists it on the basis that 'people belong to independent political communities which [rightfully] make decisions that influence the future availability of resources and opportunities.'<sup>10</sup> The idea here appears to be that continually redistributing resources will stand in the way of nations' ability to be properly self-determining, and to reap the rewards – and sometimes costs – of their own decisions.

If there *is* a defensible principle of national control, and if it has some sound foundation, then it would appear to be just the kind of tool defenders of self-determination might use to help build their case against global egalitarianism. However, whether defenders of national self-determination believe in the principle of national control is not particularly clear. Recourse to that principle tends to be implicit at best. Miller does not quite summon it in his various critiques of global egalitarianism, though he sometimes seems to imply it. Thus he says that a problem of global egalitarianism is that 'To preserve equality we would have continually to transfer resources [between nations] undermining political responsibility, and in a sense undermining self-determination too.'<sup>11</sup> The question is just in *what* sense the redistribution is undermining self-determination, and what role, if any, the principle of national control plays in that argument. Likewise Miller tells us that one reason why we should reject global egalitarianism is that 'globally equality cannot even be properly defined unless we suppose that the peoples of the world come to form a single political unit with common rules governing the holding and use of resources.'<sup>12</sup> And this, I think we are meant to agree, would be a Bad Thing. But still, this is not the

same thing as telling us that *nations do* have a right to control their own resources, or where that right might come from.

So the enterprise here is a little indirect: I examine, first, how some prominent arguments for control over *territory* might be extended to justify control over *resources*. Do the justifications which defenders of self-determination tend to offer for control over territory provide *sound* reasons for control over resources? Do they provide a sound enough basis for the very strong form of national control which Wenar seems to be describing? Second, I consider arguments which suggest that a regime of national control might serve an important good (with the candidates being the good of self-determination, and the good of effective care over resources).

Evaluating these arguments may help us understand how to handle Wenar's arguments about the just transfer of resources. Furthermore, determining the merits and character of the principle of national control may help us move closer to an understanding of what really divides global egalitarians from defenders of national self-determination. But in both cases, I will counsel caution. In Section II I suggest that even if we can extend arguments for control over territory to derive arguments for control over resources, those arguments are likely to be rather limited and conditional – limited and conditional enough to be of little help to Wenar. In Section III I examine another set of arguments for placing control over resources in the hands of nations or states, but again suggest that they are not strong ones. As such, if the principle of national control is to be defended, there is considerable work still to do. I conclude by briefly considering some of the implications for debates on global justice.

## **II Defending the principle of national control?**

Given the apparent scarcity of direct arguments for the principle of national control, one place to look for support would be erstwhile defences of control over territory, to see whether these might generate plausible justifications for control over resources too. A variety of arguments have been made for control over *territory*, specifying both different agents of control and reasons for accepting that control. In terms of agents, I will concentrate here on the nation and the state as primary agents of control. I hope that this narrowing of the field is worthwhile because prominent

defenders of self-determination – including those who invoke self-determination as an argument against global egalitarianism – do resort to such ‘collectivist’ arguments, and indeed tend to be sceptical about the chances of individualist versions yielding a suitably strong version of self-determination.<sup>13</sup>

In terms of reasons, defenders of national self-determination tend to place their faith in a justification of national control over *territory* which focuses on the way in which nations, states or ‘ethnogeographical communities’<sup>14</sup> come to enjoy a particular kind of relationship with land.<sup>15</sup> Some theories focus on the ‘attachment’ which communities come to form with land as being directly important from a normative point of view. Others focus on the ways in which communities ‘use’ or inhabit their land, vis-à-vis other communities. Most, perhaps, advance a combination of both kinds of reason. In this section I’ll examine a couple of recent attempts to justify first, national control and second, state control over territory. In both cases my focus will be on whether such accounts hold out much promise of justifying the kind of strong principle of control over *resources* which Wenar’s account depends on. In both cases, I will be rather sceptical.

### **A Defending nations’ entitlement to control their natural resources?**

Nationality-based accounts suggest that a piece of land may rightfully become the ‘home’ of a given (national) community once the land, and the people, have become adapted to each other in a deep way.<sup>16</sup> But such accounts may also suggest that the way in which a nation *uses* ‘its’ territory is also significant, over and above its symbolic importance to that community. So it might be normatively crucial that a people have invested a good deal of care, and work, in a territory, and as such ‘enhanced’ its value.<sup>17</sup> We therefore have what we might call an argument about *symbolic* value (the nation has ‘bonded’ with a territory, and produced a territory which has great symbolic value to it in particular) and one about *economic* value (the nation has produced economic value through its ‘improvement’ of the territory). Although they do not explicitly set out their stall to do so, it is worth asking whether nationalist accounts of territorial rights can extend into the domain of resources, and provide a justification for control over them too.

My suspicion is that the *attachment-based* argument, if it extends to resources at all, will do so much less strongly than in the case of territory. We might question, that is, whether attachment to resources could be of the same order as attachment to territory. Is it really key to national identity that Britain possesses a certain quantity of bauxite? Are Britons attached to that ore in a normatively significant way? Certainly it seems likely that a nation might have a far greater attachment to the highlands of its territory than to the tin deposits to be found there. In many cases, should there be an attachment-based objection to their removal, it also looks likely to be indirect – it will be (more?) based on the consequences to the territory of their extraction (unsightly mining practices laying waste to the glorious hills...) than on direct attachment to the resources themselves.

It is worth examining whether the argument about *economic value* might provide us with a reason why nations might be entitled to control the resources within their territories, though.<sup>18</sup> However, it is not clear that such an ‘enhancement’-based argument can provide the solid backing which Wenar’s principle needs. The ‘enhancement’ argument may not be wholly secure, not least since the degree of ‘cultivation’ of a territory is variable.<sup>19</sup> As such the strength of a claim to control a particular territory might be expected to vary too. As well as an *historical* criterion (which refers to whether land *has* been cultivated, and by whom, and perhaps for how long), a *comparative* criterion is usually introduced, referring to how *well* land has been cultivated, and perhaps to how much value has been added. It is easy to see the appeal of a comparative measure. After all, the historical criterion, taken alone, might be taken to place inappropriate weight on what Brian Barry once called ‘the virtue of getting there first, or even worse, in merely having some ancestor who got there first.’<sup>20</sup> Since the fact that one nation has cultivated a territory is dependent on the fact that they controlled it, and excluded others, perhaps this does not provide the kind of argument that we need.<sup>21</sup>

So appealing to a separate, comparative principle is attractive; but introducing such a criterion raises its own set of questions. Is the conclusion that we need a regime of more and less strong control, based on patterns of land use?<sup>22</sup> If so, then is it right to argue by extension that the claim to control territory on the part of those who cultivate land less than optimally might be rather weak? Might it rightfully be usurped, as John Locke once suggested?<sup>23</sup> More detail is perhaps still needed on the connection between, and relative strength of, these various arguments about

attachment, history and the conferring of value. But already, we can note several reservations about the likelihood of our grounding a strong principle of control over resources on this kind of basis.

First, if the claim to control territory turns out to be scalar – in the sense that it might be weak or strong, from case to case and also over time – then we might expect that any argument for control over resources derived from it would be too. Indeed we might expect a principle of national resource control derived from such an account to be:

*Relative / comparative.* We might, that is, expect the account to provide an argument for a greater claim over resources for community a rather than community b, rather than a decisive argument in favour of community a. And we might also expect the relativities to change over time, as the nature of resource use changes.<sup>24</sup>

*Conditional.* If a community ceases to become to most efficient available user of a piece of territory, or a cache of resources, the account seems to suggest that their claim over it becomes weaker – and, moreover, that it might become weaker than that of community b. That will not necessarily be decisive, as other factors such as attachment will still come into play. But it does suggest that at least some part of the justification for national control is revocable for reasons of efficient or inefficient use.

Second, we might ask whether the claim to control resources might not be rather *partial*. Although the argument I've been considering deals with control over a territory as a whole, it might be the case that there is no significant attachment over, or enhancement of, particular parts of that territory. If so, that possibility seems an even livelier one in the case of resources. For presumably some resources are just not bonded with (perhaps they are even undiscovered) or laboured over (since they may be neglected, or simply ignored). Our defender of national control might rejoin that a national community could add to resources' value just by leaving them *in situ*, of course. That would be plausible, but it opens an interesting can of worms, for by the same token *other* people outside of the nation will add to their value more or less passively too – another nation by desiring that good and increasing the price; a further nation by having the same resource but not selling it. Miller, for instance, earlier pointed out quite correctly that 'the value of the resources available within the

territorial boundaries of any one state depend on global institutions such as the international commodity market.<sup>25</sup> At the very least, it suggests that nations might be entitled to part of their resources, or the value of their resources, but that outside actors might also be so entitled.

Third, we should observe that it's the value added to a territory (or by extension resources) which the nationalist argument is suggesting a claim over, not the territory (or resources) itself: 'the nation as a whole now has a legitimate claim to the enhanced value that the territory now has.'<sup>26</sup> Only by adding a pragmatic argument to the effect that the value added cannot be separated from the territory itself, which cannot be removed,<sup>27</sup> is Miller able to (attempt to) justify a claim to the territory itself. But we might well ask whether this same pragmatic justification could be applied to resources. Although it might be difficult to intellectually disentangle the value added to the 'latent' value of resources, we do not have the same problem we have with territory itself, which is that it literally cannot be removed and redistributed – because many resources can.

For all of these reasons, we have to be sceptical about whether such an account could ground any strong principle of national control over resources. Of course, we still could say that, although the claim is conditional and relative and partial, in the non-ideal world we should just treat it as a much stronger and less conditional right, because we have compelling utilitarian reasons for doing so. We could for instance suggest that any meaningful version of self-determination just requires such rights, whatever their basis. This second possibility wouldn't be very satisfactory - but in any case, it's not self-evidently clear that it *is* necessary for national self-determination. That argument needs to be made, and I consider its chances of success in Section III.

## **B Defending states' entitlement to control their natural resources?**

One other possibility is that *states* might come to have a legitimate claim to control resources within their territory, as a result of the distinctive way in which they act as institutions.<sup>28</sup> Cara Nine has put forward such an argument, based on a combination of normatively-significant factors, including the way in which states produce justice for their citizens, and the way they interact with land.<sup>29</sup> And in this case, the argument



does explicitly connect control over territory with control over resources, seeking to provide a justification for both at the same time.<sup>30</sup>

I will not pause long to examine the claim that we might ground claims to land and resources on the production of justice within a territory, because it should be immediately clear that it would produce major difficulties for Wenar's account. For his account argues that the people own their resources even where their governments (elected or unelected) behave very *unjustly* - for instance by excluding them from decisions about resource sale and use. But Nine wants to limit the claim to control (or at least this part of its justification) to cases where justice is produced. As such, (at least this part of) her defence will not speak to most of the very cases Wenar is concerned about.

But will the other grounds for control over resources help Wenar out? A second foundation is based on state institutions conditioning the ways in which members *add value* to land and resources. As a result of this kind of enhancement, states can come to deserve titles to land and resources.<sup>31</sup> Added to this is a third foundation, a kind of efficiency principle, which broadly suggests that territorial claims might be supported where *efficient use* is made of land or resources. These latter two grounds overlap to some degree with the economic considerations the nationalist sets out, and which I discussed above. As such, it looks likely that the same kinds of limitations will apply to the ensuing claims. First, note that Nine, like Miller, wants to say that 'The rights claim generated by the Lockean principle of desert is weak because it can be defeated by other considerations, most importantly by another agent's prior rights claim to L'; she therefore proposes 'that rights to land can come in degrees.'<sup>32</sup> Second, the efficiency and use considerations appear likely to be scalar and conditional in the same way as the nationalist's judgements of the production of value. We might add, third, that the ensuing claims are again likely to be partial, since the state may well not directly coordinate citizens' interaction with *some* resources, beyond the rather thin fact that it may reserve the right to regulate their potential use (and we would want to avoid circularity by not placing too much weight on that). So in sum, the claim to control which the statist account intends to argue for is not – and is not apparently meant to be – strong enough to ground the principle Wenar needs.

Like the nationalist account, the statist account also raises its own quandaries. The most interesting one to me is this: although Nine *does* want to argue directly for (a weak claim to) control over resources, her argument seems to work the wrong way

around. She assumes, that is, that states have some claim to resources that lie within their territory. But she leaves it as an open question whether principles of global distributive justice, for instance, might require us to redistribute (some of) the *value generated* by the state holding rights over those resources. Of course one problem with this is whether we can disentangle the value created, but I'll leave that to one side. The more important point is that the argument seems topsy-turvy. The premise tells us that states contribute to the *value* of resources, but the conclusion tells us that it is that *value* that might legitimately be expropriated, taxed, or alienated from territory, and not the resources themselves, which presumably are rightfully controlled by the state. But this is odd. The account seems better tuned to provide an argument for the retention of the value created, rather than the 'natural' value of resources, or even the resources themselves, because it is the former that the state contributes to. As Nine says, 'if the value of the land L is significantly attributable to agent X, then agent X has a weak rights claim to L'.<sup>33</sup> But it seems more apposite, here, to suggest that the weak rights claim is to the value created, not to the land L itself. But that is not the conclusion the statist account needs to defend. (We also have to face the fact, once more, that *other* people contribute to the value of resources too. Does this also give them a weak claim to those resources?)

Once more, we don't seem to have any basis here for anything like the strong principle which Wenar suggests is obvious. For both of the accounts I've discussed, this principle looks more like a possible conclusion than an argument, and it's not obvious what its premises would be. Although some current accounts of territorial rights – including one intended to generate a claim to control resources themselves – can provide some foundation for a weak claim, it is weak, and it also looks likely to me to be much more conditional, relative and partial than Wenar suggests.<sup>34</sup>

### **III Control over resources and national self-determination**

Even if we think that the defences of territorial rights I've been canvassing so far are rather unlikely, at least without modification or augmentation, to give rise to a strong right to control resources, we might still try to defend that right on other grounds. We might, in particular, defend national control over resources in deference to another

value, such as effective national self-determination, or even effective care over resources.

However, it seems to me that to get any traction on this issue it's necessary to pause first to peer closer at the meaning of national control over resources. For lack of clarity about what we mean by national control could lead to confusion and cross-purposes. A proper appraisal of the thesis of national control will obviously look at its precise *content* – at which elements of the bundle of rights normally associated with property rights is actually being reserved to states or nations. As a first go at this, a good place to start might be Elinor Ostrom's account of property rights over resources, which generates for us a distinction between *ownership* and *proprietorship*. Ostrom distinguishes the following property rights:

*Access* – the right to enter a defined area and enjoy nonsubtractive benefits

*Withdrawal* – the right to obtain resource units

*Management* – the right to regulate internal use patterns and transform the resource by making improvements

*Exclusion* – the right to determine who can access and withdraw

*Alienation* – the right to sell management and exclusion rights<sup>35</sup>

Armed with this set of distinctions we can then derive a list of status positions, defined according to the property rights a party enjoys over a particular resource, including:

*Authorised entrants* – those with the right of access

*Authorised user / claimant* – those with the above plus withdrawal and management rights

*Proprietor* – those with the above plus exclusion rights

*Owner* – those with all five rights<sup>36</sup>

All of these status-types enjoy some property rights over designated resources. But the point which this typology allow us to note immediately is that, when applied to national control over resources, it is already open to question just what defenders of self-determination need to argue for. Take Wenar as an example. Wenar tells us that the people of a given nation 'own' its resources. That suggests a full set of rights, including that of alienation. But is the status of owner necessary to his account? As proprietors, 'the people' would be entitled to set, and oversee the implementation of,

principles of just alienation. They would also be entitled to manage national resources in a way they saw fit. But this might be compatible with a variety of forms of actual ownership (understood as including the right of alienation). It might be compatible with a regime of individual ownership, for example, where individual citizens and non-citizens enjoyed the right of alienation over certain resources, but where the terms of just alienation were both determined and overseen by ‘the people.’ So it seems to me, in short, that the claim Wenar is making – that people should be able to block resource sale, or at least place conditions on it – is compatible with rights short of ownership. Proprietorship would allow us to get at the cases which concern him, and presumably to rebuff attempts at colonialist or neo-colonialist expropriation too.

So I suggest that when we consider arguments about the necessary connection between control over resources and self-determination, we go armed with such a question about status. The accounts canvassed in Section II seem to set their sights on ownership of ‘national’ resources (and I suggested that those accounts would encounter many problems in justifying such ownership). But is ownership in Ostrom’s sense necessary for self-determination? Or would something like proprietorship suffice? Just how much control, that is, should or must be hardwired into any defensible and adequate account of national self-determination?

## **A The Principle of National Control and Self-Determination**

Cara Nine has presented a very strong claim, to the effect that ‘respecting the self-determination of states requires that a state have exclusive territorial rights regarding the control of the natural resources within its borders.’<sup>37</sup> Nine has pointed out that resource rights are often presented as ‘following from or subsumed under’ a broader claim to exercise authority over a territory,<sup>38</sup> and Nine herself does not distinguish between control over land and over resources, but considers them both together as a component of territorial rights.<sup>39</sup> As noted above, she suggests that whereas *value generated* from resource rights can be separated from a core conception of territorial rights, resource rights themselves are a necessary component of any such conception.<sup>40</sup> But whether this is so or not depends on the status we want to accord rights holders. It seems highly unlikely that complete ownership of natural resources can be considered a necessary condition for self-determination. We can easily imagine

regimes of mixed individual, common and state ownership where the state reserved for itself the status of proprietor, and regulated the extraction, exchange and expatriation of resources, and perhaps taxed owners at each stage, without claiming for itself the status of owner. It seems too strong to suggest that such a state would not enjoy self-determination.

Interestingly even if we restrict the state's role to that of proprietor the exclusivity built into Nine's conception appears too strong. David Miller, for instance, notes that the defence of national self-determination is not an argument for complete or rigid sovereignty over all internal affairs, and is compatible with the ad hoc transfer or power upwards to, for instance, confederal bodies. As he puts it himself, 'there is no reason to make a fetish out of national sovereignty.'<sup>41</sup> This principle could be extended to resources (though Miller doesn't extend it in this way). Let's imagine that there is a resource, which is highly radioactive and unstable, and an international organization decrees that it must be left where it is, in the mountains from which it could otherwise be mined (for those who don't like such other-worldly examples, substitute the regulation of chlorofluorocarbon use). In that sense, states have no control over that natural resource. In that sense, no state is self-determining, on Nine's criterion, because no state has exclusive control over all resources in its borders, even conceived in terms of proprietorship. But that therefore seems much too strong a criterion.<sup>42</sup> We would have to say that European states transforming their fishing rights into common-pool resources would no longer be self-determining either. Not that they would no longer be self-determining over that resource, but that they would not be self-determining communities. This seems to be the case whether we see international agreements as ceding proprietorship to a super-state level, or whether we see nation-states as becoming co- (but not exclusive) proprietors. But given the likely strengthening of global institutions, perhaps with powers to regulate the use of some resources on environmental grounds, it becomes more rather than less important not to make a fetish out of sovereignty or self-determination in this way.

## **B The Principle of National Control and Effective Care Over Resources**

Are there better pragmatic arguments for the superiority of state-level proprietorship or ownership? We might, perhaps, appeal to the claim that assets will deteriorate

unless owned by a single, specified party. Notably, Rawls twice suggests in *The Law of Peoples* that territorial rights might be justified via a parallel with property. Much as an asset ‘tends to deteriorate’ ‘unless a definite agent is given responsibility for maintaining it,’ so a government ought to take responsibility for a territory and for ‘maintaining the land’s environmental integrity.’<sup>43</sup> So the argument, as we might reconstruct it, suggests that we will endure a ‘tragedy of the commons’ unless specified parties are allocated an interest in preserving resources and their value. This looks like the right kind of argument to fit the bill: national control serves an important good – effective care over resources – which would not be secured by any rival system. It does not resort to a conceptual argument (national control is simply a necessary *element* of some other good, like self-determination), but places its faith in an empirical conjecture that national control will reliably *serve* another good.

As Rawls presents it the argument is a little underdeveloped – it really does not progress beyond that initial parallel with property. Even so, however, there are already three points that we need to consider about the argument as it looks at present. First, it is worth pointing out that Rawls’s argument seems custom-designed to produce an argument for proprietorship, but not necessarily for ownership. In any case there are, Ostrom tells us, many examples of (communal) proprietorship rather than ownership over natural resources where that distinction does not appear to translate into inferior investment decisions or productivity. Arguably, if we were motivated to join up an argument from the purported benefits of individual ownership, with an argument for the necessity of some form of national custodianship over resources, national proprietorship but not ownership would be the way to go. Second, the economists’ argument which Rawls picks up on is actually an argument for individual versus communal ownership within a state. It suggests that individual ownership is necessary for the retention and creation of lasting value, whereas communally-held assets will tend to deteriorate in value, at least relatively.<sup>44</sup> But Rawls, of course, wants to transpose the argument up a level, and use it to justify something like communal – or, alternatively collective - ownership. Economists are unlikely to be convinced, as their view is that communal (and perhaps collective) ownership is insecure in its benefits. Indeed if at the global level assets are *already* owned and looked after by individuals, then as far as the economists are concerned the problem may be a non-problem. Why then (as far as *they* are concerned) stipulate a need for national control? Third, even if we accept Rawls’s transposed argument, what is the

evidence for it? Rawls can hardly resort to evidence for the superiority of private over communal (or perhaps collective) control, because what he wants to defend is communal control. But at least at the domestic level we have clear sources of empirical evidence on the relative merits of common-pool versus private ownership in conserving resources and / or realising value, although the conclusions are of course disputed. But at the global level, what evidence could we cite? When have we tried taking resource control away from states and administering it communally at some global level?

It is tempting, in any case, to point out that states have not done a terrific job of conserving resources themselves. But comparative evidence is simply lacking. So arguing for the superiority of communal or collective ownership at this level is not as straightforward as Rawls implies. Rawls seems to have delivered a plausible argument to the effect that care over resources requires that specific parties are allocated an interest in their preservation. But he has not delivered the conclusion that this should be a single entity (or a single kind of entity, such as the state), or that the interest in the preservation of resources should or must be concentrated at one level. It might be that, if caring for the environmental integrity of resources is what we care about, then trans-national proprietorship is at least part of an ideal solution. Fisheries policy seems to be a good example of this. In other cases, communal proprietorship at the sub-national level might be preferable.<sup>45</sup> So whilst Rawls's initial argument has the right kind of structure, it is not clear that the evidence is strong for the *conclusion* that effective proprietorship over natural resources will always occur at the level of peoples or nation-states. As with Nine's account, the good in question would appear to be compatible with partial or co-proprietorship on the part of nation-states.

My remarks in this section have been exploratory and rather tentative. I would reach the following conclusions, though. It doesn't seem that self-determination requires national ownership, and certainly not exclusive ownership. It might be compatible with a variety of forms of ownership. It might be that self-determination as normally understood requires something like proprietorship over natural resources. But actually, it does not seem even to require exclusive proprietorship. Suffice to say that raising the question of the merits of national proprietorship over resources opens up issues where our conclusions are very tentative. For it might be that the most effective way

to preserve resources is to argue for a mixture of sub-national, national and trans-national proprietorship. But a more direct argument for that proposition will have to wait.

#### **IV Conclusions: National Control and Global Justice**

Defenders of national self-determination appear rather unsure about the principle of national control which Wenar tells us is so obvious that it hardly needs justification. It certainly looks like a possible conclusion, rather than a foundational assumption, of their arguments. But even as a conclusion it is not clear whether they are either clearly wedded to it, or capable of arguing for it, at least based on the arguments I've considered so far. I've considered two different kinds of argument for it, and found neither wholly successful.

If we return to debates about global justice, the implications are interesting. If we turn out only to be able to make, at best, a case for partial national proprietorship over natural resources, this potentially throws one of the objections to global egalitarianism in a different light.

I noted in Section I that defenders of self-determination sometimes argue that the redistribution of resources across borders is incompatible with national self-determination, in some sense. But I suggested that the precise sense in which it did so was unclear. This is a question about the *content* of a right to self-determination, not its basis. If the argument is that it violates self-determination because self-determination necessarily includes the right to exclusively control resources, then I would suggest that argument is false. Self-determination is compatible with various forms of ownership over natural resources, and may also, I would suggest, be compatible with a variety of more dispersed regimes of proprietorship, where the state does not possess exclusive authority to determine the use of resources. At the very least, I think we can say that a definition of self-determination which demands either exclusive ownership or proprietorship over resources would be implausible and unattractive.

Whilst elsewhere I have tried to defuse the debate between global egalitarians and defenders of self-determination by disentangling the various forms of global



egalitarianism, there is work to do on this front too. For the invocation of a right to self-determination in the global justice literature turns out to cover a multitude of different things. Sometimes it refers to a right to determine membership.<sup>46</sup> At other points it seems to implicate a right to control resources, though where this is so I am suggesting that more clarity is needed over the basis and limits of that right. It might also be that self-determination is being used in a looser sense, implying some kind of political self-direction: the right to make decisions, and to bear the consequences of those decisions. If we are including, here, the right to make decisions over resources then I think that begs the question. But perhaps self-determination simply means being able to choose from an array of political options, to tailor state provision in a way compatible with a public political conception of justice, to determine the balance between individual and state responsibility, and so on. If so, we need an argument why that requires national control over resources, because it is not immediately obvious that it does. We also lack an argument why it is incompatible with the trans-national redistribution of property rights over natural resources, or the resources themselves.

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<sup>1</sup> Leif Wenar, 'Property Rights and the Resource Curse,' *Philosophy and Public Affairs* 36.1 (2008): 2-32.

<sup>2</sup> Cited in Wenar, 'Property Rights,' 9.

<sup>3</sup> Wenar's description might, in practice, be an over-simplification. Thus Raul Pangalangan suggests that 'while territorial lines are drawn and kept through geo-military power, resources are subject to more sophisticated modes of control,' and as such 'are more easily subject to overlapping claims by non-state groups and to communal regulation by a putative international community.' Raul Pangalangan, 'Territorial Sovereignty: Command, Title and the Expanding Claims of the Commons,' in David Miller and Sohail Hashmi (eds) *Boundaries and Justice* (Princeton: Princeton University Press, 2001), pp. 164-79, at p. 164.

<sup>4</sup> For a discussion of the complex issues involved, see Darrell Posey and Graham Dutfield, *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities* (Ottawa: International Development Research Centre, 1996). Another response, of course, would be that intellectual property rights have simply been over-extended, or that individual parties should not be allowed to own copyright in such things.

<sup>5</sup> And neither does a closer inspection of the 1966 Convention on Civil and Political Rights, for instance, help us. Only the brief Article 1 concerns rights to self-determination; the remaining 52 Articles chiefly detail a familiar set of individual civil and political rights, and discuss mechanisms for a Committee to oversee their implementation.

<sup>6</sup> Wenar, 'Property Rights,' 10.

<sup>7</sup> The closest Wenar comes to actually defending the principle is footnote 28, page 12, where he acknowledges the existence of the rival argument that the earth may be owned equally by all. But rather than providing a direct argument against that position, or *for* national control, he simply suggests that his political proposals will also move us some way towards the goals of global egalitarians.

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<sup>8</sup> For an attempt to defuse and unpick this dispute, see Chris Armstrong, 'National Self-Determination, Global Equality and Moral Arbitrariness,' *Journal of Political Philosophy* (2010).

<sup>9</sup> Leif Wenar, 'Humanity and Justice in the Work of David Miller,' *Critical Review of International Social and Political Philosophy* 11.4 (2008): 401-11.

<sup>10</sup> David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press), p. 56.

<sup>11</sup> Miller, *National Responsibility*, p. 71. Bernard Boxill, in his critique of the idea of global equality of opportunity, also appears to suggest that massive transfers of wealth between countries is incompatible with national sovereignty. Bernard Boxill, 'Global Equality of Opportunity and National Integrity,' *Social Philosophy and Policy* 5 (1987): 143-68, at 159.

<sup>12</sup> David Miller, 'Justice and Global Inequality,' in A. Hurrell and N. Woods (eds) *Inequality, Globalization and World Politics* (Oxford: Oxford University Press, 1999), pp. 187-211, at p. 210.

<sup>13</sup> For some examples of the collectivist's scepticism about the individualist view – at least in its capacity to ground territorial rights as we know them upwards to states – see Nine, 'Resource Rights and Global Distributive Justice,' Van der Vossen, 'On the Idea of Territorial Rights.'

<sup>14</sup> Kolers, *Land, Conflict and Justice*.

<sup>15</sup> See for instance Margaret Moore, *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998); Miller, *National Responsibility*; Avery Kolers, *Land, Conflict and Justice* (Cambridge: Cambridge University Press, 2009); Tamar Meisels, 'Liberal Nationalism and Territorial Rights,' *Journal of Applied Philosophy* 20.1 (2003): 31-43.

<sup>16</sup> Thus David Miller suggests that 'The case for having rights over the relevant territory is...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'. Miller, *National Responsibility*, p. 219, 218. Such an argument is important because of the *particularity* feature of most defences of territorial rights, which aim to justify not access to territory, but access to *this* territory for *that* community. The focus on attachment, presumably, highlights a link between a specific community and a specific territory.

<sup>17</sup> Miller, *National Responsibility*, p. 218. This point also features, of course, in his resistance to the idea of a global measure of equal resources: the value of natural resources in a given territory is to a significant extent a product of the choices and decisions of distinct communities, and will vary from culture to culture. Pp. 60-1.

<sup>18</sup> Miller actually raises the possibility that resource rights might require a different justification from jurisdictional rights over territory. But as he does not tell us what that justification might be, it's worth inquiring whether the argument about territory can help. As I show in section III below, the only argument he does make for national resource rights is grounded in the same enhancement-based account (nations add value to resources, which cannot be easily disentangled from latent value; so it might make sense to leave resources where they are). See Miller, 'Territorial Rights.'

<sup>19</sup> Miller, *National Responsibility*, p. 219.

<sup>20</sup> Brian Barry, 'Humanity and Justice in Global Perspective,' *Nomos XXIV* (1982): 219-52, at 235.

<sup>21</sup> Miller considers the objection that a nation may have 'cultivated' a land that did not belong to them in the first place. Miller, *National Responsibility*, p. 219-20. Here his response is that 'the occupancy and use of land over a long period eventually [may] trump the territorial rights of the original possessors.'

<sup>22</sup> Miller's own conclusion is that 'the strength of the claim to territorial rights may vary' according to the strength of both (what I am calling) historical and comparative factors. Miller, *National Responsibility*, p. 219.

<sup>23</sup> That raises another tantalising possibility, which I also presume Miller would want to resist: might the strength of the right to restrict entry to immigrants vary according to the intensity with which land and resources are currently being utilised, as have some have suggested? Michael Walzer once raised the possibility that the right to decide *which* immigrants to admit might be forfeited in a community with excess land or resources, which were scarcely being used. Though he did not develop such an argument, a much stronger account connecting population, resources and immigration has more recently been defended by Blake and Risse. My sense is that Miller will want to resist those conclusions, but that his argument is not quite strong enough to allow him to do so with confidence. See Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), p. 46; Michael Blake and Matthias Risse, 'Immigration, Territoriality and Culture,' in J. Ryberg, T. Petersen, and C. Wolf (eds) *New Waves in Applied Ethics* (Aldershot: Ashgate, 2007), pp 153-182.

<sup>24</sup> Miller appears to recognise this in the case of territory and argues for a weak (defeasible) claim, rather than a right to control it. Here 'A claim is something less than a right, but those who refuse it must give the claimant a reason for doing so.' Miller, *National Responsibility*, p. 213.

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<sup>25</sup> David Miller, *On Nationality* (Oxford: Oxford University Press, 1995), p. 105. Indeed Miller continues to say that ‘Since states are enriched and impoverished in seemingly arbitrary ways by such institutions, this triggers an obligation on the part of resource-rich states to aid those that are relatively poor’ *ibid.* p. 105. This seems to subside as a line of argument within Miller’s account on global justice – it is not, for example, reprised in *National Responsibility and Global Justice*.

<sup>26</sup> Miller, *National Responsibility*, p.218.

<sup>27</sup> Miller, *National Responsibility*, p.218.

<sup>28</sup> Miller believes we ought to object this state-based account (Miller 2009). Miller’s chief objection is based on scepticism about whether any arising entitlements could be inherited – collectivities such as nations, for Miller, can intelligibly inherit rights and responsibilities, but not institutions such as states.

<sup>29</sup> Nine, ‘A Lockean Theory.’

<sup>30</sup> Nine, ‘Resource Rights and Global Distributive Justice.’

<sup>31</sup> Nine, ‘A Lockean Theory,’ 159.

<sup>32</sup> Nine, ‘A Lockean Theory,’ 159, 164.

<sup>33</sup> Nine, ‘A Lockean Theory,’ 159.

<sup>34</sup> An alternative to the nationalist and statist accounts examined in this section - which seem to place considerable (and perhaps inordinate) value on the generation of economic value from resources or territory – can be found in Avery Kolers’s work. His alternative use-based defence of territorial rights is based more clearly on the idea of sustainable stewardship; see Kolers, *Land, Conflict and Justice*. This justification for territorial rights shares a focus on the defence of ‘environmental integrity’ with Rawls’s very brief argument in *The Law of Peoples*, which I will examine in Section III.

<sup>35</sup> Paraphrased from Elinor Ostrom, ‘Private and Common Property Rights,’ in B. Bouckaert and G. De Geest (eds) *Encyclopedia of Law and Economics, vol. II. Civil Law and Economics* (Cheltenham: Edward Elgar, 2000), pp. 332-79, at p. 339.

<sup>36</sup> *Ibid.* p. 340. See also Elinor Ostrom, ‘How Types of Goods and Property Rights Jointly Affect Collective Action,’ *Journal of Theoretical Politics* 15.3 (2003): 239-70. To be sure, Ostrom recognises that according to economic orthodoxy ‘Property-rights systems that do not include the right to alienation are considered to be ill-defined.’ But orthodoxy is not an argument in itself, especially given that, if we are to believe Ostrom, there are abundant empirical examples of well-functioning systems of communal ownership which do not include the right to alienation. Ostrom, ‘Private and Common,’ 339, and *passim*.

<sup>37</sup> Cara Nine, ‘The Moral Arbitrariness of State Borders: Against Beitz,’ *Contemporary Political Theory* 7 (2008): 259-79, at ?272?

<sup>38</sup> Nine, ‘Resource Rights and Global Distributive Justice,’ 2.

<sup>39</sup> Nine ‘Resource Rights and Global Distributive Justice,’ 1, 6. A. John Simmons also considers ‘rights to reasonably full control over land and resources within the state that are not privately owned’ to be one (apparently single) element of rights over territory. Simmons, ‘On the Territorial Rights of States,’ 306.

<sup>40</sup> Nine ‘Resource Rights and Global Distributive Justice,’ 6-7.

<sup>41</sup> David Miller, *On Nationality*, p. 101, p. 103. Although elsewhere Miller does say that state sovereignty involves ‘the right to apply law and other instruments of public policy to everyone and everything within a particular geographical area’ (Miller, *National Responsibility*, p. 214). Perhaps this argument avoids fetishism by not depicting such a right as an *exclusive* one – i.e. it holds out the possibility of super-state actors *also* applying law and policy to ‘things’ within the state’s borders.

<sup>42</sup> Note, for instance, that in their influential defence of self-determination, Margalit and Raz suggest that ‘the right to self-determination is neither absolute nor unconditional. It affects important and diverse interests of many people...Those who may benefit from self-government cannot insist on it at all costs. Their interests have to be considered along those of others.’ Whilst Margalit and Raz do not theorise the role – if indeed there is one – of control over resources within an account of self-determination, their argument, if extended to that issue, would imply that resource rights could not be as absolute as Nine wants to suggest. To insist that they must be is to make too strong a claim on behalf of self-determination. Avishai Margalit and Joseph Raz, ‘National Self-determination,’ *Journal of Philosophy* 87.9 (1990): 439-61, at 461.

<sup>43</sup> John Rawls, *The Law of Peoples with ‘The Idea of Public Reason Revisited’* (Harvard: Harvard University Press, 1999), p. 8; see also pp. 38-9.

<sup>44</sup> For an example, see R.J. Smith, ‘Resolving the Tragedy of the Commons by Creating Private Property Rights in Wildlife,’ *CATO Journal* 1 (1981): 439-68. Smith argues that ‘the only way to avoid the tragedy of the commons is to end the common property system by creating a system of private property rights’ (p. 467).

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<sup>45</sup> It is notable that all of the examples of sound communal proprietorship over natural resources which Ostrom cites are local rather than national; and indeed she cites many studies which suggest that the maximum scale for effective proprietorship over some natural resources is much, much smaller than the national level. See Ostrom, 'Private and Common Property Rights,' pp. 347-8. Of course, some of these small-scale cases could also be trans-national.

<sup>46</sup> Thus for instance Miller at one point unpacks the value of self-determination in terms of 'the importance to a political community of being able to determine its future shape', here vis-à-vis the claims of would-be immigrants. *National Responsibility*, p. 223.